



**Western Riverside County
Regional Conservation Authority**
www.wrc-rca.org

EXECUTIVE COMMITTEE

The Executive Committee, consisting of the RCA Board Chairman, Vice Chairman, Past Chairman, and four members of the RCA Board, makes recommendations regarding personnel, administrative and financial matters, as well as provide guidance on a broad range of issues including target areas or types of habitats needed to remain in rough step. In addition, the Executive Committee may schedule Funding Coordination Committee workshops to discuss funding and acquisition strategy.

MEETING

12:00 p.m.
Wednesday, November 21, 2007
Riverside County Administrative Center
Fifth Floor, Conference Room C
4080 Lemon Street, Riverside

EXECUTIVE COMMITTEE MEMBERS

Jeff Stone, Chairman
County of Riverside District III
Eugene Montanez, Vice Chairman
City of Corona
Robin Lowe, Past Chairman
City of Hemet
Gary Thomasian
City of Murrieta
Dale Stubblefield
City of San Jacinto
John Tavaglione
County of Riverside District II
Marion Ashley
County of Riverside District V

Joe Richards, Executive Director
Honey Bernas, Director of Administrative Services
Ken Graff, Director of Land Acquisition



WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

www.wrc-rca.org

Executive Committee

(Chairman Jeff Stone, Vice Chairman Eugene Montanez, Past Chairman Robin Lowe),
Marion Ashley, Dale Stubblefield, John Tavaglione, Gary Thomasian)

MEETING AGENDA*

**Action(s) may be taken on any item listed on the agenda.*

Wednesday, November 21, 2007

12:00 P.M.

Riverside County Administrative Center
Fifth Floor, Conference Room C
4080 Lemon Street
Riverside, CA 92501

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if special assistance is needed to participate in an Executive Committee meeting, please contact the Clerk of the Board at (951) 955-9700. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT** *(At this time members of the public can address the Executive Committee regarding any items within the subject matter jurisdiction of the RCA that are not separately listed on this agenda. Members of the public will have the opportunity to speak on agenda items at the time the item is called for discussion. No action may be taken on items not listed on the agenda unless authorized by law. Each individual speaker is limited to speak three (3) continuous minutes or less. Any person wishing to address the Executive Committee on any matter, whether or not it appears on this agenda, is requested to complete a Request to Speak form available at the door. The completed form is to be submitted to the Clerk of the Board prior to an individual being heard. Whenever possible, lengthy testimony should be presented to the Executive Committee in writing and only pertinent points presented orally. Any written documents to be distributed or presented to the Executive Committee shall be submitted to the Clerk of the Board.)*
4. **COMMITTEE MEMBER ANNOUNCEMENTS**
5. **ADDITIONS/REVISIONS** *(The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee Members present, adding an item requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.)*

RCA EXECUTIVE COMMITTEE AGENDA

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November 21, 2007

6. APPROVAL OF MINUTES

7. MOU BETWEEN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY AND THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS FOR THE TRANSFER OF TUMF FUNDS FOR USE UNDER THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN

Overview

That the RCA Executive Committee:

- 1) Approve the MOU between RCA and WRCOG regarding the Transfer of TUMF Funds; and
- 2) Authorize staff to agendize this matter for the December 3, 2007 meeting of the RCA Board of Directors.

8. PROFESSIONAL SERVICES AGREEMENT BETWEEN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY AND THOMAS B. MULLEN FOR ACQUISITION OF FUNDING AND OTHER SPECIAL PROJECTS

Overview

That the RCA Executive Committee:

- 1) Approve the Professional Services Agreement between the RCA and Thomas B. Mullen; and
- 2) Authorize staff to agendize this matter for the December 3, 2007 meeting of the RCA Board of Directors.

9. EXECUTIVE DIRECTOR'S REPORT

- 12.1 Board Member Orientation/Refresher Course
- 12.2 Lease Agreement

10. FUTURE AGENDA ITEMS: *(Committee members are invited to suggest additional items to be brought forward for discussion.)*

RCA EXECUTIVE COMMITTEE AGENDA

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November 21, 2007

11. CLOSED SESSION:

- A. With respect to every item of business to be discussed in Closed Session, pursuant to Government Code Section 54956.8:**

**Conference with Real Property Negotiator
Pursuant to Government Code Section 54956.8**

11.1 Property: Assessor's Parcel No. 362-170-004
Negotiating Parties
Agency Negotiator: Director of Land Acquisition and Property
Mgt. or Designee
Property Agent: Canyon Breeze/Dorian Henderson
Under Negotiation: Price/Terms

11.2 Property: Assessor's Parcel No. 900-070-001
Negotiating Parties
Agency Negotiator: Director of Land Acquisition and Property
Mgt. or Designee
Property Agent: Winchester 700/K. Erik Friess
Under Negotiation: Price/Terms

- B. With respect to every item of business to be discussed in Closed Session, pursuant to Government Code Section 54956.9**

**11.3 Conference with Legal Counsel - Anticipated Litigation
Exposure to Litigation, Pursuant to Subdivision (c) of Government
Code Section 54956.9: One Case**

- C. With respect to every item of business to be discussed in Closed Session, pursuant to government Code Section 54957**

**11.4 Public Employee Recruitment
Title: Executive Director
Public Employment**

12. ADJOURNMENT

The next meeting of the Western Riverside County Regional Conservation Authority Executive Committee will be Wednesday, December 19, 2007, at 12:00 p.m., in the Fifth Floor Conference Room C, 4080 Lemon Street, Riverside, California, 92501.

AGENDA ITEM NO. 6

MINUTES



WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

www.wrc-rca.org

Executive Committee

MEETING MINUTES

Wednesday, September 19, 2007

1. CALL TO ORDER

The meeting of the Western Riverside County Regional Conservation Authority Executive Committee was called to order by Chairman Jeff Stone at 12:10 p.m., in Conference Room A in the County Administrative Center, 4080 Lemon Street, Fifth Floor, in Riverside, California 92501.

2. ROLL CALL

Committee Members/Alternates Present

Marion Ashley
Eugene Montanez
John Tavaglione
Jeff Stone
Dale Stubblefield
Gary Thomasian

Committee Member Absent

Robin Lowe

3. PUBLIC COMMENT

There were no public comments.

4. COMMITTEE MEMBER ANNOUNCEMENTS

There were no Committee Member announcements.

5. ADDITIONS/REVISIONS

There were no additions/revisions.

6. APPROVAL OF MINUTES

***M/S/C (MONTANEZ/THOMASIAN) to approve the May 16, 2007
Executive Committee meeting minutes, as presented.***

7. APPROVAL OF PURCHASE AGREEMENT WITH THE CITY OF RIVERSIDE FOR ACQUISITION OF REAL PROPERTY

Brian Beck, Land Acquisition Analyst, informed the Executive Committee that the City of Riverside is acquiring approximately 125 acres, adjacent to the Tequesquite Park. Of the 125 acres, there are approximately 66 acres that would be appropriate for MSHCP reserve assembly. The appraised value of the 66-acre portion is \$2,154,750. With RCA funds already committed this fiscal year, staff is proposing that RCA purchase the property by entering into a purchase agreement with the City of Riverside with an initial payment of \$750,000 TUMF funds in January 2008. The remainder of the funds, \$1,404,750, would be paid in January 2009 using RCA MSHCP funds.

M/S/C (ASHLEY/THOMASIAN) that the RCA Board of Directors:

- 1) Direct staff to prepare a purchase agreement with the City of Riverside to acquire approximate 66 acres for \$2,154,750 with the City of Riverside for the property shown on Exhibit 1; and*
- 2) Authorize staff to agendize this matter for the October 1, 2007 meeting of the RCA Board of Directors.*

8. APPROVAL OF MODIFICATION OF THE RCA APPRAISAL POLICY, SECTION 1.03 OF THE LAND ACQUISITION POLICIES

Brian Beck informed the Committee that RCA has received numerous requests from sellers to provide them with either a full copy of the appraisal or a copy of the appraisal summary. Staff is proposing modification of the RCA appraisal policy which provides guidelines to address these types of requests. Staff proposal is to not provide full appraisals to the seller. This is consistent with the Board's Public Records Policy that exempts full appraisals from disclosure until the transaction has been completed. However, the proposed policy permits the release of an appraisal summary to sellers of HANS/JPR properties at the time an offer is made. This is appropriate because the MSHCP requires that joint appraisal instructions be prepared for HANS/JPR acquisitions and, therefore, the sellers should receive a copy of the appraisal summary at the time an offer is made. On all non-HANS/JPR acquisitions, it is recommended not to release a copy of the appraisal summary until the purchase and sale agreement has been signed.

M/S/C (MONTANEZ/ASHLEY) that the RCA Board of Directors:

- 1) Modify Policy 1.03 of the RCA Land Acquisition Policies to add guidelines for distribution of Appraisal Summaries to property owners; and***
- 2) Authorize staff to agendize this matter for the October 1, 2007 meeting of the RCA Board of Directors.***

9. RECOMMENDATION TO REVISE THE RCA CRITERIA REFINEMENT POLICY

Joe Richards, Deputy Executive Director, informed the Executive Committee that in June 2006, the RCA Board endorsed a template policy that could be used by the Cities and the County. The proposed revision to the Criteria Refinement Policy would bring it in line with the City/County template.

M/S/C (THOMASIAN/STUBBLEFIELD) that the RCA Board of Directors:

- 1) Approve the attached revision to the RCA Criteria Refinement Policy; and***
- 2) Authorize staff to agendize this matter for the October 1, 2007 meeting of the RCA Board of Directors.***

10. APPROVAL OF KIOSK DESIGN FOR RCA PROPERTY ACCESS POINTS, INTERPRITIVE CENTERS OR TRAIL HEADS

Ken Graff, Director of Land Acquisition and Property Management, presented the proposed design for kiosks that would be installed at RCA's property access points, interpretive centers or trail heads. This type of kiosk design, with or without a resting bench attached to the end or front, is currently being used in many open space areas.

Eugene Montanez complimented staff for presenting a simple and uncomplicated design and plan.

M/S/C (MONTANEZ/ASHLEY) that the RCA Board of Directors:

- 1) Adopt the basic kiosk design plan attached to the staff report as an approved kiosk design for RCA Open Space Reserve Land, and authorize staff to direct their installation in appropriate sites; and***

- 2) ***Authorize staff to agendize this matter for the October 1, 2007 meeting of the RCA Board of Directors.***

11. APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH AHERN, ADCOCK AND DEVLIN TO PERFORM AGREED-UPON PROCEDURES ON MSHCP DEVELOPMENT MITIGATION FEE COLLECTIONS

Honey Bernas, Director of Administrative Services, informed the Executive Committee that the proposal is for RCA to engage Ahern, Adcock and Devlin for five (5) years to perform agreed-upon procedures on RCA's County and member cities' MSHCP Development Mitigation Fee collections. This would comply with the FY 2006 audit recommendations that all permittees be audited. Once approved, the procedures will start with the cities of Corona and Perris in FY 2008 and with the remainder of the member agencies over the four (4) subsequent years.

M/S/C (ASHLEY/STUBBLEFIELD) to:

- 1) ***Direct staff and legal counsel to continue to negotiate details of the contract;***
- 2) ***Recommend that the Board of Directors approve the negotiated contract; and***
- 3) ***Authorize staff to agendize this matter for the October 1, 2007 meeting of the RCA Board of Directors.***

12. EXECUTIVE DIRECTOR'S REPORT

Tom Mullen, Executive Director, presented a proposal to the Executive Committee to name the overall MSHCP Reserve, with the exception of specific acreage that were already named, after a County of Riverside retiree and distinguished public agency professional, Richard K. Lashbrook, who worked tirelessly and diligently with elected officials and staff toward finalizing RCIP. With the Committee's concurrence, this agenda item will placed on the Board of Directors' meeting agenda on October 1, 2007 for their consideration.

Marion Ashley and Chairman Stone agreed that this proposal is worth considering.

13. FUTURE AGENDA ITEMS

There were no requests for future agenda items.

14. ADJOURNMENT

Chairman Stone informed the Executive Committee members and staff that he will not be available for the next Committee meeting on October 17, 2007. The Committee Members discussed the possibility of rescheduling the meeting to October 25, 2007. Staff will inform the Committee members of the meeting date once it is confirmed.

Respectfully submitted,



Honey Bernas
Clerk of the Board

AGENDA ITEM NO. 7

**MOU BETWEEN THE WRCRCA
and WRCOG FOR THE
TRANSFER OF TUMF FUNDS
FOR USE UNDER THE
WESTERN RIVESIDE COUNTY
MSHCP**

Regional Conservation Authority**MEMORANDUM OF UNDERSTANDING BETWEEN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY AND THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS FOR THE TRANSFER OF TUMF FUNDS****Staff Contact:**

Honey Bernas
Director of Administrative Services
951-955-2842

Background:

In the July 2005 update on TUMF, the Western Riverside Council of Governments designated that a portion of the TUMF revenue shall be allocated to the RCA to fund the purchase of property, and related costs, in support of the MSHCP. New transportation infrastructure is anticipated to contribute five percent (5%) of construction costs to mitigate environmental impacts of its TUMF facilities to help fund the acquisition of habitat in accordance with the MSHCP.


Legal Counsel and WRCOG and RCA staff have negotiated the attached MOU which formalizes the process for RCA to access these funds. The MOU states that the RCA will request funds from WRCOG in writing. Approval for such contributions shall be provided by the WRCOG Executive Director for contributions up to \$250,000, by the WRCOG Administration & Finance Committee for contributions up to \$1,000,000, and by the WRCOG Executive Committee for contributions over \$1,000,000. The RCA will provide WRCOG with an accounting of the Funding Contributions made by WRCOG on an annual basis.

This matter will be agendized for consideration at the December 3, WRCOG Executive Committee meeting.

Staff Recommendations:

That the Executive Committee:

1. Approve the MOU between the RCA and WRCOG; and
2. Authorize staff to agendize this matter for the December 3, 2007 meeting of the RCA Board of Directors.

| FINANCIAL INFORMATION | |
|----------------------------------------------------------------------------------------------------|-------------------------------------|
| In Fiscal Year 2007-08 Budget: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Cost: \$ N/A Annual Cost: \$ N/A |
| Source of Funds: TUMF | Budget Adjustment: No From To |
| Approved by:  | Date: November 16, 2007 |

Attachment:

MOU Between the RCA and WRCOG for the Transfer of TUMF Funds

AGENDA ITEM NO. 7
Attachment 1

MOU Between
WRCRCA and WRCOG
Transfer of TUMF Funds

MEMORANDUM OF UNDERSTANDING BETWEEN THE WESTERN RIVERSIDE REGIONAL CONSERVATION AUTHORITY AND THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS FOR THE TRANSFER OF TUMF FUNDS FOR USE UNDER THE WESTERN RIVERSIDE COUNTY MULTIPLE SPECIES HABITAT CONSERVATION PLAN

THIS MEMORANDUM OF UNDERSTANDING, is made and effective this _____ day of _____, 2007, by and between the WESTERN RIVERSIDE REGIONAL CONSERVATION AUTHORITY (“RCA”) and the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (“WRCOG”). RCA and WRCOG are sometimes collectively referred to herein as the “PARTIES.”

RECITALS

A. RCA is a joint powers agency, created pursuant to the provisions of Government Code section 6500 *et al*; and

B. WRCOG is a joint powers agency, created pursuant to the provisions of Government Code section 6500 *et al*; and

C. The Western Riverside County Multiple Species Habitat Conservation Plan (“MSHCP”) is a multi-jurisdictional habitat conservation plan focusing on the conservation of both sensitive species and associated habitats to address biological and ecological diversity conservation needs in western Riverside County, setting aside undisturbed land for the conservation of sensitive habitats while preserving open space and recreational opportunities; and

D. The MSHCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment, and creates a plan to mitigate for the potential loss of covered species and their habitats due to direct and indirect impacts of future development of both private and public lands within the MSHCP Plan Area; and

E. WRCOG has adopted a Transportation Uniform Mitigation Fee (“TUMF”) to fund the construction of transportation related infrastructure in Western Riverside County; and

F. In the July 2005 update on the TUMF, WRCOG has designated that a portion of the TUMF revenue shall be allocated to the RCA to fund the purchase of property, and related costs, in support of the MSHCP; and

H. New transportation infrastructure is anticipated to contribute five percent (5%) of construction costs to mitigate environmental impacts of its TUMF facilities to help fund the acquisition of habitat in accordance with the MSHCP (“MSHCP Funding Contribution”); and

I. It is the purpose of this Memorandum of Understanding to set forth the transfer of funds from WRCOG to the RCA as part of fulfilling the WRCOG's obligation to assist in the implementation of the MSHCP.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, in consideration of the foregoing facts and mutual understandings, the PARTIES wish to memorialize, by this Memorandum, the following mutual understandings:

1. **WRCOG's MSHCP Funding Contribution.** WRCOG shall set aside five percent (5%) of the construction cost of TUMF facilities as collected to satisfy its MSHCP Funding Contribution. TUMF funds allocated to RCA under this MOU shall be used by RCA in accordance with the MSHCP. WRCOG shall provide TUMF funds in a timely manner to ensure that RCA can acquire habitat according to a timeframe to mitigate the impact of TUMF facilities on habitat.

2. **Form of Contribution.**

(a) WRCOG shall satisfy its MSHCP Funding Contribution through monetary contributions to RCA to assist in the RCA's purchase of property for the MSHCP.

(b) Contributions by WRCOG of TUMF funds shall be used to assist with the purchase of specific properties identified by RCA. RCA shall submit requests for contributions to WRCOG in writing. Approval for such contributions shall be provided by the WRCOG Executive Director for contributions up to Two Hundred Fifty Thousand Dollars (\$250,000), by the WRCOG Administration & Finance Committee for contribution between Two Hundred Fifty Thousand One Dollars (\$250,001) to One Million Dollars (\$1,000,000) and by the WRCOG Executive Committee for contributions in excess of One Million One Dollars (\$1,000,001). Such contributions shall be authorized at the sole discretion of WRCOG.

3. **Segregation of Funds.** WRCOG shall place all MSHCP Funding Contribution funds in a separate fund, segregated from other funds maintained by the agency. RCA shall be entitled to all interest earned on such funds prior to allocation to RCA under this MOU.

4. **Compliance with Government Code Sections 66000 et seq.** RCA recognizes that the MSHCP Funding Contribution TUMF funds allocated under this MOU are governed by Government Code Section 66000 et seq. and RCA shall be responsible for administering and expending such funds in accordance therewith.

5. **Statement.** On an annual basis, the RCA shall prepare an accounting of the MSHCP Funding Contributions made by WRCOG.

6. **Amendment.** This Memorandum of Understanding may be amended in writing by mutual agreement of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be signed as of the date first above written.

**WESTERN RIVERSIDE REGIONAL
CONSERVATION AUTHORITY**

**WESTERN RIVERSIDE COUNCIL OF
GOVERNMENTS**

By: _____
Jeff Stone, Chairman

By: _____
Chuck Washington, Chairman
WRCOG Executive Committee

ATTEST:

ATTEST:

By: _____
Honey Bernas, Clerk of the Western
Riverside Regional Conservational
Authority Board of Directors

By: _____
Clerk, Western Riverside Council of
Governments

Approved as to Form:

By: _____
Best Best & Krieger LLP
General Counsel

AGENDA ITEM NO. 8

**PROFESSIONAL SERVICES
AGREEMENT BETWEEN THE
WRCRCA AND
THOMAS B. MULLEN FOR
ACQUISITION OF FUNDING
AND OTHER SPECIAL
PROJECTS**

AGENDA ITEM NO. 8
Attachment 1

Professional Services
Agreement between the RCA
And Tom Mullen

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION AUTHORITY AND
THOMAS B. MULLEN FOR ACQUISITION OF
FUNDING AND OTHER SPECIAL PROJECTS**

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of January, 2008, by and between the Western Riverside County Regional Conservation Authority, a joint powers agency, with its principal place of business at 4080 Lemon Street, Twelfth Floor, Riverside, California, 92501, and Thomas B. Mullen ("Consultant"), an individual with his principal place of business at 5765 Tower Road, Riverside, California, 92506. The RCA and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 RCA: Western Riverside County Regional Conservation Authority (the "RCA") is a joint power authority created pursuant to the provisions of the California Government Code section 6500 with its principal place of business at 4080 Lemon Street, 12th Floor, Riverside, California, 92501.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the RCA on the terms and conditions set forth in this Agreement.

2.3 Project. The RCA desires to engage Consultant to render services for 1) obtaining funding to implement the Western Riverside County MSHCP, including but not limited to, reserve assembly, 2) select land acquisitions, 3) the Mid-County Parkway relating to consistency with the Plan, 4) completing the Special Area Management, and 5) special projects as directed by the RCA Executive Director.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant shall assist in obtaining funding for assembling the reserve and fulfilling the obligations under the MSHCP, select land acquisitions, the Mid-County Parkway efforts, the Special Area Management Plan, and completing special projects for the RCA as directed by the RCA Executive Director. All Services shall be subject to, and performed in accordance with, this Agreement and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be for a period of twelve (12) months, until December 30, 2008, unless earlier terminated as provided herein.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor.

The Services shall be performed by Consultant or under his supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The RCA retains Consultant on an independent contractor basis and not as an employee. An independent contractor is not an employee of the RCA and as such, not entitled to the protections and benefits provided to RCA employees.

3.2.2 Schedule of Services. Consultant shall provide his Services to the RCA on an as needed basis, within the term of this Agreement.

3.2.3 RCA's Representative. The RCA hereby designates the RCA Executive Director, or his or her designee, to act as its representative for the performance of this Agreement. All invoices for Consultant shall be submitted to the RCA. The RCA Executive Director shall have the power to act on behalf of the RCA for all purposes under this Agreement.

3.2.4 Coordination of Services. Consultant agrees to work closely with the RCA Executive Director and RCA staff in the performance of Services and shall be available to RCA's Executive Director, staff, consultants and other staff at all reasonable times.

3.2.5 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the RCA, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.3 Fees and Payments.

3.3.1 Compensation. For the Services performed under this Agreement, the RCA shall pay Consultant a monthly retainer of fifteen thousand dollars (\$15,000), plus reimbursable expenses. RCA shall make arrangements and pay for airfare and hotel accommodations required in the performance of assigned duties. Consultant shall not work more than 960 hours per fiscal year.

3.3.2 Payment of Compensation. Consultant shall submit to the RCA a monthly statement for Services rendered by Consultant. Said compensation shall be paid in accordance with an invoice submitted to the RCA by Consultant within fifteen (15) days from the last day of each calendar month, and the RCA shall, within forty-five

(45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Extra Work. At any time during the term of this Agreement, RCA may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by RCA to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from RCA's Representative.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all reimbursable expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of the RCA during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Either Party may, by written notice to the other Party, terminate the whole or any part of this Agreement at any time and without cause by giving written notice of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to RCA, and Consultant shall be entitled to no further compensation.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, the RCA may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the RCA may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

RCA

Western Riverside County
Regional Conservation Authority
4080 Lemon Street, 12th Floor
Riverside, CA 92501
Attn: Executive Director

Consultant

Thomas B. Mullen
5765 Tower Road
Riverside, CA 92506

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.4 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.5 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.6 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.8 RCA's Right to Employ Other Consultants. The RCA reserves the right to employ other consultants in connection with this Project.

3.5.9 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the RCA. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.10 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the RCA include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.11 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.12 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.13 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.14 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.15 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the RCA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the RCA, during the term of his or her service with the RCA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

**WESTERN RIVERSIDE COUNTY
REGIONAL CONSERVATION
AUTHORITY**

CONSULTANT

By: _____
Jeff Stone, Chairman

By: _____
Thomas B. Mullen
Consultant

Approved as to form:

RCA General Counsel
Best Best & Krieger LLP