

***Regional Conservation Authority*****PROFESSIONAL SERVICES AGREEMENT BETWEEN THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY AND THOMAS B. MULLEN FOR ACQUISITION OF FUNDING AND OTHER SPECIAL PROJECTS****Staff Contact:****Joe Richards, Executive Director  
(951) 955-9700****Background:**

In order to effectuate a smooth transition with the change in RCA management, staff suggests retaining the services of Tom Mullen to assist the Authority in the following efforts:

- Obtaining funding to implement the Western Riverside County MSHCP, including but not limited to, reserve assembly
- Select land acquisitions
- Mid-County Parkway consistency
- Completion of the Special Area Management Plan
- Special Projects for the RCA as directed by the RCA Executive Director

The term of the agreement is for a period of (12) months, until December 30, 2008. The contract is for a monthly retainer of \$15,000, plus reimbursable expenses, and states that the consultant shall not work more than 960 hours per fiscal year. The agreement also states that the RCA will make arrangements and pay for airfare and hotel accommodations required in the performance of assigned duties.

There are sufficient funds available in the Fiscal Year 2008 budget to cover the cost of this contract, and no budget adjustment is necessary.

**Staff Recommendation:**

That the RCA Executive Committee:

1. Approve the Professional Services Agreement between the Western Riverside County Regional Conservation Authority and Thomas B. Mullen; 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: \$ 200,000 Annual Cost: \$ N/A
Source of Funds: MSHCP Development Mitigation Fees, Tipping Fees, and other misc. revenue	Budget Adjustment: No
Approved by: <i>Honey Bernas</i>	Date: November 15, 2007

**Attachment:**

Professional Services Agreement between the RCA and Thomas B. Mullen

**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