



REPORT TO CITY COUNCIL

DATE: DECEMBER 10, 2014

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT 

SUBJECT: AGREEMENT WITH MOUNTAINS RESTORATION TRUST FOR HABITAT MITIGATION ASSOCIATED WITH THE AGOURA ROAD WIDENING PROJECT

The purpose of this item is to seek City Council approval for the City to enter into an In-Lieu Fee Mitigation Agreement with Mountains Restoration Trust (MRT) to provide habitat mitigation associated with the Agoura Road Widening Project. The fee is a lump sum of \$149,889.00 to be paid for by monies from Measure R.

The City Council adopted the Agoura Road Widening Project Final Initial Study/Mitigated Negative Declaration (IS/MND) prepared pursuant to the California Environmental Quality Act (CEQA) in December 2012. In the IS/MND, Mitigation Measures BIO-3 and BIO-4 require compensation for the temporary and permanent loss of riparian, wetland, and other related habitat. This past year, regulatory permits were obtained from the U.S. Army Corps of Engineers, Regional Water Quality Control Board and the California Department of Fish and Wildlife to conduct the Agoura Road Widening work; these permits contain conditions that further specify the types and amount of mitigation to compensate for the loss of habitat.

A portion of the habitat mitigation, particularly that for temporary impacts (e.g., an area to be graded, but not permanently developed), would occur onsite, near Agoura Road. For the remainder of the mitigation, there is insufficient land to create additional habitat in the City. Therefore, the regulatory agencies have agreed to the City providing an in-lieu fee to MRT to conduct the mitigation south of the City in the Santa Monica Mountains in the Malibu Creek Watershed, specifically in the La Sierra Preserve, located near La Sierra Creek. This work would be in addition to previous restoration at the La Sierra Preserve previously undertaken by MRT.

MRT is a non-profit land trust that works to preserve natural land in the Santa Monica Mountains through restoration, education and land acquisition. MRT commonly accepts in-lieu fees for restoration from agencies, including the Las Virgenes Municipal Water District, for example. In addition, the City previously entered into an in-lieu fee agreement with the MRT for mitigation associated with the Kanan Road Interchange

Project. Upon payment of the in-lieu fee, the City would transfer all responsibility for implementing, maintaining, and ensuring the success of the restoration project, including coordinating with the regulatory agencies, to the MRT.

This Agreement has been reviewed and approved as to form by the City Attorney.

RECOMMENDATION

Staff respectfully recommends the City Council approve the In-Lieu Fee Mitigation with Mountains Restoration Trust for a lump sum of \$149,889.00

Attachment: Agreement with Exhibits A and B

AGREEMENT ROUTING SLIP FOR

MRT

Consultant Name (\$25K and Over)

Attached, please find (check one of the following boxes):

- | | |
|---|---|
| <input type="checkbox"/> Standard Template with no changes
Complete Section 2 only | <input checked="" type="checkbox"/> Outside Agency Agreement
Complete Sections 1 and 2 |
| <input type="checkbox"/> Standard Template with changes
Complete Sections 1 and 2 | <input type="checkbox"/> Special Agreement
Complete Sections 1 and 2 |

Section 1 – Changes to template or insurance: Receive Department Head approval to amend. Check with Risk Manager for insurance and/or template amendments. Risk Manager will authorize emailing City Attorney for template review and approval. Attach City Attorney email response (approval) to this slip.

- | | |
|--|--|
| <input type="checkbox"/> _____ (Dept. Head Initials/Date)
Authorization to Amend Agreement | <input type="checkbox"/> _____ (Risk Manager Initials/Date)
Approval to Forward to City Attorney |
| <input type="checkbox"/> _____ (Risk Manager Initials/Date)
Insurance Amended (See Notes Below) | <input type="checkbox"/> <u>ac</u> Staff Initials(From No. 1 Below)
City Attorney Email Approval Attached |
| <input type="checkbox"/> _____ (Risk Manager Initials/Date)
Template Amended (See Notes Below) | <input type="checkbox"/> _____ Staff Initials/Date
Other (See Notes Below) |

Section 2 – Signed agreement received from Consultant. Sign/date and attach this routing slip to the proposed agreement and route to staff in the order listed below (i.e., 2-4). Submit the signed agreement, including the appropriate insurance and endorsement, with this completed routing slip, to the Risk Manager (insurance review/approval) who will forward to the City Clerk for final review/distribution. Agreements without the appropriate insurance attached will be returned to the department. A copy of the final agreement will be provided to the Consultant and the staff person (in Item No. 1 below)

- | | |
|--|---|
| 1. <u>Allison Cook (11-14-14)</u>
Prepared by (Staff Name/Date) | 2. <u>Mike Kamis 11-14/14</u>
Department Head - Date
(Authorization to forward to Risk Mgr/Clerk) |
| 3. <u>[Signature] 11/17/14</u>
Risk Manager – Date
(Insurance Review/Approval) | 4. <u>[Signature] 11/19/14</u>
City Clerk – Date
(Format Review/Final Distribution) |

- FOR CITY CLERK USE ONLY -

Year: 2014 Month/Day: _____

Agreement/Insurance Received: 11/14

To City Attorney for Signatures: _____

To City Manager/Mayor for Signatures: _____

City Attorney Email/Scope Attached: _____

Distributed to Consultant/Staff: _____

Laserfiche/Log/Index/File: By: _____

Insurance Logged: By: _____

Notes: This is Agreement between City + MRT for payment of in lieu fee for mitigation associated with Agoura Rd. Widening. No insurance required. City Attorney has reviewed + provided comments, which have been incorporated. - ac

Ok As is AT

**IN-LIEU FEE MITIGATION AGREEMENT BETWEEN THE
CITY OF AGOURA HILLS AND
THE MOUNTAINS RESTORATION TRUST**

THIS AGREEMENT is made and effective as of _____, between the City of Agoura Hills ("City") and the Mountains Restoration Trust ("MRT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **RECITALS.** This agreement is made with respect to the following facts and for The following purposes, which each of the parties hereto acknowledge as true and correct:

A. Pursuant to Section 1602 of the California Fish and Game Code, and Sections 401 and 404 of the Clean Water Act, in November 2013, City notified the California Department of Fish and Wildlife (the "CDFW"), Los Angeles Regional Water Quality Control Board (the "RWQCB"), and Army Corps of Engineers (the "ACOE"), respectively, of its intent to change the bed, channel or bank of five unnamed ephemeral drainage tributaries and a seasonal wetland of Medea Creek, located in the City of Agoura Hills, County of Los Angeles, California.

B. The City obtained the following permits authorizing work on the Agoura Road Widening Street Improvement Project ("the Project") impacting several unnamed drainages and a small portion of a seasonal wetland that are tributaries to Medea Creek in the City of Agoura Hills, County of Los Angeles:

1. Streambed Alteration Agreement #1600-2013-0235-R5 ("Streambed Alteration Agreement"), dated June 10, 2014, with CDFW, as authorized by Section 1600 of the Fish and Game Code.
2. 401 Water Quality Certification File No. 13-132 ("401 Certification") dated December 26, 2013 with the RWQCB, as authorized by Section 401 of the Clean Water Act.
3. Nationwide Permit Authorization #SPL-2013-00551-AJS ("404 Permit"), dated February 24, 2014 with the ACOE, as authorized by Section 404 of the Clean Water Act.

C. The Streambed Alteration Agreement, 401 Certification, and 404 Permit require the City to provide certain mitigation ("Mitigation") relating to the Agoura Road Widening Street Improvement Project.

D. The total habitat acreage to be impacted by the Project, as stated in the Stream Alteration Agreement, will be a total of 0.79 acres, consisting of 0.11 acres of permanent loss of willow riparian habitat, California buckwheat scrub, oak savanna and scrub oak chaparral habitat, and 0.68 acres of temporary loss of habitat, of which 0.06 acre is wetland, and 0.62 acre is oak savanna. The total habitat acreage to be impacted by the Project, as stated in the 401 Certification, is 0.06 acre of temporary wetland impacts, and for non-wetland waters 0.16 acre of temporary impact and 0.03 acre of permanent impact.

E. In lieu of on-site mitigation to offset adverse impacts associated with permitted projects, CDFW and RWQCB are allowing compensatory mitigation in the form of an "in lieu" fee (referred to as "In Lieu Fee") where it has been determined that such compensatory mitigation may offer greater resource protection and conservation benefits by expending such in lieu monies on independent conservation projects that will offset impacts to jurisdictional habitat caused by the authorized activity. The purpose of the In-Lieu Fee is to provide a voluntary, alternative compensatory mitigation option that will result in better designed and managed aquatic resource sites ("Aquatic Resources").

F. The CDFW and RWQCB have agreed to allow payment of an In Lieu Fee for the creation and restoration of the Aquatic Resources by the MRT, as defined more specifically in Section 2 below.

G. MRT is in a position to perform and fulfill the off-site mitigation requirements set forth in the CDFW Streambed Alteration Agreement and RWQCB 401 Certification (collectively referred to as the "Permits") as described below in Section 2, on behalf of the City.

H. The City shall perform the mitigation required pursuant to the ACOE 404 Permit, which is on-site mitigation consisting of hydroseeding disturbed areas in the ACOE's jurisdiction with native, non-invasive vegetation of facultative upland or wetter species, as appropriate, and also perform the on-site mitigation component required pursuant to the Streambed Alteration Agreement and 401 Certification, which is to compensate for the loss of 0.62 acre of temporary impacts to oak savanna.

2. **MITIGATION.** MRT shall accept payment of the In Lieu Fee and Endowment by City in order to satisfy 0.51 acres of the mitigation requirements of the Permits, as described below and more specifically outlined in Exhibit A (Stream Alteration Agreement, "Measures to Protect Fish and Wildlife Resources, Items 3 and 4.5") and Exhibit B (401 Certification, Conditions of Certification, Items 22 and 23). The long-term management of the MRT mitigation site is the responsibility of MRT and will be funded by a non-wasting endowment ("Endowment") provided by the City. The endowment will provide for the long-term physical maintenance of the mitigation site inclusive of labor, materials and administrative costs. MRT enters into this Agreement agreeing to, among other things, use the In Lieu Fee and Endowment to establish and/or restore; preserve; maintain; and manage riparian habitat, wetlands, and/or other aquatic resources (collectively, the "Aquatic Resources") in perpetuity and secure the appropriate conservation easements as may be required by CDFW and RWQCB on the property known as the La Sierra Preserve in the Malibu Creek Watershed, owned by the County of Los Angeles and managed by MRT. The mitigation site will be restored and managed in accordance with the La Sierra Preserve- Phase III Conceptual Habitat Mitigation and Monitoring Plan (July 2014).

A. *CDFW Compensatory Measures.* To mitigate for the 0.11 acre of permanent impacts to willow riparian woodland, California buckwheat scrub, oak savanna and scrub oak chaparral resulting from project-related activities, MRT shall establish or restore 0.33 acre of off-site mitigation lands. Of the 0.33 acre, no less than 0.11 acre of establishment shall be

required. To mitigate for the 0.06 acre of temporary impacts to wetlands, MRT shall establish 0.18 acre of wetland vegetation consisting of obligate wetland plant species on off-site mitigation lands. Both the requirement to establish or restore 0.33 acre of off-site mitigation lands and the 0.18 acre of wetland vegetation on off-site mitigation lands shall constitute the whole of MRT's Mitigation obligations ("MRT Mitigation") under the CDFW compensatory measures. The City shall be responsible for the balance of mitigation acreage as required by CDFW ("City Mitigation"). MRT shall have no responsibilities with respect to the City Mitigation. MRT shall prepare and submit a Habitat Mitigation and Monitoring Plan (HMMP) for review and approval by CDFW, pursuant to the requirements of the Stream Alteration Agreement for the MRT Mitigation. This plan shall contain at a minimum the location(s) the mitigation shall take place, the current conditions at the mitigation site(s), the restoration to be performed, planting palette(s) to be used, success criteria and reference site(s), measures for reporting success and completion of mitigation, and evidence of a conservation easement over the mitigation site(s).

B. *RWQCB Compensatory Measures.* MRT shall establish or restore 0.06 acre of riparian habitat to offset the proposed permanent loss of a total of 0.03 acre of non-wetland waters of the United States, which shall be satisfied on the same site(s) as the 0.06 acre of wetland vegetation required by the Stream Alteration Agreement. MRT shall create or restore riparian habitat/federal jurisdictional wetland habitat at 0.18 acre to provide compensatory mitigation for the proposed permanent impacts to 0.06 acre of wetlands, which shall be satisfied on the same site(s) as the 0.18 acre required by the Stream Alteration Agreement. MRT shall prepare and submit a Proposed Mitigation Report consistent with the requirement of the 401 Certification, which shall include.

1. The boundary of the mitigation site clearly identified on a map of suitable resolution and quality and defined by latitude and longitude.
2. A description of the types of mitigation (e.g., removal of exotics and/or replanting with native species).
3. Success criteria.
4. Documentation that funds have been used for mitigation acreage only, which do not include administrative costs.
5. Copy of this Agreement.

C. *ACOE Compensatory Mitigation.* This Agreement does not cover any ACOE mitigation, as there is none required. MRT has no responsibility for reporting to ACOE.

D. MRT shall complete its obligations to establish and/or restore the Aquatic Resources within seven (7) years, or as otherwise agreed to and acceptable to the CDFW and RWQCB. MRT shall obtain any and all required permits and approvals from agencies, and property owner permission, at MRT's expense, to conduct the MRT Mitigation.

E. *Monitoring and Reporting.* MRT shall assume, perform, and fulfill the following monitoring and reporting requirements. MRT shall prepare a mitigation and monitoring report pursuant to Stream Alteration Agreement Condition 4.6 and submit it to CDFW, within nine (9) months of completion of the MRT Mitigation and thereafter every year from that date of first submittal for a period of five (5) years or until the MRT Mitigation has

been deemed sufficient and complete. MRT shall provide the City with a courtesy copy. The report shall include at a minimum the following:

1. Documentation of the number of species of plants established.
2. Documentation of the revegetation survival percentage and sizes of species.
3. Percent cover of non-native species.
4. Photographs of the mitigation from designated stations.

Following the completion of the MRT Mitigation, MRT shall submit to the RWQCB by January 1st of each year, an Annual Mitigation Monitoring Report (Annual Report) for a period of five (5) years following the establishment or restoration of the habitat for MRT Mitigation, or until MRT Mitigation success has been achieved and documented. MRT shall provide the City with a courtesy copy. The Annual Report shall contain at a minimum:

1. Detailed description of the project construction activities performed during the previous year and all restoration and mitigation efforts performed by MRT.
2. Color photo documentation of the pre- and post-project and mitigation site conditions.
3. Discussion of monitoring activities and exotic plant control efforts.

3. **PAYMENT.** For mitigation of 0.51 acres, the City shall pay in cash or equivalent, to MRT within 30 days of MRT's execution of this Agreement a total of One Hundred Forty Nine Thousand, Eight Hundred Eighty Nine dollars and zero cents (\$149,889.00), of which One Hundred and Eight Thousand, Seven Hundred and Fifty dollars and zero cents (\$108,750.00) is for MRT Mitigation establishment, and Forty One Thousand, One Hundred Thirty Nine dollars and zero cents (\$41,139.00) is for the non-wasting endowment and long-term management of the MRT Mitigation site. The portion of the MRT Mitigation funds for RWQCB-required mitigation, Thirteen Thousand and Five Hundred dollars and zero cents (\$13,500.00), shall be used for direct costs for establishing or restoring habitat, and not include administrative costs.

4. **TERM.** This Agreement shall commence upon mutual execution and shall remain and continue in effect until tasks described herein are completed, which shall be no later than seven (7) years from the date of execution of this Agreement, unless mutually agreed to in writing by the City and MRT.

5. **PERFORMANCE.** MRT shall at all times be solely responsible for faithfully, competently and to the best of its ability and experience, performing all tasks described herein. MRT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of MRT hereunder in meeting its obligations under this Agreement. MRT shall be solely responsible to maintain and monitor the MRT Mitigation site, and, in the event of failure of the MRT Mitigation, replace the plantings and continue to maintain and monitor such additional replanting, all at MRT's sole expense. To the extent it is unclear as to MRT's responsibilities under the Mitigation requirements of the

Permits described in Section 2, the parties agree to cooperate reasonably with one another to define and clarify the work to be performed by MRT under this Agreement. Any material change or modification relating to the work to be performed by MRT hereunder shall be agreed to mutually in writing by both parties.

6. **INDEMNIFICATION.** MRT shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent consultants serving in the role of City officials, and volunteers (collectively "Indemnitees") free and harmless from any and all claims, penalties, fines and other similar citation fees, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any acts or omissions of MRT, its officials, officers, employees, agents or sub-consultants in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such claims, MRT shall defend Indemnitees at MRT's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. MRT shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. MRT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MRT or Indemnitees. All duties of MRT under this Section shall survive termination of this Agreement.

7. **INDEPENDENT CONSULTANT.** MRT shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of MRT shall at all times be under MRT's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of MRT or any of MRT's officers, employees, or agents except as set forth in this Agreement. MRT shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. MRT shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

8. **LEGAL RESPONSIBILITIES.** The MRT shall keep itself informed of all local, state and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The MRT shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the MRT to comply with this section. The City shall keep MRT informed regarding any material changes in the Permits which may relate to MRT's work required under this Agreement.

9. **NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
Attn: Greg Ramirez, City Manager

To MRT: Mountains Restoration Trust
3815 Old Topanga Canyon Road
Calabasas, California 91302
Attention: Debra Sharpton, Executive Director

10. **ASSIGNMENT.** Neither party shall assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the other party. Upon termination of this Agreement, MRT's sole compensation shall be payment for actual services performed up to, and including, the date of termination, including without limitation all actual, verifiable costs of MRT, or as may be otherwise agreed to in writing between City and the MRT.

11. **LICENSES.** At all times during the term of this Agreement, MRT shall have in full force and effect, all permits and licenses required of it by law for the performance of the services described in this Agreement.

12. **GOVERNING LAW.** The City and MRT understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

13. **PROHIBITED INTEREST.** No officer or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, MRT, or MRT's consultants for this project, during his/her tenure or for one year thereafter. MRT hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of MRT or MRT's consultants on this project. MRT further

agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

14. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

15. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of MRT warrant(s) and represent(s) that he or she has the authority to execute this Agreement on behalf of the MRT and has the authority to bind MRT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF AGOURA HILLS

William D. Koehler,
Mayor

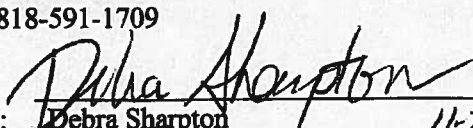
ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk
Date Approved by City Council: _____

APPROVED AS TO FORM:

Candice K. Lee,
City Attorney

MOUNTAINS RESTORATION TRUST (MRT)
Debra Sharpton
3815 Old Topanga Canyon Road
Calabasas, California 91302
Tel. 818-591-1701
FAX 818-591-1709

By: 
Name: Debra Sharpton
Title: Executive Director

11-21-14

Attachments:

Exhibit A Streambed Alteration Agreement No. 1600-2013-0235-R5

Exhibit B 401 Certification File No. 13-132

EXHIBIT A

**IN-LIEU FEE MITIGATION AGREEMENT BETWEEN THE
CITY OF AGOURA HILLS AND
THE MOUNTAINS RESTORATION TRUST**

THIS AGREEMENT is made and effective as of _____, between the City of Agoura Hills ("City") and the Mountains Restoration Trust ("MRT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **RECITALS.** This agreement is made with respect to the following facts and for the following purposes, which each of the parties hereto acknowledge as true and correct:

A. Pursuant to Section 1602 of the California Fish and Game Code, and Sections 401 and 404 of the Clean Water Act, in November 2013, City notified the California Department of Fish and Wildlife (the "CDFW"), Los Angeles Regional Water Quality Control Board (the "RWQCB"), and Army Corps of Engineers (the "ACOE"), respectively, of its intent to change the bed, channel or bank of five unnamed ephemeral drainage tributaries and a seasonal wetland of Medea Creek, located in the City of Agoura Hills, County of Los Angeles, California.

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E. In lieu of on-site mitigation to offset adverse impacts associated with permitted projects, CDFW and RWQCB are allowing compensatory mitigation in the form of an "in lieu" fee (referred to as "In Lieu Fee") where it has been determined that such compensatory mitigation may offer greater resource protection and conservation benefits by expending such in lieu monies on independent conservation projects that will offset impacts to jurisdictional habitat caused by the authorized activity. The purpose of the In-Lieu Fee is to provide a voluntary, alternative compensatory mitigation option that will result in better designed and managed aquatic resource sites ("Aquatic Resources").

F. The CDFW and RWQCB have agreed to allow payment of an In Lieu Fee for the creation and restoration of the Aquatic Resources by the MRT, as defined more specifically in Section 2 below.

G. MRT is in a position to perform and fulfill the off-site mitigation requirements set forth in the CDFW Streambed Alteration Agreement and RWQCB 401 Certification (collectively referred to as the "Permits") as described below in Section 2, on behalf of the City.

H. The City shall perform the mitigation required pursuant to the ACOE 404 Permit, which is on-site mitigation consisting of hydroseeding disturbed areas in the ACOE's jurisdiction with native, non-invasive vegetation of facultative upland or wetter species, as appropriate, and also perform the on-site mitigation component required pursuant to the Streambed Alteration Agreement and 401 Certification, which is to compensate for the loss of 0.62 acre of temporary impacts to oak savanna.

2. **MITIGATION.** MRT shall accept payment of the In Lieu Fee and Endowment by City in order to satisfy 0.51 acres of the mitigation requirements of the Permits, as described below and more specifically outlined in Exhibit A (Stream Alteration Agreement, "Measures to Protect Fish and Wildlife Resources, Items 3 and 4.5") and Exhibit B (401 Certification, Conditions of Certification, Items 22 and 23). The long-term management of the MRT mitigation site is the responsibility of MRT and will be funded by a non-wasting endowment ("Endowment") provided by the City. The endowment will provide for the long-term physical maintenance of the mitigation site inclusive of labor, materials and administrative costs. MRT enters into this Agreement agreeing to, among other things, use the In Lieu Fee and Endowment to establish and/or restore; preserve; maintain; and manage riparian habitat, wetlands, and/or other aquatic resources (collectively, the "Aquatic Resources") in perpetuity and secure the appropriate conservation easements as may be required by CDFW and RWQCB on the property known as the La Sierra Preserve in the Malibu Creek Watershed, owned by the County of Los Angeles and managed by MRT.

A. *CDFW Compensatory Measures.* To mitigate for the 0.11 acre of permanent impacts to willow riparian woodland, California buckwheat scrub, oak savanna and scrub oak chaparral resulting from project-related activities, MRT shall establish or restore 0.33 acre of off-site mitigation lands. Of the 0.33 acre, no less than 0.11 acre of establishment shall be required. To mitigate for the 0.06 acre of temporary impacts to wetlands, MRT shall establish

0.18 acre of wetland vegetation consisting of obligate wetland plant species on off-site mitigation lands. Both the requirement to establish or restore 0.33 acre of off-site mitigation lands and the 0.18 acre of wetland vegetation on off-site mitigation lands shall constitute the whole of MRT's Mitigation obligations ("MRT Mitigation") under the CDFW compensatory measures. The City shall be responsible for the balance of mitigation acreage as required by CDFW ("City Mitigation"). MRT shall have no responsibilities with respect to the City Mitigation. MRT shall prepare and submit a Habitat Mitigation and Monitoring Plan (HMMP) for review and approval by CDFW, pursuant to the requirements of the Stream Alteration Agreement for the MRT Mitigation. This plan shall contain at a minimum the location(s) the mitigation shall take place, the current conditions at the mitigation site(s), the restoration to be performed, planting palette(s) to be used, success criteria and reference site(s), measures for reporting success and completion of mitigation, and evidence of a conservation easement over the mitigation site(s).

B. *RWQCB Compensatory Measures.* MRT shall establish or restore 0.06 acre of riparian habitat to offset the proposed permanent loss of a total of 0.03 acre of non-wetland waters of the United States, which shall be satisfied on the same site(s) as the 0.06 acre of wetland vegetation required by the Stream Alteration Agreement. MRT shall create or restore riparian habitat/federal jurisdictional wetland habitat at 0.18 acre to provide compensatory mitigation for the proposed permanent impacts to 0.06 acre of wetlands, which shall be satisfied on the same site(s) as the 0.18 acre required by the Stream Alteration Agreement. MRT shall prepare and submit a Proposed Mitigation Report consistent with the requirement of the 401 Certification, which shall include.

1. The boundary of the mitigation site clearly identified on a map of suitable resolution and quality and defined by latitude and longitude.
2. A description of the types of mitigation (e.g., removal of exotics and/or replanting with native species).
3. Success criteria.
4. Documentation that funds have been used for mitigation acreage only, which do not include administrative costs.
5. Copy of this Agreement.

C. *ACOE Compensatory Mitigation.* This Agreement does not cover any ACOE mitigation, as there is none required. MRT has no responsibility for reporting to ACOE.

D. MRT shall complete its obligations to establish and/or restore the Aquatic Resources within seven (7) years, or as otherwise agreed to and acceptable to the CDFW and RWQCB. MRT shall obtain any and all required permits and approvals from agencies, and property owner permission, at MRT's expense, to conduct the MRT Mitigation.

E. *Monitoring and Reporting.* MRT shall assume, perform, and fulfill the following monitoring and reporting requirements. MRT shall prepare a mitigation and monitoring report pursuant to Stream Alteration Agreement Condition 4.6 and submit it to CDFW, within nine (9) months of completion of the MRT Mitigation and thereafter every year from that date of first submittal for a period of five (5) years or until the MRT Mitigation has

been deemed sufficient and complete. MRT shall provide the City with a courtesy copy. The report shall include at a minimum the following:

1. Documentation of the number of species of plants established.
2. Documentation of the revegetation survival percentage and sizes of species.
3. Percent cover of non-native species.
4. Photographs of the mitigation from designated stations.

Following the completion of the MRT Mitigation, MRT shall submit to the RWQCB by January 1st of each year, an Annual Mitigation Monitoring Report (Annual Report) for a period of five (5) years following the establishment or restoration of the habitat for MRT Mitigation, or until MRT Mitigation success has been achieved and documented. MRT shall provide the City with a courtesy copy. The Annual Report shall contain at a minimum:

1. Detailed description of the project construction activities performed during the previous year and all restoration and mitigation efforts performed by MRT.
2. Color photo documentation of the pre- and post-project and mitigation site conditions.
3. Discussion of monitoring activities and exotic plant control efforts.

3. **PAYMENT.** For mitigation of 0.51 acres, the City shall pay in cash or equivalent, to MRT upon execution of this Agreement a total of One Hundred Forty Nine Thousand, Eight Hundred Eighty Nine dollars and zero cents (\$149,889.00), of which One Hundred and Eight Thousand, Seven Hundred and Fifty dollars and zero cents (\$108,750) is for MRT Mitigation establishment, and Forty One Thousand, One Hundred Thirty Nine dollars and zero cents (\$41,139) is for the non-wasting endowment and long-term management of the MRT Mitigation site. The portion of the MRT Mitigation funds for RWQCB-required mitigation, (\$13,500) shall be used for direct costs for establishing or restoring habitat, and not include administrative costs.

6. **TERM.** This Agreement shall commence upon mutual execution and shall remain and continue in effect until tasks described herein are completed, which shall be no later than seven (7) years from the date of execution of this Agreement, unless mutually agreed to in writing by the City and MRT.

7. **PERFORMANCE.** MRT shall at all times be solely responsible for faithfully, competently and to the best of its ability and experience, performing all tasks described herein. MRT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of MRT hereunder in meeting its obligations under this Agreement. MRT shall be solely responsible to maintain and monitor the MRT Mitigation site, and, in the event of failure of the MRT Mitigation, replace the plantings and continue to maintain and monitor such additional replanting, all at MRT's sole expense. To the extent it is unclear as to MRT's responsibilities under the Mitigation requirements of the Permits described in Section 2, the parties agree to cooperate reasonably with one another to

define and clarify the work to be performed by MRT under this Agreement. Any material change or modification relating to the work to be performed by MRT hereunder shall be agreed to mutually in writing by both parties.

8. INDEMNIFICATION. MRT shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent consultants serving in the role of City officials, and volunteers (collectively "Indemnitees") free and harmless from any and all claims, penalties, fines and other similar citation fees, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any acts or omissions of MRT, its officials, officers, employees, agents or sub-consultants in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such claims, MRT shall defend Indemnitees at MRT's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. MRT shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. MRT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MRT or Indemnitees. All duties of MRT under this Section shall survive termination of this Agreement.

9. INDEPENDENT CONSULTANT. MRT shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of MRT shall at all times be under MRT's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of MRT or any of MRT's officers, employees, or agents except as set forth in this Agreement. MRT shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. MRT shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES. The MRT shall keep itself informed of all local, state and federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The MRT shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the MRT to comply with this section. The City shall keep MRT informed regarding any material changes in the Permits which may relate to MRT's work required under this Agreement.

11. **NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills
 30001 Ladyface Court
 Agoura Hills, California 91301
 Attn: Greg Ramirez, City Manager

To MRT: Mountains Restoration Trust
 3815 Old Topanga Canyon Road
 Calabasas, California 91302
 Attention: Debra Sharpton, Executive Director

12. **ASSIGNMENT.** Neither party shall assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the other party. Upon termination of this Agreement, MRT's sole compensation shall be payment for actual services performed up to, and including, the date of termination, including without limitation all actual, verifiable costs of MRT, or as may be otherwise agreed to in writing between City and the MRT.

13. **LICENSES.** At all times during the term of this Agreement, MRT shall have in full force and effect, all permits and licenses required of it by law for the performance of the services described in this Agreement.

14. **GOVERNING LAW.** The City and MRT understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

15. **PROHIBITED INTEREST.** No officer or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, MRT, or MRT's consultants for this project, during his/her tenure or for one year thereafter. MRT hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of MRT or MRT's consultants on this project. MRT further

agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

16. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

17. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of MRT warrant(s) and represent(s) that he or she has the authority to execute this Agreement on behalf of the MRT and has the authority to bind MRT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF AGOURA HILLS

Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

Date Approved by City Council: _____

APPROVED AS TO FORM:

Candice K. Lee,
City Attorney

**MOUNTAINS RESTORATION TRUST
(MRT)**

Debra Sharpton
3815 Old Topanga Canyon Road
Calabasas, California 91302
Tel. 818-591-1701
FAX 818-591-1709

By:

Name: Debra Sharpton

Title: Executive Director

EXHIBIT B



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



June 10, 2014

Charmaine Yambao
City of Agoura Hills, Planning and Community Development
30001 Ladyface Court
Agoura Hills, CA 91301

**Subject: Final Lake or Streambed Alteration Agreement
Notification No. 1600-2013-0235-R5
AGOURA ROAD WIDENING STREET IMPROVEMENT PROJECT**

Dear Ms. Charmaine Yambao:

Enclosed is the final Streambed Alteration Agreement (Agreement) for the Agoura Road Widening Street Improvement Project (Project). Before the Department of Fish and Wildlife (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a responsible agency, filed a notice of determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Final Initial Study and Mitigated Negative Declaration the lead agency prepared for the Project.

Under CEQA, filing a NOD starts a 30-day period within which a party may challenge the filing agency's approval of the project. You may begin your project before the 30-day period expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Brock Warmuth, Environmental Scientist, at 805-484-1691 or brock.warmuth@wildlife.ca.gov.

Sincerely,

Betty Courtney
Environmental Program Manager
Department of Fish and Wildlife

cc: Brock Warmuth

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
SOUTH COAST REGION
3883 RUFFIN ROAD
SAN DIEGO, CA 92123**



**STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2013-0235-R5
Medea Creek and Unnamed Ephemeral Drainages**

**CITY OF AGOURA HILLS
AGORA ROAD WIDENING STREET IMPROVEMENT PROJECT**

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of Agoura Hills (Permittee) as represented by Charmaine Yambao, Associate Engineer.

CIVIL

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on October 28, 2013, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located in the City of Agoura Hills (City), County of Los Angeles, California. The project site is located south of Highway 101, along Agoura Road, within Medea Creek and several unnamed ephemeral drainages that are tributary ultimately to Malibu Lagoon. Agoura Road will be widened and/or improved from the westerly City limits east to Cornell Road. Additionally, improvements are proposed for Kanan Road from 500 feet to the north to 1,600 feet to the south of the intersection of Kanan Road and Agoura Road. The project is located within Assessor's Parcel Numbers [2061001025, 2061001031, 2061002024, 2061002048, 2061002049, 2061004015, 2061004024, 2061004027, 2061004030, 2061004034, 2061004035, 2061004039, 2061004900, 206100603, 2061006035, 2061006036, 2061006044, 2061031010, 2061031020, 2061031022, 2061031023, 2061031900, 2061033013, 2061033015,

2061033016, 2061033904, 2061033028, 2061006038, 2061005047, 2061006046, 2061006008}; and can be found using the following information:

Location	End of Alignment	Latitude	Longitude
Section West of Reyes Adobe Road	West	34.144727°	-118.783889°
Section West of Reyes Adobe Road	East	34.145154°	-118.783961°
Section West of Reyes Adobe Road	North (relative center)	34.144551°	-118.789016°
Section West of Reyes Adobe Road	South (relative center)	34.143414°	-118.788681°
Section East of Reyes Adobe Road	West	34.144805°	-118.774763°
Section East of Reyes Adobe Road	East	34.143446°	-118.756213°
Section East of Reyes Adobe Road	North (limits on Kanan Road)	34.144331°	-118.761604°
Section East of Reyes Adobe Road	South (limits on Kanan Road)	34.139398°	-118.760451°

PROJECT DESCRIPTION

The project is limited to the widening of Agoura Road to the maximum build-out width within the City limits. Agoura Road will be widened from two lanes to four, in 2 segments. The first segment is from the westerly City limits to just west of Reyes Adobe Road. Between Reyes Adobe Road and Ladyface Court, Agoura Road is already four lanes wide and the project will only involve pavement overlay, no road widening will occur. Agoura Road will be widened again from Ladyface Court to Cornell Road; however, Agoura Road will remain two lanes wide from Kanan Road to Cornell Road, with diagonal parking spaces on both sides. The project includes; constructing of class II bicycle lanes, curbs and gutters on both sides of Agoura Road, landscaped medians, sidewalks with landscaped parkways, and a pedestrian bridge over Medea Creek. In addition to expanding Agoura Road and improving the Agoura Road/Kanan Road intersection, Kanan Road will be widened starting 500 feet to the north of Agoura Road and end 1,600 feet south of the intersection. Additionally, a section of Canwood Street located north of Highway 101 between Reyes Adobe Road and Strawberry Hill Drive will be repaved and the hillside between them will be stabilized from Reyes Adobe to 600 feet east of Forest Cove Lane without impacting CDFW jurisdiction. Work activities are required within six (6) State jurisdictional drainage features. Work includes; grade and fill to accommodate the road improvements, excavation and infrastructure modifications within the 2 detention basins, storm drain and culvert modifications, and fill associated with driveway expansion and replacement. Because the road expansion will cause a reduction in the surface area of the two detention basins on site, a total of 2,400 cubic yards will be excavated to compensate for the loss of capacity. A total of 6,600 cubic yards will be discharged into several unnamed drainage features to allow for the road expansion to take place. Materials that will be discharged include; soil, concrete,

asphalt, and aggregate base. A retaining wall has been proposed, southwest of the intersection of Agoura Road and Roadside Road, to minimize impacts to a known population of the California Endangered Species Act (CESA)-listed Lyon's pentachaeta (*Pentachaeta lyonii*).

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect, based on information received from the Permittees, include: Reptiles: western fence lizard (*Sceloporus occidentalis*), side-blotched lizard (*Uta stansburiana*); Birds: least Bell's vireo (*Vireo bellii pusillus*), burrowing owl (*Athene cunicularia*), Western gull (*Larus occidentalis*), red-tailed hawk (*Buteo jamaicensis*), turkey vulture (*Cathartes aura*), Anna's hummingbird (*Calypte anna*), acorn woodpecker (*Melanerpes formicivorus*), black phoebe (*Sayornis nigricans*), northern rough-winged swallow (*Stelgidopteryx serripennis*), western kingbird (*Tyrannus verticalis*), common raven (*Corvus corax*), California towhee (*Pipilo crissalis*), house wren (*Troglodytes aedon*), western scrub-jay (*Aphelocoma californica*), white-crowned sparrow (*Zonotrichia leucophrys*), lesser goldfinch (*Carduelis psaltria*), northern mockingbird (*Mimus polyglottos*), house finch (*Carpodacus mexicanus*), blue-gray gnatcatcher (*polioptila caerulea*), oak titmouse (*Baeolophus inornatus*), bush-tit (*Psaltriparus minimus*), California quail (*Callipepla californica*), great blue heron (*Ardea herodias*), red-shouldered hawk (*Buteo lineatus*), Cooper's hawk (*Accipiter cooperi*), rufous-crowned Sparrow, (*Aimophila ruficeps*), spotted towhee (*Pipilo maculatus*), ash-throated flycatcher (*Myiarchus cinerascens*), Bewick's wren (*Thryomanes bewickii*); Mammals: coyote (*Canis latrans*), California ground squirrel (*Spermophilus beecheyi*); Native Plants: coast live oak (*Quercus agrifolia*), valley oak (*Quercus lobata*), bluedicke (*Dichelostemma capitatum* spp. *capitatum*), round-leaved filaree (*California macrophylla*), blue-eyed-grass (*Sisyrinchium bellum*), butterfly mariposa lily (*Calochortus venustus*), California aster (*Corethrogyne filaginifolia*), foothill needlegrass (*Nassella lepida*), slender buckwheat (*Eriogonum gracile* var. *gracile*), blue elderberry (*Sambucus mexicana*), coyote brush (*Baccharis pilularis*), California buckwheat (*Eriogonum fasciculatum*), holly-leaf redberry (*Rhamnus ilicifolia*), Longstem spike-rush (*Elocharis macrostachya*), smooth boisduvalia (*Epilobium pygmaeum*), waterpepper (*Pistiscaria hydropteroides*), curly dock (*Rumex crispus*), yerba mansa (*Anemopsis californica*), saltgrass (*Distichlis spicata*), California goosefoot (*Chenopodium californica*), salt heliotrope (*Heliotropium curassavicum*), western vervain (*Verbena lasiostachys* ssp. *lasiostachys*), Blochman's Dudleya (*Dudleya blochmaniae*), Agoura Hills Dudleya (*Dudleya cymosa* ssp. *agourensis*), Santa Monica Dudleya (*Dudleya cymosa* ssp. *marcescens*), Many-stemmed Dudleya (*Dudleya multicaulis*), Slender Mariposa Lily (*Calochortus clavatus* var. *gracilis*), Plummer's Mariposa Lily (*Calochortus plummerae*), Southern Tarplant (*Centromedea parryi* ssp. *australis*), Ojai Navaretia (*Navaretia ojaiensis*), California Orcutt Grass (*Orcuttia californica*), Lyon's Pentachaeta (*Pentachaeta lyonii*), poison oak (*Toxicodendron diversilobum*), scrub oak (*Quercus berberidifolia*), California buckwheat (*Eriogonum fasciculatum*), California sagebrush (*Artemisia californica*), coyote brush (*Baccharis*

pikularis); laurel sumac (*Malosma laurina*); red willow (*Salix laevigata*), purple sage (*Salvia leucophylla*), toyon (*Heteromeles arbutifolia*), California sycamore (*Platanus racemosa*), arroyo willow (*Salix lasiolepis*), giant wildrye (*Elymus condensatus*); and all other aquatic and wildlife resources in the area, including the riparian vegetation which provides habitat for such species in the area.

Permanent Impacts

The Permittee proposed project-related activities shall result in the following permanent impacts to the streams: No more than 0.11 acre of CDFW jurisdiction shall be permanently impacted due to project related activities. Additionally, 82 coast live oak, 66 valley oak, and 56 scrub oak will be permanently impacted due to project related activities.

Temporary Impacts

The Permittee proposed project-related activities shall result in the following temporary impacts to the streams: Approximately 0.68 acre of CDFW jurisdiction will be temporarily impacted due to road widening activities as well as excavation and infrastructure modifications within the two onsite detention basins. Of the 0.68 acre of temporary impacts, 0.06 acre of impacts will occur to a CDFW jurisdictional wetland.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

1.1 **Final Design Plans.** The Permittee will submit 100% design plans, including but not limited to; a description of all project related activities, staging areas and a projected timeline, to CDFW for review and written approved 30 days prior to implementation of the project initiation.

1.2 **Documentation at Project Site.** Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.

1.3 **Providing Agreement to Persons at Project Site.** Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.

1.4 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.

1.5 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.

1.6 Regional Water Quality Control Board. CDFW believes that permit/certification(s) may be required from the Regional Water Quality Control Board for this project. Should such permits/certification(s) be required, a copy shall be submitted to CDFW.

1.7 Personnel Compliance On Site. If the Permittee or any employees, agents, contractors and/or subcontractors violate any of the terms or conditions of this agreement, all work shall terminate immediately and shall not proceed until CDFW has taken all of its legal actions.

1.8 Pre-project briefing. A pre-maintenance meeting/briefing shall be held involving all the contractors and subcontractors, concerning the conditions in this Agreement.

1.9 Notification Requirements. CDFW requires that the Permittee:

1.9.1 Immediately notify CDFW in writing if monitoring reveals that any of the protective measures were not implemented during the period indicated in this program, or if it anticipates that measures will not be implemented within the time period specified.

1.9.2 Immediately notify CDFW if any of the protective measures are not providing the level of protection that is appropriate for the impact that is occurring, and recommendations, if any, for alternative protective measures. CDFW shall verify compliance with protective measures to ensure the accuracy of the Permittee's mitigation, monitoring and reporting efforts.

1.9.3 CDFW may, at its sole discretion, review relevant documents maintained by the Permittee, interview the Permittee's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement.

1.10 Implementation Requirements. The agreed work includes activities associated with the Project Location and Project Description that is provided above. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Permittee with the Notification Package, and shall be implemented as proposed unless directed differently by this Agreement.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

2.1 Best Management Practices (BMP's). To avoid or minimize adverse impacts to fish and wildlife resources identified above, the Permittee has proposed and shall implement each measure listed below. Avoidance and minimization measures for this project include:

2.1.1 The project will limit the use of non-native plantings to the road median and confined planters.

2.1.2 BMP's will be utilized in compliance with current National Pollutant Discharge Elimination System (NPDES) regulations.

In addition to Permittee-proposed BMP's, the following additional measures shall be implemented to fully protect aquatic and terrestrial species during project-related activities.

Biological Surveys and Time Restrictions

2.2 Leave Wildlife Unharmd. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed. If any listed wildlife is encountered, the Permittee shall contact the CDFW immediately.

2.3 Check for Wildlife in the Project Site. Permittee shall have a qualified biologist visually check the project site for the presence of wildlife prior to initiation of project activities. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed. If the wildlife does not leave the project site, the qualified biologist shall make every effort to relocate the species out of harm's way to the extent feasible. Exclusionary devices shall be erected to prevent the migration into or the return of species into the work areas if determined appropriate and feasible by the qualified biologist. Such exclusionary devices shall be checked by the biologist, or designee of the biologist, on a daily basis to check/ensure continued exclusionary device effectiveness. Should CDFW personnel visit the site during construction activities and no biological monitor is available, construction activities shall be halted.

2.4 Incidental Take Permit. An Incidental Take Permit (ITP) from CDFW may be required if the project, project construction, or any project-related activity during the life of the project will result in "take," as defined by the Fish and Game Code, of any species protected by CESA [Fish & G. Code, §§86, 2080, 2081, subd. (b) (c)]. If CDFW determines that any threatened or endangered species shall be impacted by the work proposed, work at that location shall stop, and the habitat or nest site in question shall

be avoided. The Permittee shall contact CDFW's South Coast Region to obtain information on applying for the state take permit for CESA-listed species, if any potential for take exists as a result of Permittee's project-related activities. The Permittee may need to obtain the appropriate federal and State permits for take of threatened or endangered species.

2.5 Lyon's pentachaeta. This Agreement does not authorize take of Lyon's pentachaeta or Ojai nayarretia, which are known to occur within the project vicinity.

2.6 Non-listed Special Status Species and other vertebrates methodology. A qualified biological monitor shall be present during work in all CDFW jurisdictional areas during initial project-related activities to monitor for non-listed special-status and/or common ground-dwelling vertebrates encountered in the path of project-related activities. The monitor shall make every effort to relocate the species out of harm's way to the extent feasible by doing one of the following: (1) Utilize shovel, rake, or similar hand tool to gently re-direct the animal out of work area; (2) Install silt fence or other exclusionary fencing to prevent species from re-entering disturbance area; and (3) Capture/relocate species to appropriate habitat outside the disturbance area. The biological monitor shall have the authority to temporarily stop construction activities until the species is determined to be out of harm's way. Any exclusionary devices shall be checked by the biologist, or designee of the biologist, on a daily basis to check/ensure continued exclusionary device effectiveness. Should CDFW personnel visit the site during initial construction activities and no biological monitor is available, construction activities shall be halted.

2.7 Reporting Observations to CNDDB. The Permittee shall be responsible for reporting all observations of threatened/endangered species or of species of special concern to CDFW's Natural Diversity Data Base within ten (10) days of sighting.

2.8 Contractor Education. Permittee shall have a qualified biologist prepare for distribution to all Permittee contractors, subcontractors, project supervisors, and consignees a "Contractor Education Brochure" with pictures and descriptions of all sensitive plant and animal species, and specifically bats potentially occurring within the work areas. Permittee contractors and consignees shall be instructed to bring to the attention of the project biological monitor any sightings of species described in the brochure.

2.9 Burrowing Owl Inspection. Permittee shall inspect all burrows that exhibit typical characteristics of owl activity such as an observation of at least one burrowing owl, or, alternatively, its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance, no sooner than three days prior to any site preparation activities. If it is evident that the burrows are actively being used, Permittee shall not commence activities until no sign is present that the burrows are being used by adults or juvenile owls.

2.10 Nesting and/or Breeding Bird Surveys. The Permittee shall not remove or otherwise disturb vegetation or conduct any other project activities on the project sites from March 1st to September 15th to avoid impacts to breeding/nesting birds; OR, PRIOR to project-related activities or site preparation activities, and those activities fall within the above breeding date restrictions, the Permittee shall have a qualified biologist survey breeding/nesting habitat within the project site and adjacent to the project site for breeding/nesting birds. Activities must be initiated within 72 hours of the conclusion of surveys. The Biologist shall provide CDFW field notes or other documentation within 24 hours of completing the surveys. An email report with a letter report to follow may be used. The email/letter report should state how impacts of any nesting birds will be avoided by citing the appropriate information from these conditions.

2.11 Active Breeding and/or Nest. If the nesting season cannot be avoided and construction or vegetation removal occurs between March 1st to September 15th (January 1st to July 31st for Raptors), the Permittee will do one of the following to avoid and minimize impacts to nesting birds;

1) Implement default 300 foot minimum avoidance buffers for all passerine birds and 500 foot minimum avoidance buffer for all raptors species. The breeding habitat/nest site shall be fenced and/or flagged in all directions, and this area shall not be disturbed until the nest becomes inactive, the young have fledged, the young are no longer being fed by the parents, the young have left the area, and the young will no longer be impacted by the project.¹

2) Develop a project specific Nesting Bird Management Plan. The site-specific nest protection plan shall be submitted to CDFW for review and approval. The Plan should include detailed methodologies and definitions to enable a CDFW qualified avian biologist to monitor and implement nest-specific buffers based on topography, vegetation, species, and individual bird behavior. This Nesting Bird Management Plan shall be supported by a Nest Log which tracks each nest and its outcome. The Nest Log will be submitted to CDFW at the end of each week.

3) The Permittee may propose an alternative plan for avoidance of nesting birds for CDFW concurrence.

2.12 Migratory Birds. Be advised, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13), Sections 3503, 3503.5 and 3513 of the California Fish and Game Code that prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

¹ NOTE: Buffer area shall increase to 300 feet for passerines and 500 feet for raptors if any endangered, threatened, or CDFW species of special concern are identified during protocol or pre-construction presence/absence surveys.

2.13 Take of Bird Nests. The Applicant shall not take or destroy nests (or eggs) of birds that are designated under Federal and California State laws, MBTA and Fish and Game code sections 3503, 3503.5, 3511, and 3513.

Habitat Protection

2.14 Demarcate Work Area Boundary. This Agreement does not authorize temporary impacts to jurisdictional streams outside the 0.11 acre of permanent impacts associated with the road widening, excavation and infrastructure modifications within the two detention basins, storm drain, culvert modifications, and fill associated with driveway expansion and replacement. In consultation with the designated Biologist, the Permittee or Designated Representative shall demarcate the perimeter of the work area to prevent temporary damage to adjacent habitat and to provide visual orientation to its limits. Marking shall be in place during all periods of operation. All persons employed or otherwise working on the project site shall be instructed about the restrictions that the marking represents.

2.15 Vegetation Removal. Disturbance or removal of vegetation shall be limited to the permanent impacts authorized in the agreement necessary to construct the road. Except for trees marked for removal on plans submitted to and approved by the CDFW, no native trees outside of the trees identified in this Agreement, with a trunk DBH in excess of four (4) inches shall be removed or damaged without prior consultation and approval of a CDFW representative. Vegetation marked for protection may only be trimmed with hand tools to the extent necessary to gain access to the work sites.

2.16 Authorized Uses of Herbicides. No herbicides shall be used on native vegetation unless specifically authorized, in writing, by CDFW. A small amount of selective trimming of native species (e.g., willow, oak and sycamore) may occur to prevent overspray of herbicide from reaching these branches, but only as provided within the conditions of this Agreement. Native vegetation may only be trimmed; individual plants shall not be removed. Material in excess of three (3) inches DBH shall require specific notice to and consultation with CDFW. All trimming shall be conducted using hand saws and hand tools.

2.17 Demolition of Structures. When any structure is demolished, tarps shall be suspended above the bottom of the creek, with a gap between any water if present, or any diversion so not to smother any aquatics, and to trap all dust and debris from entering the channel. The dust shall be vacuumed at the end of each day to prevent the dust from blowing downstream and into any water.

2.18 Substrate. Rock, gravel, and/or other materials shall not be imported to, taken from or moved within the bed and or banks of the stream, except as otherwise addressed in the project description.

2.19 Hours of Operation and Lighting. Permittee's construction activities within and adjacent to jurisdictional areas shall take place during daylight hours only. No night work is authorized within or adjacent to jurisdictional areas.

2.20 Domestic Animals. The Permittee shall not permit pets on or adjacent to the construction site.

2.21 Weapons. The Permittee shall ensure that no guns or other weapons are on-site during construction, with the exception of the security personnel and only for security type functions. No hunting shall be authorized/permited during project-related activities.

2.22 Excavation Spoils. No castings or spoil from the excavation operations shall be placed on the stream side of the Project site.

2.23 Seeding Requirement. Permittee shall restore all exposed/disturbed areas and access points within the work area, by seeding with a native seed mix pre-approved by the CDFW. Revegetation shall be completed as soon as possible after construction activities in those areas cease. Seeding placed after October 15 shall be covered with broadcast straw, jute netting, coconut fiber blanket or similar erosion control blanket.

Placement of In-stream Structures/Dewatering

2.24 Dewatering Restrictions. This Agreement does not authorize use of any water diversion.

2.25 Culverts. Culverts shall be of sufficient size for periods of high water flow and shall remain at the current diameter or larger.

2.26 Concrete -- Primary Containment. The Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering into the channel outside of those structures. No concrete or any cement product may be poured if measurable rain is forecasted within 15 days. If any concrete is poured after November 1st, a quick-cure ingredient shall be added to the concrete mix to ensure a faster set or drying time. Cement and concrete shall not be poured within 150 feet of a stream during the rainy season. Cement shall not be poured in or near a flowing stream, to reduce the potential for significant adverse impacts to the stream, water, or biota without prior approval.

2.27 Unauthorized Materials. Any materials placed in seasonally dry portions of a stream that could be washed downstream or could be deleterious to aquatic life shall be removed prior to inundation by high flows.

2.28 Temporary Dams. This Agreement does not authorize any temporary dam or other artificial obstruction. Any work in a wetted portion of a streambed shall be approved by CDFW prior to construction.

Turbidity and Siltation

2.29 Predicted Rain. If measurable rain with 50% or greater probability is predicted within 72 hours during project-related activities, all activities shall cease and protective measures to prevent siltation/erosion shall be implemented/maintained.

2.30 Sediment Control Devices. The Permittee shall install an appropriate sediment control device downstream of the work area to filter sediment created from water re-entering the creek. Acceptable materials include silt fence, straw bales, or other appropriate devices to prevent sediment runoff during rewatering activities. Silt control shall remain in place only until the water running through the work area is clear of sediment.

2.31 Erosion Control. Any erosion control shall exclude the use of plastic or "hard" netting. If netting is to be used, it must be flexible (e.g. "soft" hemp) so that snakes or other animals do not become trapped in the netting.

2.32 Removal of Silt from Barriers. Permittee shall remove silt collected around the silt barriers on an as needed basis to prevent silty/turbid water from flowing around the silt barriers during storm events. Silt barriers which trap sediment shall be removed upon completion of the associated project activities and after all flowing water is cleared of turbidity in a manner that will not introduce silt to the stream or lake. The stream or lake shall then be restored to a clean and natural condition.

2.33 Dust Control. No stream water may be used in construction, such as in dust control. All construction water shall be from developed sources. Any dust produced from demolition of existing structures shall be vacuumed on a daily basis from the creek channel, and from any location where it may pass into waters of the state from rain or wind.

2.34 Sediment and Turbidity Levels. Upon CDFW determination that turbidity/siltation levels resulting from project-related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation, shall be halted until effective CDFW-approved control devices are installed, or abatement procedures are initiated.

2.35 Runoff Control. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

2.36 Contaminated Site Water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a flowing stream, or dry ephemeral stream, or placed in locations that may be subjected to high storm flows.

2.37 Discharge of Silty/Turbid Water Prohibited. Silty/turbid water shall not be discharged into the stream, lake or into storm drains. Such water shall be settled, filtered, or otherwise treated prior to discharge back into the water body. Permittee shall place and maintain silt barriers, such as straw bales, "biologs," or filter fabric silt fencing, around the storm drain inlets until the threat of erosion from surrounding drainage ceases.

Equipment and Access

2.38 Building Material Storage. Project building material and/or construction equipment shall not be placed where materials could pass into the waters of the state or where they may cover aquatic or riparian vegetation.

2.39 Staging and Vehicle Storage. Staging/storage areas for equipment and materials shall be located outside of the stream in an area selected due to its non-vegetated status. Staging in all other areas is prohibited by this Agreement unless otherwise approved by CDFW PRIOR to staging activities.

2.40 Authorized Vehicles. Vehicles shall not be driven or equipment operated in water-covered portions of a stream, or where wetland vegetation, riparian vegetation, or aquatic organisms may be harmed or destroyed except as permitted. CDFW shall be notified within 24 hours by email or fax PRIOR to work in a wetted stream. In locations identified for project area access, or within the bank and streambed, vegetation shall be driven over only; no grubbing shall occur.

2.41 Vehicle Access. Access to the work site shall be via existing roads and access ramps. This Agreement does not authorize the use of any temporary ramps within jurisdictional features.

2.42 Equipment Maintenance and Fueling. No equipment maintenance or fueling shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas.

2.43 Wash water. Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or placed in locations that may be subjected to high storm flows.

2.44 Vehicle Maintenance. Any equipment or vehicles driven and/or operated adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.

2.45 Pollution Prevention. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream/lake shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak. Clean up equipment shall be on site prior to the start of project-

related activities. No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or other pollutants from the equipment may enter these areas under any flow.

Pollution, Litter and Cleanup

2.46 Remove Cleared Material from Stream. All trimmed or cleared material/vegetation shall be removed from the area and deposited where it cannot re-enter the stream.

2.47 Pollutants and Debris. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, cement or concrete or washings thereof, asphalt, paint, oil or other petroleum products or any other substances which could be hazardous to aquatic life, or other organic or earthen material from any logging, construction, or other associated project-related activity shall be allowed to contaminate the soil and/or enter into or placed where it may be washed by rainfall or runoff into waters of the State. Any of these materials, placed within or where they may enter a stream, by the Permittee or any party working under contract, or with the permission of the Permittee, shall be removed immediately. When project-related activities are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.

2.48 Pollution Compliance. The Permittee shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the Permittee to insure compliance.

2.49 Clean Up Equipment. Clean up equipment such as extra boom, absorbent pads, skimmers, shall be on site prior to the start of dredging.

2.50 Debris. Except as otherwise permitted in this Agreement, the removal of soil, vegetation, and vegetative debris from the stream bed or stream banks is prohibited. The Permittee shall remove all human generated debris, such as yard and farm cuttings, broken concrete, construction waste, garbage and trash. The Permittee shall remove washed out culverts, and other construction materials, that the Permittee places within, or where they may enter, the stream.

2.51 Pick Up Debris. Permittee shall pick up all debris and waste daily.

2.52 Pollution Clean-up. The clean-up of all spills shall begin immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding clean-up procedures.

2.53 Trash Receptacles. The Permittee shall install and use fully covered trash receptacles with secure lids (wildlife proof) that contain all food, food scrapes, food wrappers, beverage and other miscellaneous trash generated by work force personnel.

3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below:

Permanent and Temporary Impacts (0.79 acres)- To mitigate for 0.11 acres of permanent impacts to willow riparian woodland, California buckwheat scrub, oak savanna and scrub oak chaparral resulting from project-related activities the Permittee shall mitigate for project impacts with establishment or restoration of no less than 0.33 acre of mitigation lands. Of the 0.33 acres no less than 0.11 acre of establishment shall be required. To mitigate for 0.68 acre of temporary impacts to 0.62 acre oak savanna and 0.06 acre of wetlands, resulting from road widening activities as well as excavation and construction within the on-site detention basins, the Permittee shall mitigate for project impacts with establishment or restoration of no less than 0.9 acre. Of those 0.9 acre, at least 0.18 acre of mitigation shall consist of the establishment of "wetland" vegetation consisting of obligate wetland plant species. If preservation or enhancement is proposed more mitigation shall be required.

Off-site Mitigation. The Permittee has proposed to fulfill their mitigation obligation off-site with a CDFW approved entity. Prior to accepting any off-site mitigation, CDFW must review and approve in writing, a mitigation agreement or plan between the Permittee and entity that is going to perform the mitigation. This agreement must contain at a minimum: a contractual obligation to complete the required mitigation, the location and details on what mitigation will take place, success criteria, contingency and reporting measures.

The Permittee shall also revegetate all temporarily impacted areas with a native seed mix approved in writing by CDFW and perform exotic species removal and control as defined by the following measures.

Restoration Success Criteria

3.1 **Tree Replacement Ratio.** Oak trees impacted by project related-activities including those outside CDFW jurisdiction shall be replaced according to the MND measure BIO-9 which reads: To compensate for the loss of 82 coast live oak and 66 valley oak trees (including 1 landmark oak tree), and the loss of 44,406 square feet of scrub oak, the City shall replant trees according to the following: **Mitigation Ratio.** Compensate for the loss of coast live oak and valley oak trees shall be at a ratio of 4:1, with at least two (2) 24-inch box specimens and one (1) 36-inch box specimen, with the remaining tree diameter dependent on the size of the individual tree to be removed, pursuant to the City's Oak Tree Ordinance and Oak Tree Preservation Guidelines. Compensation for the loss of one (1) landmark oak tree shall be two container grown 60-inch box size trees. Compensation for the loss of scrub oaks shall be at a ratio of 1:1 (square footage to square footage). The replacement ratio of all other native trees removed as a result of project related activities will be the following ratio: Willows shall

be replaced at a ratio of 5:1. Sycamores which are to be removed shall be replaced as follows: trees less than 5 inches diameter at breast height (DBH) shall be replaced at 3:1; trees from 5- to 12-inches shall be replaced at 5:1; trees from 12- to 24-inches shall be replaced at 10:1; trees from 24- to 36-inches shall be replaced at 15:1; all trees greater than 36 inches shall be replanted at a ratio of 20:1. The replacement ratio for damaged trees, including root damage, shall be 2:1 for plants with DBH less than 12 inches, 6:1 for plants with a DBH from 12 to 24 inches, and 15:1 for damaged trees with a DBH greater than 24 inches. CDFW recommends that the Operator using rooted plants in liners or 1 gallon containers for restoration to increase the likelihood of survival of plantings. Prior to project implementation, a survey shall be conducted and submitted to CDFW, mapping and identifying all trees species to be impacted along with their DBH.

3.2 Fuel Modification Zone. No restoration/mitigation shall occur in fuel modification zones, future project areas or areas of maintenance.

Exotic Species Removal and Control

3.3 Pest Species. The Permittee shall remove any non-native vegetation *Arundo* (*Arundo donax*), tamarisk (*Tamarix* spp.), eucalyptus-immature 3" < (*Eucalyptus* spp.), pepper tree (*Schinus molle*), castor bean (*Ricinus communis*), African umbrella sedge (*Cyperus* spp.), mustards (*Brassica* spp.), tree tobacco (*Nicotiana glauca*), periwinkle (*Vinca minor*), and pampas grass (*Cortaderia selloana*) from the work area and shall dispose of it in a manner and a location which prevents its reestablishment.

3.4 *Arundo donax*. *Arundo*, if present, shall be cut to a height of six inches or less, and the stumps painted with an herbicide approved for aquatic use within five minutes of cutting. Herbicides shall be applied at least three times during the period from May 1st to October 1st to eradicate these plants. Where proposed methods for removing giant cane deviate from this procedure, the Permittee shall present the alternate methods, in writing, to CDFW for review and approval, prior to implementation.

3.5 Exotics Removal and Control Mechanisms. Whenever possible, invasive species shall be removed by hand or by hand-operated power tools rather than by chemical means. Where control of non-native vegetation is required within the bed, bank, or channel of the stream, the use of herbicides is necessary, and there is a possibility that the herbicides could come into contact with water, the Permittee shall employ only those herbicides, such as Rodeo/Aquamaster (Glyphosate), which are approved for aquatic use. If surfactants are required, they shall be restricted to non-ionic chemicals, such as Agri-Dex, which are approved for aquatic use.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

4.1 Impacts Statement. Within 30 days of the execution of this Agreement, the Permittee shall submit an updated impact analysis for permanent and temporary based on the 100% design plans for this project and considering all permanent and temporary impacts necessary to expand Agoura Road to its maximum build-out width. Based on changes to the actual area of impact, relative to the originally proposed area, additional mitigation may be required.

4.2 Notification Prior to Work. The Permittee shall notify CDFW, in writing, at least five (5) days prior to initiation of project-related activities and at least five (5) days prior to completion of project and mitigation activities. Notification shall be sent to the email address: R5LSACompliance@wildlife.ca.gov, Reference # 1600-2013-0235-R5.

4.3 Reporting. All surveys, pre and post construction notifications, monitoring reports and any other required communication between the Permittee and CDFW shall be submitted in two formats, digital and hard copy. The hard copy shall be mailed to: 3883 Ruffin Road., San Diego 92123, Attn: Streambed Unit, Reference # 1600-2013-0235-R5. The digital copy shall be submitted to R5LSACompliance@wildlife.ca.gov Reference # 1600-2013-0235-R5.

4.4 Final Construction Report. Permittee shall provide a final construction report to CDFW no later than two weeks after the project is fully completed including color photographs of before and after project-related activities, including the surrounding staging areas. The construction report at a minimum shall contain pre-project photographs, total amount of area impacted post-project, and post-project photographs. This shall be submitted to the CDFW no later than November 15, 2016.

4.5 Habitat Mitigation and Monitoring Plan. Prior to signing this Agreement, the Permittee shall submit to CDFW, a Habitat Mitigation and Monitoring Plan for review and approval. This plan shall contain at a minimum, the location(s) the mitigation shall take place, the current conditions at the mitigation site(s), the restoration to be performed, planting palette(s) to be used, success criteria and reference site(s), measures for reporting success and completion of mitigation and evidence of a conservation easement over the mitigation site(s). If the Permittee wishes to perform the required mitigation off-site with a CDFW approved agency, the HMMP shall contain a section detailing the agreement between the Permittee and the off-site mitigation agency.

4.6 Mitigation and Monitoring Report. If onsite mitigation is implanted, the Permittee shall provide a mitigation and monitoring report to CDFW one year from completion of the project each year for five years or until the mitigation has been deemed successful and approved by CDFW. This report shall include at least documentation of the number and species of replacement plants, documentation of revegetation survival percentages/sizes/species, percentage cover of non-native species and photos from designated stations.

4.7 Compliance. CDFW shall verify compliance with protective measures to ensure the accuracy of the Operator's mitigation, monitoring and reporting efforts. CDFW may, at its sole discretion, review relevant documents maintained by the Operator, interview the Operator's employees and agents, inspect the work site, and take other actions to assess compliance with or effectiveness of protective measures in this Agreement.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Charmaine Yambao
City of Agoura Hills - Planning and Community Development
30001 Ladyface Court
Agoura Hills, CA 91301
818-597-7310
cyambao@ci.agoura-hills.ca.us

To CDFW:

Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, California 92123
Attn: Lake and Streambed Alteration Program
Notification #1600-2013-0235-R5
Email: R5LSACompliance@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC section 1605(f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on April 1, 2019, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. City of Agoura Hills, Agoura Road Widening, From Western City Limit to Cornell Road, Project Plans
- B. General Biological Resource Assessment Results for the 38.50 Acre Agoura Hills Road Widening Project in the City of Agoura Hills, Los Angeles County, California, June 2012
- C. Supplemental Biological Resources Evaluation, Agoura Road Widening Project, Agoura Hills, CA, March 2012
- D. Second Supplemental Biological Resources Evaluation, Agoura Road Widening Project, Agoura Hills, CA, September 2012
- E. Agoura Road Widening Project, City of Agoura Hills, Los Angeles County, California, Least Bell's Vireo Focused Survey Report, July 2012
- F. Protocol survey for California gnatcatcher *Polioptila californica* for Agoura Road Widening Project, May 2013
- G. 2013 Rare Plant Survey – Agoura Road Widening Project, June 2013
- H. Jurisdictional Delineation Report for the Agoura Road Widening Project, City of Agoura Hills, September 2012
- I. Supplemental Jurisdictional Delineation Report for the Agoura Road Widening Street Improvement Project, City of Agoura Hills, Los Angeles County, California August 2013
- J. Final Initial Study and Mitigated Negative Declaration, SCH# 2012101026 November 2012

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may

be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF AGOURA HILLS



Charmaine Yambao, P.E.
Associate Engineer
Civil

5/20/2014

Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Betty J. Courtney
Environmental Program Manger

6/10/2014

Date

Prepared by: Brock Warmuth
Environmental Scientist



Los Angeles Regional Water Quality Control Board

Ms. Charmaine Yambao
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301-2583

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7012 3460 0001 6366 0540

WATER QUALITY CERTIFICATION FOR PROPOSED AGOURA ROAD WIDENING PROJECT (Corps' Project No. 2013-551-AJS), MEDEA CREEK AND 3 UNNAMED TRIBUTARIES TO LINDERO CREEK, CITY OF AGOURA HILLS, LOS ANGELES COUNTY (FILE No. 13-132)

Dear Ms. Yambao:

Board staff has reviewed your request on behalf of City of Agoura Hills (Applicant) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on November 27, 2013.

I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003 - 0017 - DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

Please read this entire document carefully. The Applicant shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this Certification action, please contact Valerie Carrillo Zara, P.G., Lead, Section 401 Program, at (213) 576-6759.

Samuel Unger
Samuel Unger, P.E.
Executive Officer

Dec. 26, 2013
Date

DISTRIBUTION LIST

Allison Cook (via electronic copy)
Rincon Consulting Inc.
180 N. Ashwood Avenue
Ventura, CA 93003

Bill Orme (via electronic copy)
State Water Resources Control Board
Division of Water Quality
P.O. Box 944213
Sacramento, CA 94244-2130

Brock Warmuth (via electronic copy)
California Department of Fish and Wildlife
Streambed Alteration Team
3883 Ruffin Rd Suite A
San Diego, CA. 92123-4813

Antal Szijj (via electronic copy)
U.S. Army Corps of Engineers
Regulatory Branch, Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

Paul Amato (via electronic copy)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Jim Bartel
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011

ATTACHMENT A

**Project Information
File No. 13-132**

1. **Applicant:** City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301-2583

Phone: (818) 597-7360 Fax: (818) 597-7352
2. **Applicant's Agent:** Lacrissa Cook Davis
Rincon Consulting Inc.
180 N. Ashwood Avenue
Ventura, CA 93003

Phone: (805) 644-4455 Fax: (805) 644-4240
3. **Project Name:** Agoura Road Widening Project
4. **Project Location:** City of Agoura Hills, Los Angeles County

<u>Latitude</u>	<u>Longitude</u>
34.144727	118.783989
34.145154	118.783961
34.144551	118.789016
34.143414	118.788681
34.144805	118.774763
34.143446	118.756213
34.144331	118.761604
34.139398	118.760451

5. **Type of Project:** Road Widening
6. **Project Purpose:** The City proposes to widen Agoura Road to its maximum build-out width within the City limits to ensure road safety requirements are met for pedestrians, bicyclists and vehicles. The project also proposes to repave and stabilize the hillside along Canwood Street and the U.S. Highway 101 for public safety. The proposed project is identified in the City's 2035 General Plan and in the City's Capital Improvements Program.
7. **Project Description:** The proposed project will include widening Agoura Road from two to four lanes from the westerly City limits to just west of Reyes Adobe Road, and again from Ladyface Court to Kanan Road. For

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the segment between Reyes Adobe Road and Ladyface Court, there will only be a pavement overlay. Agoura Road will remain a two-lane roadway from Kanan Road to Cornell Road with the addition of diagonal parking spaces on both sides of the road.

Improvements at the Agoura Road/Kanan Road intersection will also be conducted, including widening Kanan Road between Agoura Road and 500 feet north and 1600 feet south of the intersection, and widening Agoura Road approximately 600 feet on either side of the intersection to allow for turning movements. Beyond these limits, Kanan road would remain a two-lane road.

On both sides of Agoura Road, the project will include constructing a Class II bike lane and curb/gutters, installing landscaped medians, and meandering sidewalks with landscaped parkways. A second pedestrian-only bridge over Medea Creek will be constructed as a separate structure adjacent to the roadway bridge.

In addition to improvements on Agoura Road, the project will also include repaving Canwood Street from Reyes Adobe Road to Forest Cove Lane, and repairing pavement and stabilizing a portion of the hillside along Canwood Street from Forest Cove Lane to approximately 650 feet east of Forest Cove Lane.

Work activities are required within six (6) jurisdictional features and include: grading and fill to accommodate the project, excavation and infrastructure modifications within the two detention basins, storm drain and culvert modifications, and fill associated with driveway expansion and replacement. Construction is anticipated to last approximately one year.

Within the scope of this project, three inlets leading to three unnamed tributaries to Lindero Creek will be reconstructed. A fourth inlet is located on the roadway bridge over Medea Creek. These existing drainage features and associated outlet structures require realignment and other modifications in order to widen the roadway.

The road widening and activities within the basins will result in permanent impacts of approximately 0.03 acres (111.32 linear feet) and temporary impacts of approximately 0.16 acre (399.70 linear feet) of non-wetland waters of the U.S. In addition, implementation

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of the project will result in temporary direct impacts to approximately 0.06 acre (131.61 linear feet) of wetland due to fill and grading activities.

Roadway widening and grading will require removal of approximately 204 oak trees, 44,406 square feet (0.001 acre) of oak scrub habitat, and other vegetation within the project area, mostly within the Agoura Road corridor, which could affect existing views from the roadway. Slope reconstruction along Canwood Street will also require vegetation removal along a portion of the roadway. Grading and terracing of portions of the hillsides south of Agoura Road will be required, which could affect the appearance of these slopes. In addition, soldier piles will be placed along the top slope of Canwood Street to minimize impacts to vegetation on the slope and maintain the appearance of the slope.

Modified drainages and slopes will be designed to tie into the existing drainage system and to accommodate existing and expected drainage flows from the roadways, landscaping, and other flows passing through the area.

8. Federal Agency/Permit: U.S. Army Corps of Engineers
NWP No. 14 (Permit No. 2013-551-AJS)
9. Other Required Regulatory Approvals: California Department of Fish and Wildlife
Streambed Alteration Agreement
10. California Environmental Quality Act Compliance: On December 26, 2012 a Mitigation Negative Declaration was issued for this project.
11. Receiving Water, and Designated Beneficial Uses: Medea Creek Reach 1 (Hydrologic Unit No. 404.23)
MUN*, GWR, REC-1, REC-2, WARM, COLD, WILD, RARE, WET
3 Unnamed Tributaries To Lindero Creek Reach 1 (Hydrologic Unit No. 404.23)
MUN*, REC-1, REC-2, WARM, WILD

*Conditional beneficial use

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12. Impacted Waters of the United States: Federal jurisdictional wetlands: 0.06 temporary acres (131.61 linear feet)
Non-wetland waters (streambed): 0.16 temporary acres (399.70 linear feet) and 0.03 permanent acres (11.32 linear feet)
13. Dredge Volume: None
14. Related Projects Implemented/to be Implemented by the Applicant: The Applicant has not identified any related projects carried out in the last 5 years or planned for implementation in the next 5 years.
15. Avoidance/Minimization Activities: The Applicant has proposed to implement several Best Management Practices, including, but not limited to, the following:
- Work within unlined drainages may be required, which would have the potential to result in erosion and siltation that could affect water quality; however, standard construction BMPs, including but not limited to, the use of temporary soil stabilizers (terracing, mulching blankets), berms or swales, straw bales, silt fences, sediment traps, or sediment basins, would be implemented in compliance with NPDES requirements that would minimize erosion on site and off site.
 - The use of temporary soil stabilizers (terracing, mulching blankets), berms or swales, straw bales, silt fences, sediment traps, or sediment basins, would be incorporated into the design to ensure that erosion and siltation are minimized and that NPDES requirements are achieved during project operation.
 - Standards BMPs would be incorporated into the design to ensure that pollutants do not enter the drainage system and that water quality requirements are achieved during project operation.
 - Environmentally sensitive habitat areas, including wetlands, waters of the U.S., open water, and riparian habitat adjacent to construction areas but not proposed for disturbance shall be fenced off using high visibility tape with wooden stakes, or similar methods to prevent entry of personnel and equipment, but allow continuous movement of wildlife.

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- **Environmentally sensitive habitat areas, including wetlands, waters of the U.S., open water, and riparian habitat adjacent to construction areas but not proposed for disturbance shall be fenced off using high visibility tape with wooden stakes, or similar methods to prevent entry of personnel and equipment, but allow continuous movement of wildlife.**
- **A biologist approved by the City's Environmental Analyst shall be on site during installation to ensure that the fences are correctly placed. The City or appointed staff shall also monitor to ensure that this fencing is properly maintained throughout the construction period.**
- **If silt fencing is required for erosion control measures, contractor-grade silt fence shall be used and shall be installed securely, without gaps. Fencing shall be monitored daily by a qualified biologist throughout the construction period to ensure it is in good condition and functioning properly. Further inspection shall be conducted after rain events to ensure that any animals attempting to disperse are not restricted by the fencing.**
- **To compensate for the temporary loss of non-wetland waters of the U.S. and waters of the state, the City shall follow all requirements, including identified mitigation, of the appropriate regulatory agencies, including California Department of Fish and Wildlife (CDFW), Army Corps of Engineers (ACOE), and the Los Angeles Regional Water Quality Control Board (RWQCB).**
- **At a minimum, the City shall be responsible for restoring the same or similar habitat in the same location that is disturbed for temporary impacts at a ratio of 1:1 (restoration: loss). If restoration in the same area is not feasible, then the restoration shall be completed as close to the impact area as possible.**
- **To compensate for the permanent loss of non-wetland waters of the U.S. and waters of the state, the City shall follow all requirements, including identified mitigation, of the appropriate regulatory agencies, including CDFW, ACOE, and RWQCB.**
- **At a minimum, the City shall be responsible for restoring the same or similar habitat in an existing degraded portion of the same**

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drainage or water feature, or a similar one in the general area of the project, at a ratio of 1:1 (restoration: loss). If a location in the general area of the project is not feasible, then the City shall restore another appropriate area within the City limits as close to the impacted area as possible

- Standard Best Management Practices (BMPs) will be utilized in compliance with the current National Pollutant Discharge Elimination System (NPDES) regulations that would prevent pollutants such as loose soils, other construction wastes, or fuels from being carried off site to adjacent drainages and waterways that would compromise water quality. These may include, but are not limited to, erosion prevention measures, including the use of temporary soil stabilizers (terracing, mulching blankets) and structures such as berms or swales, to prevent and/or slow runoff across disturbed areas and/or divert runoff to sediment traps or basins; and sediment control measures, including the use of straw bales, silt fences, sediment traps, and/or sediment basins. Such standard BMPs have been incorporated into the project design to ensure that erosion and siltation on and off site are minimized and that water quality requirements are achieved prior to project operation.

16. Proposed Compensatory Mitigation:

The majority of the native and non-native trees to be removed by the project are outside of jurisdictional waters, it is important to note that the City will be mitigating for these trees in accordance with the City's Oak Tree Ordinance and Oak Tree Preservation Guidelines. As stated in Mitigation Measure BIO-9 of the MND, the City shall compensate for the loss of coast live oak and valley oak trees at a ratio of 4:1, with at least two (2) 24-inch box specimens and one (1) 36-inch box specimen, with the remaining tree diameter dependent on the size of the individual tree to be removed, pursuant to the City's Oak Tree Ordinance and Oak Tree Preservation Guidelines. Compensation for the loss of one (1) landmark oak tree shall be two (2) container grown 60-inch box size trees. Compensation for the loss of scrub oaks shall be at a ratio of 1:1 (square footage to square footage). Scrub oak shall be replaced in kind.

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**17. Required
Compensatory
Mitigation:**

In addition to the compensatory mitigation proposed above, the Regional Board will require mitigation at a ratio of 3:1 for any wetland impacts and 2:1 for all other permanent or temporary impacts associated with the proposed project, which shall be included in the comprehensive mitigation plan and will be included with other habitat mitigation requirements for trees and CDFW habitat.

See Attachment B, Conditions of Certifications, Additional Conditions for modifications and additions to the above proposed compensatory mitigation.

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STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR Subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' (ACOE) Section 404 Permit and the California Department of Fish and Wildlife's (CDFG) Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the State.**
2. The Applicant shall adhere to the most stringent conditions indicated with either this Certification, the CDFW's Streambed Alteration Agreement, or the ACOE Section 404 Permit.
3. The Applicant shall comply with all water quality objectives, prohibitions, and policies set forth in the *Water Quality Control Plan, Los Angeles Region (1994)*, as amended.
4. The Avoidance/Minimization activities proposed by the Applicant as described in Attachment A, No. 15, are incorporated as additional conditions herein.
5. The Applicant and all contractors employed by the Applicant shall have copies of this Certification, and all other regulatory approvals for this project on site at all times and shall be familiar with all conditions set forth.

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6. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.
7. All excavation, construction, or maintenance activities shall follow best management practices to minimize impacts to water quality and beneficial uses. Dust control activities shall be conducted in such a manner that will not produce downstream runoff.
8. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State. Designated spoil and waste areas shall be visually marked prior to any excavation and/or construction activity, and storage of the materials shall be confined to these areas.
9. All waste or dredged material removed shall be relocated to a legal point of disposal if applicable. A legal point of disposal is defined as one for which Waste Discharge Requirements have been established by a California Regional Water Quality Control Board, and is in full compliance therewith. Please contact the Land Disposal Unit for further information regarding the disposal of solid wastes.
10. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
11. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.
12. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
13. Application of pesticides must be supervised by a certified applicator and be in conformance with manufacturer's specifications for use. Compounds used must be appropriate to the

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target species and habitat. All pesticides directed toward aquatic species must be approved by the Regional Board. Pesticide utilization shall be in accordance with State Water Resources Control Board Water Quality Order Nos. 2011-0002-DWQ and 2004-0009-DWQ.

14. The Applicant shall not conduct any construction activities within waters of the State during a rainfall event. The Applicant shall maintain a **five-day (5-day) clear weather forecast** before conducting any operations within waters of the State.
15. If rain is predicted after operations have begun, grading activities must cease immediately and the site must be stabilized to prevent impacts to water quality, and minimize erosion and runoff from the site.
16. The grading, stabilization and re-vegetation will be phased to limit the exposed or working face such that the graded area can be stabilized within 24 hours after the first prediction of rain during the 5-day forecast or within 24 hours after final grading of the phased area.
17. The Applicant shall utilize the services of a qualified biologist with expertise in riparian assessments during any vegetation clearing activities. The biologist shall be available on site during construction activities to ensure that all protected areas are marked properly and ensure that no vegetation outside the specified areas is removed. The biologist shall have the authority to stop the work, as necessary, if instructions are not followed. The biologist shall be available upon request from this Regional Board for consultation within 24 hours of request of consultation.
18. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum 5-foot buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge (ROWD)** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste.
19. All project/maintenance activities not included in this Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional Certification action.
20. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan (plan)** to this Regional Board. The plan shall include the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls,

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and a map or drawing indicating the locations of diversion and discharge points. Contingency measures shall be a part of this plan to address various flow discharge rates. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for the following shall be implemented:

- pH
- temperature
- dissolved oxygen
- turbidity
- total suspended solids(TSS)

Analyses must be performed using approved US Environmental Protection Agency methods, where applicable. These constituents shall be measured at least once prior to diversion and then monitored for on a daily basis during the first week of diversion and/or dewatering activities, and then on a weekly basis, thereafter, until the in-stream work is complete.

Results of the analyses shall be submitted to this Regional Board by the 15th day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Downstream TSS shall be maintained at ambient levels. Where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20%. Where natural turbidity is greater than 50 NTU, increases shall not exceed 10%. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.

21. The Applicant shall restore **all areas** of TEMPORARY IMPACTS to waters of the United States and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the State. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species. Restored areas shall be monitored and maintained with native species as necessary for five years. The Applicant shall implement all necessary Best Management Practices to control erosion and runoff from areas associated with this project.
22. The Applicant shall provide COMPENSATORY MITIGATION to offset the proposed temporary and permanent loss of a total of **0.19 acres** waters of the United States by creating or restoring riparian habitat at a minimum **2:1** area replacement ratio (**0.38 acres**). The Applicant shall also provide compensatory mitigation for the proposed permanent impacts to **0.06 acres** wetlands by creating or restoring riparian habitat/Federal jurisdictional wetland habitat at a minimum **3:1** area replacement ratio (**0.18 acres**). The Applicant shall submit a **Proposed Mitigation Report** which shall include:
 - (a) The boundary of the mitigation site shall be clearly identified on a map of suitable resolution and quality and shall also be defined by latitude and longitude.

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- (b) The type(s) of mitigation shall be described (e.g., removal of exotics and/or replanting with native species, etc.)
- (c) Success criteria shall be established.

This information shall be submitted to this Regional Board for approval prior to any project activities which take place within waters of the United States and shall include copies of all agreements made between the Applicant and a third party organization regarding compensatory mitigation efforts.

23. If the Applicant proposes funding to a third-party organization for the creation or restoration of streambed riparian habitat within waters of the United States/Federal jurisdictional wetlands, then funding shall apply to mitigation acreage only, exclusive of administrative costs. The mitigation site shall be located within the Malibu Creek Watershed unless otherwise approved by this Regional Board. The Applicant shall submit a **Proposed Mitigation Report** which shall include:

- (d) Documentation from the third party indicating that funds have been used for mitigation acreage only, which do not include administrative costs.
- (e) The boundary of the mitigation site shall be clearly identified on a map of suitable resolution and quality and shall also be defined by latitude and longitude.
- (f) The type(s) of mitigation shall be described (e.g., removal of exotics and/or replanting with native species, etc.)
- (g) Success criteria shall be established.

This information shall be submitted to this Regional Board for approval prior to any disturbance within waters of the United States and shall include copies of all agreements made between the Applicant and a third party organization regarding compensatory mitigation efforts.

24. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** (Annual Reports) by **January 1st** of each year for a minimum period of **five (5) years** following this issuance of 401 Certification or until mitigation success has been achieved and documented. The Annual Reports shall describe in detail all of the project/construction activities performed during the previous year and all restoration and mitigation efforts; including percent survival by plant species and percent cover. The Annual Reports shall describe the status of other agreements (e.g., mitigation banking) or any delays in the mitigation process. At a minimum the Annual Reports shall include the following documentation and answered appropriately whether or not mitigation has been performed:

- (a) Color photo documentation of the pre- and post-project and mitigation site conditions;
- (b) Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the project and mitigation areas;

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- (c) The overall status of project and a detailed schedule including whether or not work has begun on the Project;
 - (d) Copies of all permits revised as required in Additional Condition 1;
 - (e) Water quality monitoring results for each reach (as required) compiled in an easy to interpret format;
 - (f) A certified Statement of "no net loss" of wetlands associated with this project;
 - (g) Discussion of any monitoring activities and exotic plant control efforts; and
 - (h) A certified Statement from the permittee or his/her representative that all conditions of this Certification have been met.
25. All applications, reports, or information submitted to the Regional Board shall be signed:
- (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
 - (b) For a partnership, by a general partner.
 - (c) For a sole proprietorship, by the proprietor.
 - (d) For a municipal, State, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.
26. Each and any report submitted in accordance with this Certification shall contain the following completed declaration: •

"I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the _____ day of _____ at _____.

(Signature)

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_____ (Title)"

27. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number 13-132. Submittals shall be sent to the attention of the 401 Certification Unit.
28. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.
29. The project shall comply with the local regulations associated with the Regional Board's **Municipal Stormwater Permit** issued to Los Angeles County and co-permittees under NPDES No. CAS004001 and Waste Discharge Requirements Order No. R4-2012-0175. This includes the Standard Urban Storm Water Mitigation Plan (SUSMP) and all related implementing local ordinances and regulations for the control of stormwater pollution from new development and redevelopment. The project shall also comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) **General Permit for Storm Water Discharges Associated with Construction Activity**, Order No. 2009-009-DWQ. All stormwater treatment systems shall be located outside of any water of the State and shall not be used as a wetland or riparian mitigation credit.
30. Coverage under this Certification may be transferred to the extent the underlying federal permit may legally be transferred and further provided that the Applicant notifies the Executive Officer at least 30 days before the proposed transfer date, and the notice includes a written agreement between the existing and new Applicants containing a specific date of coverage, responsibility for compliance with this Certification, and liability between them.
31. The Applicant or their agents shall report any noncompliance. Any such information shall be provided verbally to the Executive Officer within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
32. *Enforcement:*
 - (a) In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies,

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penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.

- (b) In response to a suspected violation of any condition of this Certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) In response to any violation of the conditions of this Certification, the SWRCB or RWQCB may add to or modify the conditions of this Certification as appropriate to ensure compliance.
33. This Certification shall expire **five (5) years** from date of this Certification. The Applicant shall submit a complete application at least 90 days prior to termination of this Certification if renewal is requested.