

SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

5048



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:

May 10, 2011

SUBJECT: Gavilan Hills-Smith Road Channel and Debris Basin
Consulting Services Agreement
Project No. 2-0-00290

RECOMMENDED MOTION:

1. Approve and ratify the sole source multi-year Consulting Services Agreement (Agreement) between the District and Pacific Restoration Group, Inc. (Contractor); and
2. Authorize the Chairman to execute the Agreement on behalf of the District.

BACKGROUND:

The Agreement sets forth the terms and conditions by which the Contractor will continue to perform habitat mitigation maintenance services for the Gavilan Hills-Smith Road Channel and Debris Basin Project.

See Page 2.

FINANCIAL:

See Page 2.

WARREN D. WILLIAMS

General Manager-Chief Engineer

FINANCIAL
DATA

Current F.Y. District Cost: \$12,900
Current F.Y. County Cost: \$0
Net District Cost: \$66,300

In Current Year Budget: Yes
Budget Adjustment: No
For Fiscal Year: 2010-11; 11-12,
12-13 & 13-14

SOURCE OF FUNDS:

25120 947420 527980 Zone 2 Const/Maint/Misc-Contracts

Positions To Be
Deleted Per A-30

☐

Requires 4/5 Vote

☐

C.E.O. RECOMMENDATION:

APPROVE

BY: Michael R. Shetler
Michael R. Shetler

County Executive Office Signature

MINUTES OF THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT

On motion of Supervisor Benoit, seconded by Supervisor Stone and duly carried,
IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone and Benoit
Nays: None
Absent: Ashley
Date: May 10, 2011
xc: Flood

Kecia Harper-Ihem
Clerk of the Board

By: [Signature]
Deputy

Prev. Agn. Ref.: 11.3 of 4-6-10

District: 1st

Agenda Number:

11.4

ATTACHMENTS FILED

WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL

BY: [Signature] DATE

FISCAL PROCEDURES APPROVED
IAN M. CHAND, FINANCE DIRECTOR

BY: [Signature] 3/29/2011

Departmental Concurrence

IVAN M. CHAND

Dep't Recomm.:
Poli cy
Consent
Per Exec. Ofc.:
Poli cy
Consent

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Gavilan Hills-Smith Road Channel and Debris Basin
Consulting Services Agreement
Project No. 2-0-00290

SUBMITTAL DATE: May 10, 2011
Page 2

BACKGROUND:

The Board approved a contract with Contractor in the amount of \$453,317.75 as Agenda Item Number 11.7 on October 21, 2008. The Board, on April 6, 2010, approved a change order for extra work on this project and recognized the Notice of Completion for the project as Agenda Item Number 11.3.

As a condition of the resource agencies permits, the District is required to demonstrate successful implementation of the completed mitigation measures through established performance standards.

The Contractor, in light of its institutional knowledge and experience with the project, is uniquely qualified to provide necessary maintenance services to ensure those established performance standards are met. Utilizing this Contractor as a sole source provider will provide continuity to the project and will expedite approvals by the resource agencies.

FINANCIAL:

Sufficient funding is available in the District's Zone 2 budget for FY 2010-2011 and will be included in the proposed budget for fiscal years 2011-2012 through 2013-14.

KEC:blj

CONSULTING SERVICES AGREEMENT
Gavilan Hills-Smith Road Channel and Debris Basin
(Project No. 2-0-00290)

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT, hereinafter called "DISTRICT", and PACIFIC RESTORATION GROUP, INC.,
hereinafter called "CONTRACTOR", hereby agree as follows:

1. PROJECT - CONTRACTOR shall perform habitat mitigation maintenance services for the project described as Gavilan Hills-Smith Road Channel and Debris Basin (Project No. 2-0-00290).
2. SCOPE OF SERVICES - CONTRACTOR shall furnish tools, equipment, facilities, materials and labor necessary to perform in a complete, skillful and professional manner those services described on Attachment "A" attached hereto and made a part hereof. CONTRACTOR shall not perform any additional work, including any Extra Work, except as directed by DISTRICT in writing.
3. TIME FOR PERFORMANCE - CONTRACTOR shall commence performance of service upon receipt of a written Notice to Proceed from DISTRICT and shall diligently perform services to full completion in a timely manner. The terms and conditions of this Agreement will expire on June 30, 2014.
4. COMPENSATION - DISTRICT shall pay CONTRACTOR for services properly performed and expenses incurred. The total amount paid to CONTRACTOR under this Agreement shall not exceed sixty-six thousand three hundred dollars (\$66,300).
5. PAYMENT - Upon satisfactory performance of CONTRACTOR'S services as set forth herein, DISTRICT shall pay CONTRACTOR within thirty (30) days after DISTRICT'S receipt of CONTRACTOR'S appropriate invoice(s). The DISTRICT shall withhold 5 percent (5%) of the estimated value of work completed as shown in Attachment A.

1 CONTRACTOR shall keep employee and expense records according to customary
2 accounting methods and such records shall be available, upon request, for inspection by
3 DISTRICT to verify the invoice(s) of CONTRACTOR. All invoice(s) shall itemize
4 charges to conform to the portion(s) of work as set forth in Attachment "A".

5 The DISTRICT, upon satisfactory completion of the services as set forth herein, shall
6 make the final retention payment to CONTRACTOR within thirty (30) days after
7 DISTRICT'S receipt of appropriate invoice from CONTRACTOR.

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9 6. LICENSES - At all times while performing services under this Agreement,
10 CONTRACTOR, its employees, agents, contractors and subcontractors shall maintain
11 professional licenses required by the laws of the State of California including but not
12 limited to Chapter 7 of the Business and Professional Code.

13 7. PERMITS AND RIGHTS OF ENTRY - DISTRICT shall obtain all rights of entry as
14 may be required to allow CONTRACTOR to perform the proposed consulting services
15 within and upon privately-owned property. All permits and rights of entry as may be
16 required from any and all other affected public entities shall be obtained by
17 CONTRACTOR. Sufficient evidence of having obtained such permits and/or rights of
18 entry shall be furnished to DISTRICT by CONTRACTOR, prior to initiation of work.
19 CONTRACTOR will prosecute the work in such a manner as to minimize public
20 inconvenience and possible hazard, and will restore the streets and other work areas to
21 their original condition and former usefulness as soon as practicable. CONTRACTOR
22 shall be responsible for the protection of public and private property adjacent to the
23 work and shall exercise due caution to avoid damage to such property.
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- 1 8. NOTICES - Any and all notices sent or required to be sent to the parties of this
2 Agreement will be mailed by first class mail, postage prepaid, to the following
3 addresses:

4 RIVERSIDE COUNTY FLOOD CONTROL	PACIFIC RESTORATION
5 AND WATER CONSERVATION DISTRICT	GROUP, INC.
1995 Market Street	Post Office Box 77038
Riverside, CA 92501	Corona, CA 92877
Attn: Environmental Regulatory Services Section	Attn: Danny Richards

- 7 9. INSURANCE - Without limiting or diminishing CONTRACTOR'S obligation to
8 indemnify or hold DISTRICT harmless, CONTRACTOR shall procure and maintain or
9 cause to be maintained, at its sole cost and expense, the following insurance coverages
10 during the term of this Agreement:

11 A. Workers' Compensation:

12 If CONTRACTOR has employees as defined by the State of California,
13 CONTRACTOR shall maintain statutory Workers' Compensation Insurance
14 (Coverage A) as prescribed by the laws of the State of California. Policy shall
15 include Employers' Liability (Coverage B) including Occupational Disease with
16 limits not less than \$1,000,000 per person per accident. Policy shall be endorsed
17 to waive subrogation in favor of the Riverside County Flood Control and Water
18 Conservation District, the County of Riverside, its agencies, districts, special
19 districts, and departments, their respective directors, officers, Board of
20 Supervisors, employees, elected or appointed officials, agents or representatives
21 and, if applicable, to provide a Borrowed Servant/Alternate Employer
22 Endorsement.
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1 B. Commercial General Liability:

2 Commercial General Liability insurance coverage, including but not limited to,
3 premises liability, unmodified contractual liability, products and completed
4 operations liability, personal and advertising injury, and cross liability coverage,
5 covering claims which may arise from or out of CONTRACTOR'S performance
6 of its obligations hereunder. Policy shall name the Riverside County Flood
7 Control and Water Conservation District, the County of Riverside, its agencies,
8 districts, special districts, and departments, their respective directors, officers,
9 Board of Supervisors, employees, elected or appointed officials, agents or
10 representatives as additional insureds. Policy's limit of liability shall not be less
11 than \$1,000,000 per occurrence combined single limit. If such insurance contains
12 a general aggregate limit, it shall apply separately to this Agreement or be no less
13 than two (2) times the occurrence limit.
14

15 C. Vehicle Liability:

16 If vehicles or mobile equipment are used in the performance of the obligations
17 under this Agreement, then CONTRACTOR shall maintain liability insurance for
18 all owned, non-owned or hired vehicles so used in an amount not less than
19 \$1,000,000 per occurrence combined single limit. If such insurance contains a
20 general aggregate limit, it shall apply separately to this Agreement or be no less
21 than two (2) times the occurrence limit. Policy shall name the Riverside County
22 Flood Control and Water Conservation District, the County of Riverside, its
23 agencies, districts, special districts, and departments, their respective directors,
24 officers, Board of Supervisors, employees, elected or appointed officials, agents
25 or representatives as additional insureds.
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1 D. [This section intentionally left blank]

2 E. General Insurance Provisions – All Lines:

- 3 i. Any insurance carrier providing insurance coverage hereunder shall be
4 admitted to the State of California and have an A.M. BEST rating of not
5 less than an A: VIII (A: 8) unless such requirements are waived, in writing,
6 by the County Risk Manager. If the County Risk Manager waives a
7 requirement for a particular insurer such waiver is only valid for that
8 specific insurer and only for one policy term.
- 9
- 10 ii. The CONTRACTOR must declare its insurance self-insured retention for
11 each coverage required herein. If any such self-insured retention exceeds
12 \$500,000 per occurrence each such retention shall have the prior written
13 consent of the County Risk Manager before the commencement of
14 operations under this Agreement. Upon notification of self-insured retention
15 deemed unacceptable to the DISTRICT, and at the election of the County
16 Risk Manager, CONTRACTOR'S carriers shall either: 1) reduce or eliminate
17 such self-insured retention with respect to this Agreement with DISTRICT,
18 or 2) procure a bond which guarantees payment of losses and related
19 investigations, claims administration, and defense costs and expenses.
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- 21 iii. CONTRACTOR shall cause their insurance carrier(s) to furnish DISTRICT
22 with 1) a properly executed original Certificate(s) of Insurance and certified
23 original copies of Endorsements effecting coverage as required herein; and
24 2) if requested to do so orally or in writing by the County Risk Manager,
25 provide original certified copies of policies including all Endorsements and
26 all attachments thereto, showing such insurance is in full force and effect.
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1 Further, said Certificate(s) and policies of insurance shall contain the
2 covenant of the insurance carrier(s) that thirty (30) days written notice shall
3 be given to DISTRICT prior to any material modification, cancellation,
4 expiration or reduction in coverage of such insurance. In the event of a
5 material modification, cancellation, expiration or reduction in coverage, this
6 Agreement shall terminate forthwith, unless DISTRICT receives, prior to
7 such effective date, another properly executed original Certificate of
8 Insurance and original copies of Endorsements or certified original policies,
9 including all endorsements and attachments thereto, evidencing coverages
10 set forth herein and the insurance required herein is in full force and effect.
11 *CONTRACTOR shall not commence operations until DISTRICT has been*
12 *furnished with original Certificate(s) of Insurance and certified original*
13 *copies of Endorsements and if requested, certified original policies of*
14 *insurance including all endorsements and any and all other attachments as*
15 *required in this Section. An individual authorized by the insurance carrier*
16 *to do so on its behalf shall sign the original endorsements for each policy*
17 *and the Certificate of Insurance.*

- 20 iv. It is understood and agreed by the parties hereto that CONTRACTOR'S
21 insurance shall be construed as primary insurance, and DISTRICT'S
22 insurance and/or deductibles and/or self-insured retentions or self-insured
23 programs shall not be construed as contributory.
- 25 v. If, during the term of this Agreement or any extension thereof, there is a
26 material change in the scope of services or there is a material change in the
27 equipment to be used in the performance of the scope of work which will
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1 add additional exposures (such as the use of aircraft, watercraft, cranes, etc.);
2 or the term of this Agreement, including any extensions thereof, exceeds five
3 (5) years, DISTRICT reserves the right to adjust the types of insurance
4 required under this Agreement and the monetary limits of liability for the
5 insurance coverages currently required herein, if, in the County Risk
6 Manager's reasonable judgment, the amount or type of insurance carried by
7 CONTRACTOR has become inadequate.

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9 vi. CONTRACTOR shall pass down the insurance obligations contained herein
10 to all tiers of subcontractors working under this Agreement.

11 vii. The insurance requirements contained in this Agreement may be met with a
12 program(s) of self-insurance acceptable to DISTRICT.

13 viii. CONTRACTOR agrees to notify DISTRICT of any claim by a third party or
14 any incident or event that may give rise to a claim arising from the
15 performance of this Agreement.
16

17 10. INDEMNIFICATION – CONTRACTOR shall indemnify and hold harmless
18 DISTRICT (including its officers, Board of Supervisors, elected and appointed officials,
19 employees, agents and representatives) from any and all liability, claim, damage,
20 proceeding or action, present or future, based upon, arising out of or in any way relating
21 to CONTRACTOR'S (including its officers, employees, subcontractors and agents)
22 actual or alleged negligent, reckless or willful misconduct, acts or omissions related to
23 this Agreement, performance under this Agreement, or failure to comply with the
24 requirements of this Agreement, including but not limited to: (a) property damage; (b)
25 bodily injury or death; or (c) any other element of any kind or nature whatsoever.
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1 CONTRACTOR shall defend, at its sole expense, all costs and fees (including but not
2 limited to attorney fees, cost of investigation, defense and settlements or awards),
3 DISTRICT (its officers, Board of Supervisors, elected and appointed officials,
4 employees, agents and representatives) in any claim, proceeding or action for which
5 indemnification is required.

6 With respect to any of CONTRACTOR'S indemnification requirements,
7 CONTRACTOR shall, at its sole cost, have the right to use counsel of their own choice
8 and shall have the right to adjust, settle, or compromise any such claim, proceeding or
9 action without the prior consent of DISTRICT; provided, however, that such
10 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
11 CONTRACTOR'S indemnification obligations to DISTRICT.
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13 CONTRACTOR'S indemnification obligations shall be satisfied when CONTRACTOR
14 has provided to DISTRICT the appropriate form of dismissal (or similar document)
15 relieving DISTRICT from any liability for the claim, proceeding or action involved.
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17 The specified insurance limits required in this Agreement shall in no way limit or
18 circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the
19 DISTRICT from third party claims.

20 In the event there is conflict between this section and California Civil Code Section
21 2782, this section shall be interpreted to comply with California Civil Code Section
22 2782. Such interpretation shall not relieve CONTRACTOR from indemnifying
23 DISTRICT or the County of Riverside to the fullest extent allowed by law.
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- 25 11. SUBCONTRACTS - In the event CONTRACTOR subcontracts any portion of
26 CONTRACTOR'S duties under this Agreement, CONTRACTOR shall require its
27 subcontractors to comply with the terms of this Agreement in the same manner as
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1 required of CONTRACTOR. The fact that CONTRACTOR employs special
2 consultants not in his regular employ shall not relieve CONTRACTOR of any
3 responsibility regarding the adequacy of the special consultant's designs or other work
4 performed pursuant to this Agreement.

5 12. TERMINATION - At any time during the term of this Agreement, DISTRICT may:

- 6 A. Terminate this Agreement without cause upon providing CONTRACTOR thirty
7 (30) days written notice stating the extent and effective date of termination; or
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9 B. Upon five (5) days written notice, terminate this Agreement for CONTRACTOR
10 default, if CONTRACTOR refuses or fails to comply with the provisions of this
11 Agreement or fails to make progress so as to endanger performance and does not
12 cure such failure within a reasonable period of time. In the event of such
13 termination, the DISTRICT may proceed with the work in any manner deemed
14 proper to DISTRICT.

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16 In the event DISTRICT issues a Notice of Termination, CONTRACTOR shall (i) stop
17 all work under this Agreement on the date specified in the Notice of Termination; and
18 (ii) transfer to DISTRICT and deliver in the manner, and to the extent, if any, as
19 directed by DISTRICT, any equipment, data or reports which, if the Agreement had
20 been completed, would have been required to be furnished to DISTRICT.

21 In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for
22 all services performed in accordance with this Agreement to the date of termination.

23 Notwithstanding any of the other provisions of this Agreement, CONTRACTOR rights
24 under this Agreement shall terminate (except for fees accrued prior to the date of
25 termination) upon dishonesty, or a willful or material breach of this Agreement by
26 CONTRACTOR, or in the event of CONTRACTOR'S unwillingness or inability for
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any reason whatsoever to perform the duties hereunder, or if the Agreement is terminated pursuant to Section 18, hereinafter titled NON-DISCRIMINATION.

13. ASSIGNMENT - Neither this Agreement nor any part thereof shall be assigned by CONTRACTOR without the prior written consent of DISTRICT.

14. CONFLICT OF INTEREST - CONTRACTOR covenants that it presently has no interest in, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by it under this Agreement.

CONTRACTOR warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, DISTRICT has the right to annul this Agreement without liability, pay only for the value of the work actually performed, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. CONTRACTOR may be requested to complete a Conflict of Interest Statement prior to, during, or after execution of this Agreement. CONTRACTOR understands that as a condition of this Agreement, CONTRACTOR agrees to complete the Conflict of Interest Statement when requested to do so by DISTRICT.

1 15. INDEPENDENT CONTRACTOR – Nothing herein shall be construed to create an
2 employer-employee relationship between the parties. The consideration set forth above
3 shall be the sole payment due for services rendered. It is understood that DISTRICT
4 will not withhold any amounts for payment of taxes from the compensation of
5 CONTRACTOR. CONTRACTOR will be solely responsible to pay all applicable taxes
6 from said payments.

7 CONTRACTOR and the agents and employees of CONTRACTOR shall act at all times
8 in an independent capacity during the term of this Agreement and in the performance of
9 the services to be rendered hereunder and shall not act as or shall not be and shall not in
10 any manner be considered employees or agents of DISTRICT.

11 16. JURISDICTION/LAW/SEVERABILITY – This Agreement is to be construed in
12 accordance with the laws of the State of California. If any provision of this Agreement
13 is held by a court of competent jurisdiction to be invalid, void or unenforceable, the
14 remaining provisions shall be declared severable and shall be given full force and effect
15 to the extent possible.

16 Any legal action, in law or equity related to the performance or interpretation of this
17 Agreement shall be filed only in the Superior Court for the State of California located in
18 Riverside, California, and the parties waive any provision of law providing for a change
19 of venue to another location. Prior to the filing of any legal action, the parties shall be
20 obligated to attend a mediation session with a neutral mediator to try to resolve the
21 dispute.

22 17. WAIVER – Any waiver by DISTRICT of any breach of any one or more of the terms of
23 this Agreement shall not be constructed to be a waiver of any subsequent or other
24 breach of the same or any other term thereof. Failure on the part of DISTRICT to
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1 require exact, full and complete compliance with any terms of this Agreement shall not
2 be construed as in any manner changing the terms hereof, or estopping DISTRICT from
3 enforcement hereof.

4 18. NON-DISCRIMINATION – In the performance of the terms of this Agreement,
5 CONTRACTOR shall not engage in nor permit others he may employ to engage in
6 discrimination in the employment of persons because of the race, color, national origin
7 or ancestry, religion, physical handicap, disability as defined by the Americans with
8 Disabilities Act (ADA), medical condition, marital status or sex of such persons, in
9 accordance with the provision of California Labor Code Section 1735.
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11 19. NON-APPROPRIATION OF FUNDS - It is mutually agreed and understood that the
12 obligation(s) of DISTRICT are limited by and contingent upon the availability of
13 DISTRICT funds for the reimbursement of CONTRACTOR'S fees. In the event that
14 such funds are not forthcoming for any reason, DISTRICT shall immediately notify
15 CONTRACTOR in writing. This Agreement shall be deemed terminated and have no
16 further force and effect immediately on receipt of DISTRICT'S notification by
17 CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to
18 reimbursement of its costs in accordance with Sections 4 and 5 (COMPENSATION and
19 PAYMENT).
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

MAY 10 2011
(to be filled in by Clerk of the Board)

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

RECOMMENDED FOR APPROVAL

By Warren D. Williams
WARREN D. WILLIAMS
General Manager-Chief Engineer

By Marion Ashley
MARION ASHLEY, Chairman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By Neal Kipnis
NEAL KIPNIS
Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By Kecia Harper-Ihem
Deputy

(SEAL)

Consulting Services Agreement
Gavilan Hills-Smith Road
3/29/11
KEC:blj

PACIFIC RESTORATION GROUP, INC.By: **DANNY RICHARDS**
Vice President

Consulting Services Agreement
Gavilan Hills-Smith Road
3/29/11
KEC:blj

ATTACHMENT 'A'

SCOPE OF WORK

GAVILAN HILLS-SMITH ROAD CHANNEL

AND DEBRIS BASIN

HABITAT MITIGATION PLAN

(Referenced Habitat Mitigation Plan is on file and available for public viewing at Riverside Flood Control Office)

General Maintenance Services – The Maintenance Services in this scope of work cover all labor, materials and equipment necessary to maintain the mitigation site, within the project limits of work, for the third through fifth year of a five (5) year long-term maintenance period.

During the three-year maintenance contract, the Contractor shall be responsible for keeping all areas within the Limit of Work free of target exotic species and maintain all plants installed from seed and containers in a vigorous and thriving condition by irrigating, weeding, cultivating, and any other work necessary. The Contractor shall be responsible for maintaining the health and vigor of plant material in conformance with the Habitat Mitigation and Monitoring Plan (HMMP). Contractor shall visit the site at a minimum on a monthly basis for the duration of the maintenance period to assess maintenance needs. Additional contractor maintenance may be required to maintain the established performance criteria, as specified in the Performance Criteria described below. Additional maintenance shall be directed by the Project Biologist via the District's representative during the maintenance period as specified in the Habitat Monitoring section shown below.

Contractor shall review the maintenance recommendations described in the Project Biologist's annual monitoring reports, quarterly site observation reports and implement the recommendations in consultation with the District.

Restrictions – Maintenance personnel shall avoid impacting the Environmentally Sensitive Area (ESA).

No pesticides, petroleum products, hydraulic fluid, antifreeze or other potentially toxic compounds shall be deposited on the ground. All equipment maintenance, pesticide mixing and refueling shall be done in approved staging areas away from wetlands, ESAs and areas prone to flow.

Any spills of toxic materials including pesticides shall be cleaned up immediately. The appropriate agencies shall be notified of all spills.

Wildlife shall not be trapped, harmed, harassed, or killed unless it poses an imminent and immediate threat to human health and safety. Contractor shall alert the Project Biologist as soon as threatening wildlife is discovered on the project site. The Project Biologist will coordinate removal/relocation if necessary.

All vegetative slash and debris shall be disposed of at a landfill or green waste recycling facility. Vegetative slash and debris shall be completely covered and secured prior to leaving the site and during transport. Vegetative slash, especially collected flowering parts shall be kept in enclosed containers or bins away from stream courses and removed from the site weekly.

Cleanup – Contractor shall remove and properly dispose offsite all non-organic debris. Removal of trash and litter shall continue on a regular basis during the maintenance period. Organic debris resulting from weed removal shall be removed from the site and disposed of at a landfill or green waste recycling facility to avoid further introduction of undesirable exotic seed and propagates. Leaf and branch drop shall be retained in place unless otherwise directed.

Weed Control – Contractor shall control annual weed growth and conduct non-native species removal per the requirements the HMMP, Section 5.1.1. Native understory species will not be cleared in the mitigation area. Only annual weeds and non-native vegetation shall be cleared. Additional vegetation thinning of native species, if necessary, must be authorized by the Project Biologist in all planting and seeding areas. Weed Control shall be conducted as required to maintain the site 90% free of exotics/weeds and maintain an acceptable appearance and native cover criteria throughout the maintenance period. Methods for removal can include hand removal, cultivation, or chemical eradication in conformance with the Exotic Plant Treatment and Removal Methods Section below. Chemical control may be used for invasive perennial species that are low growing and are difficult to control by hand pulling.

The weed species identified in the Exotic Plant Treatment and Removal Methods Section below and in the HMMP Section 5.1.1 (Table 6) are considered detrimental to the restoration process and shall be targeted for removal in all planting areas. Additional species targeted for control include common ragweed (*Ambrosia artemisifolia*), horseweed (*Conyza canadensis*), nettle-leaf goosefoot (*Chenopodium murase*), rabbit's-foot grass (*Polypogon monspeliensis*), water cress (*Rorippa nasturtium-aquaticum*), and fountain grass (*Pennisetum setaceum*). Other species may be added by the Project Biologist to the list of species to be controlled by Contractor if new species begin to appear onsite.

Target species shall be removed at a time of year that shall not enhance erosion and such that viable weed seeds are not present on the plants.

Follow-up treatment of remaining stumps and resprouts initially treated during project installation is a requirement of the maintenance period.

Irrigation – The Contractor shall operate and maintain the irrigation system at the optimum level for plant health and vigor. Irrigation maintenance shall include all replacement and repair of irrigation equipment caused by, but not limited to, animal pests, human activities, and flooding.

Irrigation shall be provided at a frequency and duration that does not limit the normal growth potential of the vegetation being established. Irrigation volume shall be gradually reduced over time to acclimate plants to a non-irrigated condition prior to complete cessation of

irrigation. Irrigation from June to November shall be minimized to allow plants to experience normal drought cycles and to promote appropriate root growth.

The District will be financially responsible for the irrigation water supply.

Container plants outside the reach of temporary irrigation systems, or requiring supplemental watering shall be irrigated by hand, as necessary for plant survival. Risers shall be added to irrigation heads or vegetation may require trimming around irrigation heads if vegetation growth inhibits spray trajectory. Any trimming of native vegetation must be pre-approved by the District, in consultation with the Project Biologist.

Contractor shall maintain accurate logs of irrigation during the maintenance period. Irrigation logs shall include the dates and duration of irrigation for each irrigated area.

Contractor shall have personnel proficient in the operation and programming of irrigation controllers including solar powered. The Contractor shall provide Project Biologist with a written irrigation schedule when requested. Project Biologist shall have the ability to change and monitor the irrigation schedule. Contractor shall maintain adequate soil moisture by programming of automatic sprinkler controllers according to the following guidelines:

- Contractor must consider soil conditions, season temperatures, wind conditions, water window, humidity, and minimizing runoff. Watering is to be adjusted based on conditions to obtain maximum performance of irrigation system under the conditions presented. This may include the need for daytime watering during adverse conditions to prevent ice, freezing, or frost damage to plant material, as well as spray drift, and over or under watering. The Contractor shall observe and abide by any watering restrictions prescribed by the water supplier (Western Municipal Water District.)
- Complete monthly check and evaluation of the irrigation systems and adjust and/or repair any sprinkler heads found to be damaged, or malfunctioning. Head adjustments to include resetting, elevating, lowering, up righting, and leveling of irrigation heads to reestablish appropriate heights as to not be damaged by equipment or suffocated by plant material. Adjust heads and watering schedules to minimize excessive runoff.
- Contractor shall observe and note any deficiencies occurring from the original design and review these findings with the Project Biologist so that appropriate improvements can be considered.
- Contractor shall repair all leaking or defective valves immediately with similar size, make and model of irrigation valve upon occurrence, or within twenty-four (24) hours following notification from District of such a deficiency.

- Contractor shall report to the District all damage identified on the irrigation system (animal, pest, human activities, landslide, flooding, etc.) and the repair conducted to return to operation.

The irrigation system is considered temporary in nature and it is expected that use shall cease once the plantings are adequately established, which is expected by November 2011. The irrigation system shall remain intact until the completion of the mitigation project and upon final acceptance by the permit holding Resource Agencies (expected in Spring 2014). At the completion of the project, and with the approval of the District all above-ground pipe and components shall be completely removed from the site. The irrigation components, such as valves and sprinkler heads, may be salvaged for re-use elsewhere, as directed by the District. Below-ground components may be abandoned in place and/or salvaged if feasible.

Remedial Planting and Seeding – Project maintenance shall include all replacement of plantings and seed caused by, but not limited to, animal, pest and human activities, and flooding.

Where plants show signs of failure to grow at any time during the specified maintenance period, and where plants are so injured, damaged, dead or diseased as to render them unsuitable for the intended purpose, Contractor shall replace plant materials, one (1) new plant for each plant removed (1:1 ratio) within ten (10) days of receipt of written notice by District and Project Biologist. If Contractor fails to replace plants within the ten (10) day time limit, District may replace them at Contractor's expense five (5) days after written notice to Contractor. Project Biologist may delay the request for planting based on seasonal conditions.

Any dead plant(s) determined by the Project Biologist to be diseased or being in a degraded state of health so as not to fulfill the intent of the planting shall be replaced, unless replacement by natural on site recruitment is approved by Project Biologist.

Fertilizers shall not be applied to planting areas unless directed by the District and Project Biologist.

Plants used for replacement shall be the same kind and size as specified in the original plant legend. Replacement plants shall be furnished, planted, and fertilized as originally specified, at no additional cost to the District.

Container Plants shall not be pruned or fertilized unless directed by Project Biologist.

Herbivore/Insect Control – Contractor shall be responsible for immediately controlling any insect infestations and diseases that may spread throughout planted areas. The use of pesticides shall require prior approval by the District and Project Biologist.

Contractor shall be responsible for monitoring and control of herbivory of plants and shall inform Project Biologist within 24 hours of discovery, who shall then prescribe remedial action. Any remedial action, such as additional fence and/or protective cages, shall be provided at the District's expense.

Erosion Control – Contractor shall monitor for erosion within restoration areas. Erosion control shall emphasize prevention. If required, repair of eroded areas may include redirection or dissipation of the water source and re-contouring of soil, followed by seeding, mulching, and planting as directed by the District or Project Biologist. The plant palette for re-seeded or planted areas shall conform to the original plant and seed species and quantities. Invasive exotic species are prohibited from use as an erosion control measure.

Temporary erosion control devices shall be required to maintain the integrity of the constructed ponds and lower drainage swale for the duration of the maintenance period. It is anticipated that vegetation development will reduce the need for temporary erosion control devices.

Erosion control devices (gravel bags/fiber rolls) shall be maintained through the maintenance period to control the flow of water throughout the drainage system and prevent channel and bank erosion. All temporary erosion control devices shall remain in place and maintained functional unless removal is directed by Project Biologist.

All temporary erosion control devices shall be removed at the end of the maintenance period.

If the hydroseed application is unsuccessful then potential remedial actions may include: reseeded, installation of additional erosion control devices and follow-up weed control as directed by the District and Project Biologist. Contractor shall install additional erosion control measures as prescribed by District or Project Biologist after evaluation of potential or existing erosion problems on a case-by-case basis.

Exotic Plant Treatment and Removal Methods – All exotic treatment and removal strategies shall be performed in accordance with all applicable pesticide regulations and laws. Removal strategies shall avoid damage to native plants and adjacent ESA areas and shall take erosion control into consideration.

The following is a partial list of exotic woody tree species that exist, or may be present within the limit of work: gum tree (*Eucalyptus* sp.), Mexican fan palm (*Washingtonia robusta*), Canary Island date palm (*Phoenix canariensis*), Peruvian pepper tree (*Schinus molle*), Brazilian pepper tree (*Schinus terebinthifolius*), Pine (*Pinus* spp.), Jacaranda (*Jacaranda mimosifolia*), walnut (*Juglans* sp.), tree tobacco (*Nicotiana glauca*), salt cedar (*Tamarix* sp.) and locust (*Robinia* sp.). Particular treatment methods for individual trees are noted on the plans or will be indicated and flagged in the field by the Project Biologist.

The following is a partial list of exotic herbaceous species that exist, or may be present within the limit of work: Pampas grass (*Cortaderia selloana*), castor bean (*Ricinis communis*), sweet fennel (*Foeniculum vulgare*), Mustard (*Brassica* spp. & *Hirschfeldia* sp.), thistles (*Cirsium* spp. & *Centaurea* sp.), filaree (*Erodium botrys* & *E. cicutarium*), Italian ryegrass (*Lolium multiflorum*), cheeseweed (*Malva parviflora*), clover (*Melilotus* spp.), bristly ox-tongue (*Picris echioides*), Russian thistle (*Salsola tragus*), common sow-thistle (*Sonchus oleraceus*), Cocklebur (*Xanthium strumarium*), Bermuda grass (*Cynodon dactylon*), and Nonnative annual grasses

(*Avena* spp., *Bromus* spp., *Dactylis* sp., *Digitaria* sp., *Hordeum* sp.) and others deemed necessary for removal by the Project Biologist. All listed species are to be hand-pulled, treated with herbicide or a combination of both. Treatment methods are noted below unless otherwise indicated in the field by the Project Biologist.

Exotic woody shrubs and trees (greater than 3' tall) to be cut to grade and treated are indicated in the plans, or will be flagged in the field by the Project Biologist. Specific trees, as indicated, are to be cut to within 2 to 3 inches of the finish grade and stumps sprayed or daubed with an approved appropriate systemic herbicide within 3 minutes of initial cut. All trees along the existing stream bank shall be felled away from the existing streambed to avoid impacts to the stream banks and prevent erosion. Tree stumps will remain in place.

Exotic woody shrubs and trees to be cleared and grubbed are indicated in the plans, or will be flagged in the field by the Project Biologist. During initial exotic removal operations all trees shall be cut to within 6 inches of the existing grade. Remaining stumps and entire root masses shall be completely grubbed out and removed from the site during grading operations.

Exotic woody trees to be left as wildlife snags are indicated in the plans, or will be flagged in the field by the Project Biologist. Specific trees, as indicated, will be girdled and treated with an appropriate herbicide. The girdle must consist of a single, continuous cut band around the entire tree. The girdle must have a minimum of 0.75 inch in vertical width and must completely sever the bark and cambium layer over its entire width. Trees girdled are to be sprayed or daubed with an approved appropriate systemic herbicide along the entire length of the cut within 3 minutes of initial cut.

In general, small herbaceous weeds, grasses and small shrubs that do not regenerate from roots, rhizomes, tubers, etc., shall be pulled, hoed, or dug out. Herbaceous weeds, grasses and small shrubs that can regenerate from a tap root, root fragments, rhizomes or similar (such as fennel, pepper trees and Bermuda grass) shall be carefully spot sprayed in place with the appropriate systemic herbicide. The Contractor's attention is directed to the Herbicides Section below on the use of herbicides. Sprayed plants shall be allowed to brown out and die and then be cut, bagged and removed from site.

Pampas grass shall first have all plumes cut and placed in a sealed bag or container. Following flowering plume removal they shall be completely grubbed out, including the entire root ball. In areas where access to Pampas grass with an excavator or backhoe is not feasible due to native vegetation or saturated soils, etc. (as determined by the Project Biologist) it shall be cut to a height of 18" tall (max.) and promptly sprayed with the appropriate systemic herbicide.

Vegetative debris and slash shall not be stored on site and shall not be placed in areas prone to flow or where it could be washed into creeks, drainages, marshes, creeks, or rivers. All vegetative slash and debris from target exotic species shall be disposed of at a landfill or green waste recycling facility. Vegetative slash and debris shall be completely covered and secured prior to leaving the site and during transport. Vegetative slash, especially pampas grass seed plumes shall be kept in enclosed containers or bins away from stream courses and removed from the site daily.

Herbicides – Herbicide active ingredient shall be glyphosate, or an approved equal. Herbicide that may come in contact with open water must be registered for aquatic use, such as "Aquamaster", "Rodeo", or an approved equal. In areas where the herbicide will not come in contact with open water, the herbicide shall be "Roundup", "Roundup Original", "Roundup Pro", "Roundup Pro Dry", or an approved equal. Other herbicides may be used if prescribed by a Pest Control Adviser and approved by the Project Biologist. At no time shall pre-emergent herbicides be used, or any other herbicide not recommended by a Pest Control Adviser and pre-approved by the Project Biologist.

A blue or purple colored herbicide dye shall be used in all herbicide applications and shall be a non toxic, non-staining, water soluble, liquid material. This would include "Blazon" by Milliken Chemicals, Inman, SC, Agro Marc (Amvac) by Butler's Mill, or an approved equal.

Additives that help reduce drift shall be used when spraying within 100 feet of environmentally sensitive areas, landscaped areas, open water, and existing native habitat regardless of wind speed.

Herbicide preparation (mixing, addition of dye and surfactant) shall only be allowed in designated staging area. The pouring of prepared herbicide into spray or daubing apparatus shall be conducted only in the designated staging area, over a spill pan, and in accordance with State of California laws and pesticide regulations.

Herbicide application may utilize the following methods: (a) Application of herbicide onto fresh cut stumps with a paint brush, brush dauber, or backpack sprayer, (b) Spraying plant foliage with the use of a backpack sprayer, truck or trailer mounted sprayer with pressurized hose, or (c) Use of a wicking stick in situations where herbaceous weeds are growing above lower growing native plants.

Intentional or unintentional application of herbicides to non-target plants is prohibited. If the Project Biologist determines that herbicides were applied to non target plants by accident or due to neglect, the Contractor shall replace all affected plants (materials and labor) at the Contractor's expense. The replacement plant(s) shall be the same type, size, and quality as the affected plant(s). The cost including materials and labor, and any required mitigation, shall be the sole responsibility of the Contractor.

Herbicide application and weed removal shall be performed during those periods when weather conditions are suitable in accordance with State and local laws and locally accepted practices. In cases of unseasonable weather, i.e. forecasted rainfall, flooding, etc., work shall be delayed until weather returns to normal as determined by the Project Biologist.

Cut and paint treatment requires the application of the herbicide to a fresh cut within three (3) minutes of cutting, before the sap on the cut surface begins to congeal. If more than 3 minutes is allowed to elapse the plant shall be re-cut and the fresh cut shall be treated with the appropriate herbicide at no additional cost to District.

Contractor shall submit invoices, Material Safety Data Sheets (MSDS), and product data sheets for all herbicide materials proposed for use to the Project Biologist at least 3 days prior to the treatment/application date. All herbicides shall be delivered to the site in manufacturer's original containers bearing directions for use and warning labels. MSDS sheets shall be kept on site as required by law and the area posted prior to spraying, as necessary for safety and as required by law.

Performance Criteria – Performance criteria have been established for the southern willow scrub, elderberry/mule fat scrub and Riversidian sage scrub habitat types to be created onsite, and are listed in Table 7 of the HMMP.

Diversity criteria was included for sage scrub habitats based on expected establishments of native species throughout the maintenance monitoring period.

No more than 10% cover of non-native plants will be allowed in any area of the mitigation site at any time.

If the Contractor is found to have neglected the maintenance responsibilities set forth in this scope of work, any quantity of container plants found dead in excess of the allowable tolerance levels, as defined in section 5.2 of the HMMP shall be replaced by the Contractor at no cost to the District.

Contractor shall not be held responsible for failures due to neglect by District, vandalism, and "Acts of Nature" during maintenance period. Such conditions shall be documented in writing by Contractor and delivered to the District and Project Biologist within one (1) month of occurrence.

Excessive mortality caused by acts of nature and by natural competition arising from rapid growth of native vegetation, as determined by the Project Biologist, is excluded. Natural recruitment of plant species within planted areas may, at the discretion of the Project Biologist, be counted as replacement plants if the recruits are healthy, vigorous, and exhibit natural growth patterns and forms.

These performance criteria will be utilized to assess the annual progress of the mitigation area, and are regarded as interim project objectives designed to achieve the final goals. Fulfillment of these criteria will indicate that the mitigation areas are progressing toward the habitat types that constitute the long-term goals of the plan. If mitigation efforts fail to meet the performance standards listed in the HMMP in any one year, the Project Biologist will recommend remedial actions to be implemented (e.g., supplemental planting, seeding, transplanting) that will enhance the habitat to a level in conformance with these standards.

Habitat Monitoring – Contractor shall schedule quarterly and annual reviews during the duration of the maintenance period.

The District and Project Biologist will monitor site conditions, including seed germination, container plant survival and soil erosion, to determine if the plants are becoming adequately established and to verify whether seed germination has been successful.

Upon completion of the monitoring visit, a recommendations list will be prepared by the District based on the Site Observation Report (SOR) prepared by the Project Biologist documenting any outstanding items to be completed or corrected. Contractor shall complete recommendations list items within ten (10) calendar days of receipt. Delay of completion of recommendations list items will delay monthly payment.

Improper maintenance which may cause poor conditions of planted material and the non-effective control of target exotic trees will cause postponement of monthly progress payment until the deficiencies have been corrected.

Completion of Mitigation-Early Termination of Contract – The District will notify the ACOE, CDFG, and RWQCB upon submitting the final year annual report that the final success criteria have been met at the end of the five-year monitoring period, and request acceptance of the site and release from permit conditions. Early release may be possible if performance standards are met prior to the end of the five-year monitoring period and the resource agencies agree with the level of establishment. If the resource agencies release the District from permit conditions early and further maintenance services are not required, the District may terminate this agreement with the Contractor prior to the end of the five-year monitoring period.

Extra Work/Contingencies - The District reserves and shall have the right, when confronted with unpredicted conditions, unforeseen events, or emergencies, to revise the details of the contemplated work, or to add work of a different character or function and have the Contractor perform such revised or added work as "Extra Work", when such extra work is considered by the District to be virtually appurtenant to the satisfactory completion of the project.

"Extra Work" is defined as added work of a different character or function and for which no basis for payment is prescribed.

When the District wants to have extra work performed, the District will submit to the Contractor a proposed scope of extra work. The Contractor shall thereupon prepare a cost estimate and schedule for the work and submit it to the District. The Contractor may not start the work until a written task order authorizing the Contractor to start the work is issued by the District.

The District shall budget a reserve fund of \$6,000 to fund any extra work which may be necessary to satisfy the requirements of the regulatory permits.

Retention - The District shall retain 5 percent (5%) of the estimated value of work completed as part security for the fulfillment of the contract by the Contractor. Upon completion of the contract the District shall pay the Contractor all amounts retained.