



MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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MEMORANDUM

TO: The Governing Board

FROM:  Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Officer

DATE: February 6, 2013

SUBJECT: **Agenda Item IX: Consideration of resolution adopting findings that the Marsh Street Park construction project is substantially complex and to increase the retention amount from 5% to 10%.**

Staff Recommendation: That the Governing Board adopt the attached resolution adopting findings that the Marsh Street Park construction project is substantially complex and to increase the retention amount from 5% to 10%.

Background: As of January 1, 2012 a new section of the Public Contract Code Section 7201 reduced the amount that public agencies can retain from contractors on public works construction projects from 10% to 5%, unless the project is found to be a "complex project". A retention is a contractual withholding of money held by MRCA to cover any unexpected expenses such as liens or poor workmanship that may occur before the project is completed and accepted. The standard procedure is to pay the retained amount once all of the following occur: work is fully completed, MRCA inspects and accepts work, Contractor submits all items required under the contract, all lien periods expire, and 60 days pass after MRCA files a Notice of Completion with the County Clerk. Regardless of retention, public agencies still have the right to withhold 150% of the value of any disputed amount of work from the final payment, and in the event of a good faith dispute, are not required to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

Section 7201(b) provides in part that "The retention proceeds withheld from any payment by a public entity from the original contractor... shall not exceed 5 percent of the payment. In no event shall the total retention proceeds withheld exceed 5 percent of the contract price." However, Section 7201(b)(4) provides, in part, that an awarding agency may withhold in excess of five percent (5%) on specific projects where the governing body has approved a finding during a properly noticed and normally scheduled public hearing and prior to bid that the project is substantially complex and therefore requires a higher retention amount than 5 percent. The awarding entity shall include both this finding and the actual retention amount in the

bid documents.

Plans for the Marsh Street Park project are currently being permitted by the City of Los Angeles, and the project is expected to be ready for bidding within the next few months. Improvements to the three-acre site will include an open-air picnic shelter, landscaped walking and nature trails with health and fitness stations, a restroom building and storage shed, a free play meadow, picnic tables, a community gathering/outdoor classroom area, bioswales, and parking for forty-three cars. Demolition and ancillary work will consist of demolition of two buildings, including asbestos and lead-based paint abatement, site demolition (vegetative, asphalt, concrete, and misc.), and new utilities. The open-air picnic shelter is a custom structure to be built by the General Contractor. The restroom and storage shed are pre-engineered structures that will be supplied and installed by a separate vendor. A portion of the perimeter fencing will be custom-fabricated by a local artist and installed by the General Contractor.

The project site is located at the end of a dead-end street in a residential neighborhood, directly adjacent to the Los Angeles River Bikeway, a public multi-modal trail. The adjacent property to the northwest is the site of the L.A. River Lofts multi-unit housing development, which will be under construction at the same time as Marsh Street Park. Additional measures that may not occur on a typical park project must be taken due to these site constraints to ensure the safety of residents, bikeway users, and construction personnel. These measures include but are not limited to: the proper phasing and sequencing of work to minimize impact to the residents and bikeway users, construction of safety barriers to protect the general public at adjacent areas, limited hours for hauling and material deliveries, and coordination with the adjacent housing development.

The project site is over three acres in size, is directly adjacent to the Los Angeles River, and the project will have high visibility to the public. The immediate proximity to the River means that storm water prevention and erosion control will be critical. This will require the General Contractor to hire a Qualified Stormwater Practitioner to review, monitor, and document the SWPPP (Storm Water Pollution Prevention Plan). Additionally, the Contractor must implement and maintain best management practices for storm water pollution prevention that will be in strict conformance to the General Construction Permit that must be submitted to the State Water Resources Control Board.

The project consists of multiple construction components that must be properly coordinated between specialized trade contractors. These components include but are not limited to hazardous material abatement, custom fencing fabricated by a local artist, extensive landscaping and installation of bio-swales, and two pre-engineered structures. The General Contractor will be responsible for providing

site utilities to precise locations so that the pre-engineered building vendor may properly connect all building utilities.

Based on the project scope and factors described above, staff recommends that the board make a finding that the project is substantially complex.