



# MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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## MEMORANDUM

TO: The Governing Board

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

DATE: March 13, 2014

SUBJECT: **Agenda Item VII: Consideration of resolution adopting findings that the Milton Street Park and Green Street 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 Milton Street Park and Green Street 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 Milton Street Park and Green Street 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. The Milton Street Park includes a 1.2-acre vacant rectangular parcel which will be converted into a publicly-accessible natural park with pedestrian pathways, new entry gateways, ADA-accessible ramps, a shade structure for birdwatching, multi-functional lawn space, outdoor classroom, overlooks, stormwater management components, native landscaping, interpretive panels, bike racks, seating, and other amenities. The Milton Green Street improvements will build Vegetated Stormwater Curb Extensions (VSCEs) located on both sides of the street. The VSCEs are designed to capture, treat, and infiltrate the wet and dry weather runoff from the street as well as runoff from the park.

Demolition and ancillary work will consist of demolition of partially-constructed, partially-buried building foundations (for which there are no engineering drawings), site demolition (vegetative, asphalt, concrete, and misc.), and new utilities. The entry gateways and shade structures are custom structures to be built by the General Contractor.

The project site is located in a residential neighborhood, directly adjacent to the Ballona Creek Bikeway, a public multi-modal trail. The adjacent property to the north is Marina del Rey Middle School. 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, schoolchildren, 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 school.

The project site is over one acre in size, is directly adjacent to the Ballona Creek, and the project will have high visibility to the public. The immediate proximity to the Creek 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 retaining and freestanding gabion walls, work performed within the

public street, the custom VSCEs, custom entry structures, and extensive landscaping.

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