



MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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MEMORANDUM

TO: The Governing Board

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

DATE: October 1, 2014

SUBJECT: **Agenda Item XI: Consideration of resolution authorizing entering into a contract with DIRTONU, Inc. dba MUROW|CM for hillside stabilization at the Trebek Open Space property, Nichols Canyon.**

Staff Recommendation: That the Mountains Recreation and Conservation Authority (MRCA) adopt a resolution authorizing entering into a contract with DIRTONU, Inc. dba MUROW|CM for hillside stabilization at the Trebek Open Space property, Nichols Canyon.

Background:

In the winter of 2009-2010, Southern California experienced heavy rains in a series of storms. These storms impacted several MRCA properties, including the Trebek Open Space ("Trebek"), located in Nichols Canyon.

There was a land failure at Trebek which is alleged to have contributed to damage to a neighboring residence. The neighbors subsequently filed a lawsuit against the MRCA and several other defendants, including the City of Los Angeles. The actual cause of the land failure remains in dispute and is the subject of the ongoing litigation. In March of 2013, another land failure occurred and the City of Los Angeles issued an Order to Comply to the MRCA.

Staff counsel for the MRCA, in consultation with outside insurance defense counsel, has determined that, regardless of the resolution of the issues in litigation, the most effective way to limit liability for future land failures at Trebek would be to stabilize the hillside.

Outside counsel retained the services of grading experts who drafted a plan to diffuse the flow of water at Trebek in a manner that would effectively prevent further land failures that would damage the plaintiff's property and meet the requirements of the City of Los Angeles' Order to Comply. Also, this plan is an attempt to abate a nuisance created by the water flow coming from above the property due to an excess water flow caused by the City streets. The plans were approved by the City of Los Angeles and a permit for the work was issued.

The MRCA attorneys attempted to reach a global settlement that would result in a fund that would pay for the proposed work. To date, such a settlement has not been reached. Counsel and experts retained on this project have concluded that it is crucial that the work be completed prior to the expected rainy season and prior to the expiration of the permits issued by the city. The current permit will expire in November 2014. The project must commence prior to the expiration of the permit.

Pending adoption of the attached resolution, staff has determined that the proposed action constitutes an exception to the provisions of Public Contract Code Sections 20815.1 and 20815.3, relating to competitive bidding of construction, maintenance, or repair projects. The courts have recognized a general exception to statutes requiring competitive bidding where no competitive advantage would be gained from doing so. (*Graydon v. Pasadena Redev. Agency* (1980) 104 Cal.App.3d 631, cert denied (1980) 449 US 983).

Considering the totality of the circumstances, it is unlikely that the proposed stabilization project would benefit in any substantive manner from a competitive bidding process. Due largely to the unexpected inability of the litigants to reach a settlement agreement, the MRCA is left with an expiring permit and a possible heavy rainy season. At this point, a bidding process would delay the stabilization work by several months and would be detrimental to the public interest by leaving the Trebek property vulnerable to winter storms for the upcoming rainy season. It is highly unlikely that any competitive advantage would be gained from halting the work to begin a competitive bidding process.

Staff recommends the approval of the attached resolution authorizing the proposed contract.