



# MOUNTAINS RECREATION & CONSERVATION AUTHORITY

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## MEMORANDUM

TO: The Governing Board

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

DATE: May 6, 2015

SUBJECT: **Agenda Item VII: Consideration of resolution adopting findings that the Franklin/Ivar Park 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 Franklin/Ivar 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.

The Franklin-Ivar Park project will convert a vacant 3/4-acre lot owned by the Santa Monica Mountains Conservancy into a natural park in the heart of urban Hollywood. The site is down slope from a freeway ramp and in a densely populated area. Elements of Franklin-Ivar Park include an amphitheater for both scheduled and impromptu performances, California-native plant demonstration garden, picnic area, and play elements for young children. The construction documents are complete and the project is expected to be ready for bidding in May 2015.

The project site is located in a residential neighborhood, directly adjacent to the heavily traveled Franklin and Ivar avenues. There is limited parking available in the neighborhood and access to the site will be very difficult and complicated by the need to ensure the safety of residents and construction personnel. These measures include but are not limited to: the proper phasing and sequencing of work to minimize impact to the residents, construction of safety barriers to protect the general public at adjacent areas, and limited hours for hauling and material deliveries. Demolition and ancillary work will consist of site demolition (vegetative, asphalt, concrete, and misc.), mass grading, over-excavation, new drive approaches in the public right-of-way, and coordination with various agencies for new site utilities.

The project site, slightly less than one acre in size, is directly adjacent to the 101 highway, and the project will have high visibility to the public. The Hollywood Dell Civic Association spearheaded this project and was instrumental in drafting the State Parks grant for the park. Their members and other stakeholders have continually demonstrated a high level of interest in the park and MRCA staff does not expect their interest to wane once construction has begun.

The project consists of multiple construction components that must be properly coordinated between specialized trade contractors. These components include but are not limited to the amphitheater retaining walls, work performed within the public street, the steep hillside tree and under story plantings, the Mee Fog system, the fog canyon Art Wall, and artistic fencing. The need to carefully coordinate these trades and their respective scopes of work is further complicated by the limited site area, which will necessitate careful logistic planning including phased site staging and just in time deliveries.

Work on constricted sites of this nature is not regularly, customarily or routinely performed by MRCA or licensed contractors. Based on the project scope and factors described above, staff recommends that the board make a finding that the project is substantially complex.