

**Agreement Between
the United States Army Corps of Engineers,
the Santa Monica Mountains Conservancy,
and the California Department of Transportation**

This Agreement (“Agreement”) is entered into this _____ day of _____, 2007, by and between the United States Army Corps of Engineers (the “Corps”), the Santa Monica Mountains Conservancy (the “SMMC”), and the State of California, acting by and through its Department of Transportation (“Department”) (collectively, the “Parties”).

RECITALS:

- A. WHEREAS, the Corps and the SMMC have entered into an Agreement for Establishment and Administration of the Los Angeles County Resource In-Lieu Fee Mitigation Program (“Corps-SMMC Agreement”), dated May 22, 2000, to create and administer the Los Angeles County Aquatic Resource In-Lieu-Fee Mitigation Program (the “In Lieu Fee Program”), which is attached hereto as Exhibit A, and incorporated herein by reference. The purpose of the In-Lieu Fee Program is to provide a voluntary, alternative compensatory mitigation option that will result in better designed and managed aquatic resource restoration projects. The In-Lieu Fee Program is designed to facilitate a holistic approach to aquatic resource management in Los Angeles County, allocating money to where there is the greatest opportunity for long-term ecological benefit; and
- B. WHEREAS, Department implemented an emergency maintenance project on State Route 118 in 2004 in the vicinity of Alamos Canyon Road in the City of Simi Valley in Ventura County (the “Project”). Said Project consisted of the removal of sediment build up in the stream culvert, installation of a new energy dissipater, installation of a debris rack near the culvert inlet, deepening of the existing stream bed, and the trimming and removal of trees upstream; and
- C. WHEREAS, Project resulted in impacts to .7046 acres of waters of the United States (“Project Impacts”); and
- D. WHEREAS, pursuant to consultation with the Corps, the Department obtained an After-the-Fact Nationwide Permit Authorization dated March 4, 2004 (No. 200400766- MDC) (the “Verification”) for the Project; and
- E. WHEREAS, pursuant to consultation with the California Regional Water Quality Control Board, Los Angeles Region, the Department obtained a Conditional Clean Water Act Section 401 After-the-Fact Water Quality Certification dated May 13, 2004 (No. 04- 053) (the “Certification”) for the Project; and
- F. WHEREAS, the Department can satisfy its obligation set forth in the Verification and Certification, and thereby mitigate for Project Impacts, through payment of

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. SMMC shall submit to Department, within thirty (30) days from the date of the last signature on this Agreement, an invoice requesting that the Compensation Monies be paid into the Fund.
2. Subject to provision 14 below, the Department, within sixty (60) days of receipt of the SMMC's invoice, shall pay the Compensation Monies into the Fund in order to satisfy the mitigation requirements set forth in the Verification and Certification and thereby offset Project Impacts.
3. SMMC, within fourteen (14) days of receipt of the Department's Compensation Monies, shall send a completed and fully executed payment receipt, attached hereto as Exhibit B and incorporated herein, to the Department and the Corps.
4. SMMC shall use the Compensation Monies deposited into the Fund by Department, to finance projects, developed and selected pursuant to the terms and conditions of the Corps-SMMC Agreement (including payment of those administrative costs identified in the Corps-SMMC Agreement). Specifically, SMMC agrees to restore 7.046 acres within Brown's Canyon, in an unincorporated portion of Los Angeles County outside the City of Chatsworth.
5. SMMC, the Corps and the Department acknowledge and agree that the Compensation Monies in the Fund shall be managed and disbursed in accordance with the Corps-SMMC Agreement. In the event that the Corps-SMMC Agreement is terminated or expires prior to all Compensation Monies being expended, SMMC and the Corps shall notify the Department in writing. Furthermore, SMMC and the Corps shall wind down the Fund in accordance with the terms of the Corps-SMMC Agreement. The Corps further agrees to ensure that any un-obligated Compensation Monies that are diverted to the Corps or any other entity approved in writing by the Corps, will be utilized to satisfy the terms of this Agreement and all of the SMMC's responsibilities and obligations set forth herein will be satisfied.
6. SMMC shall provide the Department and the Corps with an annual report. The annual report will include programmatic information on the status of all funded projects and a fiscal statement itemizing the expenditure of the Compensation Monies, including any accrued interest or investment income thereon, from each October 1 to September 30. SMMC shall submit the report annually, on or about December 15, until such time as the Compensation Monies have been fully expended. SMMC shall submit the report to the following addresses:

Department:

Paul Caron, Branch Chief
Division of Environmental Planning
California Department of Transportation, District 7
100 S. Main Street
Los Angeles, CA 90012

Corps:

U.S. Army Corps of Engineers:
David J. Castanon, Chief
Regulatory Branch
2151 Alessandro Drive, Suite 110
Ventura, California 93001

7. SMMC shall provide to the Department a copy of the annual monitoring reports, as described in the Corps-SMMC Agreement, for all projects that are funded with Compensation Monies for a minimum of five years after construction of those said projects are completed. SMMC shall submit the report to:

Paul Caron, Branch Chief
Division of Environmental Planning
California Department of Transportation, District 7
100 S. Main Street
Los Angeles, CA 90012.

8. The Department's check, warrant, or wire transfer for the Compensation Monies shall be made payable to the SMMC for deposit into the Fund and shall be delivered to the Santa Monica Mountains Conservancy at:

5750 Ramirez Canyon Road
Malibu, CA 90265
Attention: Joseph Edmiston

9. The Department and its officers, employees or agents shall not be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the SMMC or the Corps under, or in connection with, the obligations they undertake pursuant the Corps-SMMC Agreement.
10. If any part of this Agreement is held to be invalid by a court of competent jurisdiction, the other parts shall not be affected thereby. This Agreement represents the entire agreement of the Parties and may not be amended except by writing signed by each party hereto. SMMC warrants to the other signatories that it is a federally chartered corporation qualified to do business in the State of California. All

signatories have full right and authority to enter into and consummate this Agreement and all related documents.

11. In the event any party breaches this Agreement, the other party or parties may enforce this Agreement by any means available at law or in equity.
12. Capitalized terms not defined in this Agreement shall have the meaning given to them in the Corps-SMMC Agreement.
13. This Agreement does not commit the Corps to activities beyond the scope of its mission, funding and authorities. Any federal funding needed to carry out the Corps' responsibilities under this Agreement shall be subject to the availability of appropriated funds pursuant to the Anti-Deficiency Act (31 U.S.C. section 1341). This Agreement does not commit the SMMC to expend any money not delivered pursuant to this Agreement or the Corps-SMMC Agreement.
14. Department's obligation to pay the Compensation Monies into the Fund is subject to the appropriation of the resources by the California Legislature, California Budget Authority and the allocation of those resources by the California Transportation Commission.
15. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the Parties, notwithstanding that all of the Parties are not signatory to the original or the same counterpart.

IN WITNESS WHEREOF, this Agreement is executed as follows:

United States Army Corps of Engineers (Corps)

By:

Name: Alex C. Dornstauder
Title: Colonel, US Army, District Engineer
Date: _____, 2007

Santa Monica Mountains Conservancy (SMMC)
Mountains Recreation and Conservation Authority

By:

Name: Joseph Edmiston
Title: Chief Deputy Executive Director
Date: _____, 2007

California Department Of Transportation (Department)

By:

Name: Douglas R. Failing

Title: District Director

Date: _____, 2007

Approved as to form and procedure

Attorney

Department of Transportation

Exhibit A

**In-Lieu Fee Mitigation Agreement between the
Los Angeles Division of the Corps and the SMMC (MOA)**

Exhibit B

**SANTA MONICA MOUNTAINS CONSERVANCY PROGRAM
(PAYMENT RECEIPT)**

PROJECT PROPONENT INFORMATION

Name: Bill Varley
Project Manager, California Department of Transportation
Address: 100 S. Main Street, Los Angeles, CA 90012
Telephone: (213) 897-3672

PROJECT INFORMATION

California Department of Transportation project expenditure authorization 4J8703
Corps file #200400766-MDC
Regional Water Quality Control Board File No. 04-053

Project Name: Alamos Canyon Culvert

Project Location: Alamos Canyon Creek near State Route 118 in the City of Simi Valley

County: Ventura County

Project Description: The removal of sediment build up in the stream culvert of Alamos Canyon, installation of a new energy dissipater, installation of a debris rack near the culvert inlet, deepening of the existing streambed, and the trimming and removal of trees upstream. This work was conducted in early 2004 as part of emergency maintenance.

Total Impacts: Impacts to .7046 acres of waters of the United States.

Total Payment Amount: Nine Hundred-Fifteen Thousand Nine Hundred-Eighty Dollars (\$915,980)

PAYMENT INFORMATION

Payee: Santa Monica Mountains Conservancy for the benefit of The Los Angeles County Aquatic Resource In-Lieu-Fee Program

Payer: California Department of Transportation

Amount: Nine Hundred-Fifteen Thousand Nine Hundred-Eighty Dollars (915,980)

Method of Payment: State of California Check/Warrant/Wire Transfer

Received by:

Signature:

Name:

Title:

Date: