

Agenda Report



Date: May 25, 2010
To: The Honorable Mayor and City Council
From: Stephen W. Helvey, City Manager
Subject: Community Conservancy International (CCI) Agreement Amendment

RECOMMENDATION

It is recommended the City Council approve an amendment to an agreement with Community Conservancy International (CCI) to perform an objective, independent review of the proposed Mineral Extraction project on City-owned open space property, authorize the City Manager to execute the agreement and make minor changes as necessary. In addition, should such a project be approved through the issuance of a CUP, CCI would monitor the activities of the lessee for the first two years of their operations.

BACKGROUND

Community Conservancy International (CCI) specializes in tackling the complex and challenging problems created when people and nature intersect. They pride themselves on working to ensure successful natural and human communities when subjected to changing conditions through their performance of detailed scientific and technical analysis and coordinating their results with public agencies and elected officials.

On September 2, 2009, an agreement was entered into with CCI to perform work related to Prop A reimbursement in connection with the Unocal and Chevron Properties in the amount of \$10,000 (with an addendum to extend amount by \$5,000 for a total of \$15,000). This agreement was approved by the City Manager under his administrative authority and was charged against the applicant's deposit. The attached amended agreement changes the Scope of Work in Exhibits A and B and the corresponding Fee Schedules in Exhibits C and D.

DISCUSSION

To ensure that the City-owned habitat property is appropriately protected, the City would like to have a separate, independent review of the proposed Mineral Extraction project by CCI. To accomplish this, the City would provide a grant to CCI in the amount of \$65,000, plus a maximum of \$10,000 in expenses. Upon issuance of this grant, CCI would be expected to complete and deliver their analysis in report form to the City Council on, or before, August 1, 2010. Should the City Council issue a CUP for the Mineral Extraction project after considering the facts before them at the public hearing, CCI would be given an additional grant for two years of monitoring the activities on the

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site pursuant to the Conditional Use Permit. This grant would be in the amount of \$125,000 and would be funded to CCI in two increments of \$62,500; first payment would be made within 30 days of CUP approval by the City (if issued); second payment would be made 12 months later. Their monitoring would include monthly on site reviews of the operations in the habitat and quarterly summary reports of their findings and recommendations.

Staff believes that by having CCI act as an independent evaluator of the proposed project and potential actual project it would add additional assurances to the City Council as they deliberate this important decision.

FISCAL IMPACT

The City's General Fund would fund the initial grant from its unreserved balances. Should a project be approved, the monitoring grant would be funded from sources determined at that time.

Submitted by:



Stephen W. Helvey
City Manager

Attachment A: CCI Agreement Amendment

**CITY OF WHITTIER
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this _____ day of _____, by and between the CITY OF WHITTIER, a municipal corporation located in the County of Los Angeles, State of California, hereinafter referred to as "CITY" and COMMUNITY CONSERVANCY INTERNATIONAL with principal offices at 2554 Lincoln Boulevard, Suite 223, Los Angeles, CA 90291 hereinafter referred to as "CONSULTANT".

WITNESSETH

WHEREAS, CONSULTANT is a conservation and community projects non-profit organization, the principal members of which are fully qualified and registered as required under the laws of the State of California; and

WHEREAS, The CITY retains and employs CONSULTANT to act as such for CITY to perform such consulting services as may be requested of it by the CITY. CONSULTANT accepts the employment and agrees to render such services as CONSULTANT on the terms and conditions hereinstated; and

WHEREAS, CONSULTANT is experienced in providing such services for municipal corporations and is able to provide personnel with the requisite experience and background to carry out these duties;

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises hereinabove stated, the parties hereto agree as follows:

1. **SERVICES TO BE PERFORMED**

CITY hereby engages CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the technical and professional services set forth in the scope of services attached hereto as Exhibits "A" and "B" and incorporated herein by this reference.

2. **TIME FOR PERFORMANCE**

CONSULTANT shall begin work within ten (10) days following execution of this Agreement by CITY. CONSULTANT shall complete all tasks in accordance with the schedule included in the scope of services.

3. **PERFORMANCE TO SATISFACTION OF CITY**

CONSULTANT agrees to perform all work in the scope of services to the reasonable satisfaction of CITY and within the time hereinafter specified. If the quality of work is not satisfactory, CITY in its discretion, has the right to:

- a. Meet with CONSULTANT to review the quality of the work and resolve the matters of concern;
- b. Terminate the Agreement as hereinafter set forth.

4. COMPLIANCE WITH LAW

All services rendered hereunder shall be performed by CONSULTANT or under its direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized by or permitted under State or local law to perform such services

5. FAMILIARITY WITH WORK

By execution of this Agreement, CONSULTANT warrants that

- (1) It carefully considered how the work should be performed, and
- (2) It fully understands the difficulties and restrictions attending the performance of the work under this Agreement.
- (3) It has the professional and technical competency to perform the work and the production capacity to complete the work in a timely manner with respect to the schedule included in the scope of services.

6. COMPENSATION

A. SERVICES DESCRIBED IN PROPOSAL

- a) For the provision of all services rendered under this Agreement in accordance with the scope of services, attached hereto as Exhibit "A" and all expenses associated therewith, CITY shall pay CONSULTANT an amount that shall not exceed the authorized amount of \$65,000.00 (plus up to \$10,000.00 in expenses) as set forth in the fee schedule, Exhibit "C" attached hereto, unless the CITY has given specific advance approval in writing.
- b) For the provision of all services rendered under this Agreement in accordance with the scope of services, attached hereto as Exhibit "B" and all expenses associated therewith, CITY shall pay CONSULTANT an amount that shall not exceed the authorized amount of \$125,000.00 as set forth in the fee schedule, Exhibit "D" attached hereto, unless the CITY has given specific advance approval in writing.

B. ADDITIONAL SERVICES.

For any additional services, change orders or any additional compensation of any nature to be proposed for payment to CONSULTANT by CITY, such modification of this original Agreement be in the form of a written amendment to the Agreement signed by authorized representatives of both parties.

It is specifically understood that oral requests or approvals of such additional services, change orders or additional compensation and any approvals from CITY shall be barred and are unenforceable.

C. PAYMENT PROCEDURE.

Progress payments to CONSULTANT, if allowed, shall be in accordance with the fee schedules attached as Exhibits "C" and "D." CONSULTANT shall submit invoices to the CITY no more frequently than monthly. When work is to be paid on a "lump sum" basis, progress invoices shall be submitted as tasks are completed as described in Exhibits "C" and "D." Within ten (10) working days of receipt of such invoice, CITY shall determine whether CONSULTANT has satisfactorily performed the work described in the invoice. CITY shall thereafter pay CONSULTANT for that work which CITY deems to have been satisfactorily completed, minus a ten percent (10%) retention. Such retention shall be paid to CONSULTANT within thirty (30) days of CITY's determination that CONSULTANT has satisfactorily completed all required tasks.

7. TERMINATION

A. TERMINATION FOR CONVENIENCE.

Either the CITY or the CONSULTANT may terminate this AGREEMENT at any time without cause by giving thirty (30) calendar days written notice to the other of such termination and specifying the effective date thereof. If this AGREEMENT is terminated as provided herein, CONSULTANT will be paid a total amount equal to the service provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

B. TERMINATION FOR CAUSE.

If for any reason, CONSULTANT shall fail to fulfill in a timely and proper manner its obligation under this AGREEMENT, or if CONSULTANT shall violate any of the covenants or stipulations of this agreement, CITY shall then have the right to terminate this agreement

by giving a five (5) calendar day written notice to CONSULTANT. The notice shall refer to this clause, shall specify the nature of the alleged default, and shall specify the effective date of the termination. The CONSULTANT will be paid a total amount equal to the service provided as of the termination date. In no event shall the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT.

In the event of termination, CONSULTANT shall immediately stop rendering services under this Agreement unless directed otherwise by CITY, and shall deliver to CITY all plans, data, reports, summaries, floppy disks, and all such other information and materials as CONSULTANT may have accumulated in performing this Agreement.

8. COORDINATION OF WORK

A. Selection of Representatives

The following principal of CONSULTANT is hereby designated as the principal and representative of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and to make all decisions in connection therewith:

Esther Feldman	President
<u>Representative</u>	<u>Title</u>

The foregoing principal may not be changed by CONSULTANT without the express written approval of CITY.

B. Contract Officer

The Contract Officer shall be the City Manager, or such other person as designated by the City Manager of the City. It shall be the CONSULTANT's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the CONSULTANT shall refer any decision which must be made by CITY to the Contract Officer. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Contract Officer.

9. INDEPENDENT CONTRACTOR

A. CONSULTANT Status

CONSULTANT is an independent contractor and not an employee of CITY. Neither CITY nor any of its employees shall have any control over

the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as herein set forth and, CONSULTANT expressly warrants not to, in any time or in any manner, represent that CONSULTANT, or any of CONSULTANT's officers, employees or agents, are in any manner officers, employees, or agents of CITY. It is distinctly understood that said CONSULTANT is and shall at all times remain as to the CITY a wholly independent CONSULTANT, and that CONSULTANT's obligations to the CITY are solely such as are prescribed by this Agreement.

B. CONSULTANT's Personal Services - Inducement

This Agreement contemplates that the CONSULTANT's personal services and those of CONSULTANT's officers, employees, and agents are a substantial inducement to the CITY for entering into this Agreement. CONSULTANT may not assign any interest in this Agreement, except upon written consent of CITY.

10. PERS ELIGIBILITY INDEMNITY.

In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, CONSULTANT shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits. Except for CONSULTANT'S gross negligence or willful misconduct, CONSULTANT's maximum aggregate liability to CITY in connection with or in any manner related to this Agreement (whether in an action in contract or tort or otherwise) will be limited to the total amount paid by CITY to CONSULTANT hereunder.

11. INDEMNITY

CONSULTANT hereby agrees to protect, indemnify and hold CITY and its employees, officers and servants free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees and other expenses incurred by the CITY arising in favor of any party, including claims, liens, debts, personal injuries, including employees of the CITY, death or damages to property (including property of the CITY) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of the negligence, recklessness or willful misconduct of CONSULTANT in the performance of its services under this Agreement. This provision is not intended to create any cause of action in favor of any third party against CONSULTANT or the CITY or to enlarge in any way the CONSULTANT'S liability but is intended solely to provide for indemnification of the CITY for liability for damages or injuries to third persons or property arising from CONSULTANT'S negligent performance hereunder.

12. INSURANCE

Throughout the term of this Agreement, CONSULTANT shall procure and maintain, at its own cost, the insurance as described in Exhibit "E", "Insurance Requirements".

13. MISCELLANEOUS

A. Ownership of Documents

All deliverables described in the scope of services shall be the property of CITY and shall be delivered to CITY upon completion or termination of this Agreement. All hard copy documents and information in electronic files that are assembled or prepared by CONSULTANT shall be made available to CITY upon request to review or to copy, and CITY shall reimburse CONSULTANT for actual cost of reproduction of documents not included as deliverables in the scope of services. Copies and said documents and electronic information may be retained by CONSULTANT, but shall not be made available by CONSULTANT to any individual or organization without the prior written approval of CITY, except as required by law.

B. Notices

Any notices to be given under this Agreement shall be given by enclosing the same in the sealed envelope, postage prepaid, and

depositing the same in the United States Postal Service, addressed as follows:

CITY:

CONSULTANT:

CITY OF WHITTIER
13230 Penn Street
Whittier, CA 90602
Attn: CITY CLERK

COMMUNITY CONSERVANCY
INTERNATIONAL
2554 Lincoln Blvd., Suite 223
Los Angeles, CA 90291

C. Enforcement of Agreement

This Agreement shall be construed and interpreted as to both validity, and performance of the parties, in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and each party covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

D. Disputes

In the event of any dispute arising under this Agreement, the injured Party shall notify the injuring Party in writing of its contentions by submitting a claim therefor.

The injured Party shall continue performing its obligations hereunder so long as the injuring Party cures any default within ninety (90) days after service of the notice, or if the cure of the default is commenced within thirty (30) days after service of said notice and is cured within a reasonable time after commencement; provided that, if the default is an immediate danger to the health, safety and general welfare, the CITY may take immediate action. Compliance with the provisions of this Section shall be a condition precedent to any legal action, and such compliance shall not be a waiver of any Party's right to take legal action in the event that the dispute is not cured.

E. Waiver

No delay or omission in the exercise of any right or remedy of a nondefaulting Party on any default shall impair such right or remedy or be construed as a waiver. CITY's consent or approval of any act by CONSULTANT requiring CITY's consent to or approval of any subsequent act of CONSULTANT or any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

F. Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

G. Attorney's Fees

If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs of suit from the losing Party.

H. Integration

This Agreement, together with attached Exhibits identified herein supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party, which is not embodied herein, nor any other agreement; statement or promise not contained in this Agreement shall be valid and binding. Any modification of the Agreement shall be effective only if it is in writing and signed by all parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

CITY OF WHITTIER

By _____
Stephen W. Helvey, City Manager /Date

ATTEST:

By _____
Kathryn A. Marshall, City Clerk /Date

APPROVED AS TO FORM:

By _____
City Attomey /Date

CONSULTANT:

By _____
/Date

EXHIBIT "A"
SCOPE OF SERVICES

Community Conservancy International (CCI) will analyze and review a proposal by the City of Whittier to conduct oil drilling and related activities in protected open space areas in the Puente Hills in the City of Whittier, and will prepare a report on its findings. CCI will review: anticipated impacts from proposed conversion of protected open space land purchased with Los Angeles County Proposition A funds to oil drilling sites and related infrastructure; effects of the proposed oil drilling development and activities on the Puente Hills Preserve and on the City's and other regional and state agencies' long-term habitat management and restoration plans for this area; policy implications of the proposed land use changes related to the original intent of L.A. County's Propositions A (Safe Parks Acts, 1992 and 1996) and to the City's agreement with the L.A. County Regional Park and Open Space District; and policy implications related to L.A. County's Propositions A (Safe Parks Acts, 1992 and 1996) and the City's proposed use of potential oil drilling revenues.

CCI will prepare a report of its findings in a digital version in pdf format and 10 printed and bound copies, and a PowerPoint presentation of key findings from the report. Additional printed copies will be billed to the City as an expense. CCI will prepare maps and graphics necessary to illustrate its findings. CCI will retain a GIS subcontractor to assist with the analysis of GIS data provided by the City, to integrate publicly available local and regional aerial images and other relevant data, and to prepare maps. Mapping will be limited to Los Angeles County.

The report will be based on information to be provided by the City, including information on the oil drilling proposal, the Preserve, trails and other public access, all GIS data and project-related photos and graphics, and assumes data is in GIS file format (either shape files, file geodatabase or coverage), and that photos and graphics are of a resolution suitable for printing. If CCI must take photos, or if this data is only available in CAD format, or if spatial data must be created, the additional time necessary to convert CAD files to GIS format and to create spatial data will be billed on a time and expense basis to the City. Please note that this spatial information is essential for the integration with other existing data files vital to this analysis, and that high-resolution photos are needed for preparing printed materials.

Timing of completion of report: two months from receipt of all materials, files, GIS data and other information related to the City's proposal and approval of amended contract by City.

EXHIBIT "B"
SCOPE OF SERVICES

Upon approval of the CUP to Matrix Oil Corporation by the City, CONSULTANT will commence monitoring of the work for a two year period commencing from date of approval.

CONSULTANT will make monthly on-site visits, in coordination with the City, and will provide a quarterly report to City, summarizing observations, concerns or recommendations for improvement.

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. **AMOUNT OF COMPENSATION.** For performing and completing all services pursuant to Exhibit "A" Scope of Services, a grant of \$65,000.00, one payment, plus expenses not to exceed \$10,000.00.

II. **BILLING.** At the end of each month, Contractor shall submit an invoice to the City for expenses and GIS work, etc., per scope of work in Exhibit "A", at the following address:

CITY OF WHITTIER
13230 Penn Street
Whittier, CA 90602

The invoice submitted pursuant to this paragraph shall show the:

- 1) Purchase order number;
- 2) Project name/description;
- 3) Actual out-of-pocket expenses incurred in the performance of services not to exceed \$5,000.00 for GIS spatial data and photos AND \$5,000.00 for other expenses including printing extra copies of the report; and,
- 4) Other such information as the City may reasonably require.

III. **METHOD OF PAYMENT.** Payment to Contractor for the compensation specified in Section I, above, shall be made: 1) in one payment of \$65,000 within seven (7) days of approval by the City; and 2) for expenses and GIS work, after the City Manager or designee determines that the billing submitted pursuant to Section II, above, accurately reflects work satisfactorily performed in accordance with the Exhibit "A" Scope of Services. City shall pay Contractor within thirty (30) days therefrom.

EXHIBIT "D"
SCHEDULE OF COMPENSATION

I. **AMOUNT OF COMPENSATION.** For performing and completing all services pursuant to Exhibit "B" Scope of Services, a total amount not to exceed \$125,000.00, payable in two payments of \$62,500.00. First payment will be made within 30 days of CUP approval by the City; second payment will be made 12 months later.

II. **BILLING.** At the first day of the month following the date of approval by the City of a CUP, and 12 months from that date, Contractor shall submit an invoice for \$62,500 to the City at the following address:

CITY OF WHITTIER
13230 Penn Street
Whittier, CA 90602

The invoice submitted pursuant to this paragraph shall show the:

- 1) Purchase order number;
- 2) Project name/description;
- 3) Other such information as the City may reasonably require.

III. **METHOD OF PAYMENT.** Payment to Contractor for the compensation specified in Section I, above, shall be made within thirty (30) days therefrom.

EXHIBIT "E"
INSURANCE REQUIRMENTS

The CONSULTANT shall maintain throughout the duration of the term of the Agreement, liability insurance covering the CONSULTANT and, with the exception of Professional Liability Insurance, designating CITY including its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultant's, as additional insured against any and all claims resulting in injury or damage to persons or property (both real and personal) caused by any aspect of the CONSULTANT's work, in amounts no less than the following and with such deductibles as are ordinary and reasonable in keeping with industry standards. It shall be stated, in the Additional Insured Endorsement, that the CONSULTANT's insurance policies shall be primary as respects any claims related to or as the result of the CONSULTANT's work. Any insurance, pooled coverage, or self-insurance maintained by the CITY, its elected or appointed officials, directors, officers, agents, employees, volunteers, or CONSULTANTS shall be non-contributory.

General Liability:

a.	General Aggregate	\$2,000,000
b.	Each Occurrence	\$1,000,000
c.	Damage to Premises	\$100,000
d.	Medical Expense (any one person)	\$5,000

Workers' Compensation:

a.	Workers' Compensation	Statutory Limits
b.	EL Each Accident	\$1,000,000
c.	EL Disease - Policy Limit	\$1,000,000
d.	EL Disease - Each Employee	\$1,000,000

The CONSULTANT shall provide thirty (30) days advance notice to CITY in the event of material changes or cancellation of any coverage. Certificates of insurance and additional insured endorsements shall be furnished to CITY thirty (30) days after the effective date of this Agreement, and no payments for services provided by CONSULTANT under this agreement shall be made by CITY until it is in receipt of said certificates. Refusal to submit such certificates shall constitute a material breach of this Agreement entitling CITY to any and all remedies at law or in equity, including termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, CITY shall have the right but not the duty to obtain replacement insurance and to charge the CONSULTANT for any premium due for such coverage. CITY has the option to deduct any such premium from the sums due to the CONSULTANT.

Insurance is to be placed with insurers authorized and admitted to write insurance in California and with a current A.M. Best's rating of A-:VII or better. Acceptance of insurance from a carrier with a rating lower than A-:VII is subject to approval by CITY's Risk Manager. CONSULTANT shall immediately advise CITY of any litigation that may affect these insurance policies.