

Appendix A: City of San Diego MOU

**AGREEMENT
BETWEEN
THE CITY OF SAN DIEGO AND
SAN DIEGO EARTHWORKS**

THIS AGREEMENT is made and entered into this ____ day of _____, 2004, by and between San Diego EarthWorks (EarthWorks) and The City of San Diego [City] [collectively referred to as Parties].

WHEREAS, EarthWorks has secured grant funds from the California Coastal Conservancy to prepare the Rose Creek Watershed Opportunities Assessment, including an invasive exotic removal component, for Rose Creek, between the Marine Corps Air Station at Miramar (MCAS Miramar) and Mission Bay, San Clemente Creek, and their tributary canyons; and

WHEREAS, the information obtained through the Rose Creek Watershed Opportunities Assessment will benefit the City; and

WHEREAS, the City desires to contribute to EarthWorks' development of the Rose Creek Watershed Opportunities Assessment that will benefit the public; and

WHEREAS, the City recognizes a benefit for an assessment of areas along Rose and San Clemente creeks to better focus efforts for habitat enhancement and restoration that will benefit the public, and can be accomplished by the use of future grants and volunteer efforts; and

NOW, THEREFORE, in consideration of the mutual covenants contained in this agreement, the Parties agree as follows:

I. Term of Agreement.

The services to be performed by EarthWorks, as set forth in this Agreement, will begin on April 1, 2004, and end on April 1, 2005.

II. Obligations of Earthworks.

A. Scope of Work. EarthWorks agrees to perform the services as agreed to with the Coastal Conservancy, a summary of which is described in Exhibit A.

B. Permits. EarthWorks agrees to secure all approvals and permits required by state, federal, or local agencies, including rights-of-entry from the various property owners (public and private) within the project area.

C. Progress Reports. EarthWorks agrees to keep City or its designated representative regularly informed on all phases of the assigned project. Until the project has been completed, EarthWorks shall make progress reports, quarterly or upon request, to City or its

designated representative in such detail and at such times as may be reasonably requested as to the actual progress of the project.

D. Records. Earthworks agrees to provide the City with copies of work products produced as part of the assessment, as requested.

E. Non-Discrimination. EarthWorks agrees that it shall not discriminate on the basis of race, color, sex, religion, age, disability, national origin or sexual orientation in the application, hiring, or employment, or subject any applicant to any other discriminatory practices prohibited by state, federal or local law.

F. Compliance With Laws. EarthWorks agrees to comply with all applicable local, state and federal laws and regulations in performing this Agreement.

III. Obligations of City.

The Storm Water Pollution Prevention Division of Metropolitan Wastewater Department shall be the primary contact for this Agreement. The City's obligation to perform the tasks and incur the expenses set forth in Exhibit B and below, are contingent upon EarthWorks full performance of tasks set forth in Exhibit A. As set forth in Section VI, Earthworks failure to perform is grounds for termination by the City.

A. Existing Data/Ownerships. City (Open Space Division) agrees to provide access to existing data for Rose Canyon Open Space and Marian Bear Memorial Park and to provide a map for Rose and San Clemente creeks outlining ownerships, parcel numbers, and owner contacts at an estimated cost reflected in Exhibit B, in order that the assessment may be completed with minimal delay.

B. Monitoring. City (Storm Water Pollution Prevention Division) agrees to monitor the Rose Creek watershed at 24 stations over the next two (2) years at an estimated cost reflected in Exhibit B.

C. Clearances. City (Open Space Division) agrees to provide right-of-entry permits as needed, for EarthWorks and/or its consultant to access City property.

D. No Payment By City. EarthWorks and the City agree that the City is not liable for any costs incurred by EarthWorks, by way of this Agreement or any agreement EarthWorks may have with any third party.

IV. Indemnification and Insurance.

A. Indemnification. EarthWorks agrees to defend, indemnify, protect, and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to EarthWorks' employees, volunteers, agents, or officers which arise from, or are connected with, or are caused or claimed to be caused by the acts or omissions of EarthWorks, its agents, officers, employees, or volunteers, and all expenses of investigating and defending

against same; provided, however, that EarthWorks' duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its agents, officers, or employees.

B. Insurance. EarthWorks shall obtain and keep in force during the period of this Agreement a policy of comprehensive public liability insurance which insures EarthWorks against any and all claims of liability, including accident, injury, or death arising from the provision of Project services, or from the ownership, use, operation, maintenance, or administration of Project premises and all areas applicable thereto. Such insurance shall be in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) for any injury to, or death of, any person or persons in any accident or occurrence, and shall name The City of San Diego as an additional insured.

C. Workers Compensation. EarthWorks shall maintain workers compensation insurance as required by law.

V. Right to Enter and Inspect.

City and its agents and employees shall at all times have the right of entry and free access to the project sites and right to inspect all work done, labor performed, and materials furnished in and about the project.

VI. Termination.

City or EarthWorks may terminate this Agreement by giving written notice to the other party 30 days prior to the effective date of termination. In addition, City may terminate this Agreement at any time if EarthWorks fails to meet or fulfill its obligations under this Agreement.

VII. Additional Terms.

A. Earthworks shall at all times and in all respects to this Agreement be independent of City, and its agents, employees, or volunteers shall be the agents, employees, and volunteers of EarthWorks, and not of City.

B. Neither party to this Agreement may assign this Agreement or any interest in this Agreement.

C. This Agreement may be modified by mutual written agreement of City and EarthWorks.

D. This Agreement constitutes the entire agreement between the Parties. There is no express or implied agreement except as stated in this Agreement.

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego, acting by and through its City Manager, and by EarthWorks.

Cletus C. Klein, Chief Financial Officer
San Diego EarthWorks

DATE

Scott Tulloch, Director
Metropolitan Wastewater Department

DATE

(Pursuant to the provisions of Section 28 of the San Diego City Charter, the Park and Recreation Director is authorized to sign all contracts and other documents which are assigned responsibility of the City Manager under the Charter. (Memorandum of April 7, 2000))

I HEREBY APPROVE the form and legality of the foregoing Agreement this
day of _____, 20____.

CASEY GWINN, City Attorney

By: Deborah Berger, Deputy City Attorney

EXHIBIT A

**WORK PLAN INCLUDING BUDGET ITEMIZATION AND SCHEDULE (to be inserted
after approval by California Coastal Conservancy)**

ESTIMATED CITY COSTS (to be inserted by City)