



Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Jesse Bobbett, Community Services Director

Approved by: Reva Feldman, City Manager

Date prepared: May 11, 2020 Meeting date: May 26, 2020

Subject: Professional Services Agreement with Managed Career Solutions

RECOMMENDED ACTION: Authorize the City Manager to execute a Professional Services Agreement with Managed Career Solutions, Social Purpose Corporation, DBA Managed Career Solutions Rehab & FTI-LA & American Medical Careers (MCS) for trail clearance and remediation work at Charmlee Wilderness Park.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action. Funding for the work will be provided by the United States Department of Labor's Disaster Recovery National Dislocated Worker Grant awarded to the California Employment Development Department (EDD). MCS has secured funding through the EDD.

WORK PLAN: This item was included as item 2j in the Adopted Work Plan for Fiscal Year 2019-2020.

DISCUSSION: On April 8, 2019, the City Council voted to terminate the lease agreement with the Santa Monica Mountains Conservancy for the exchange of the Malibu Bluffs Open Space for Charmlee Wilderness Park (Park). On June 29, 2019, the City resumed control of the Park, which remained closed after sustaining substantial damage during the Woolsey Fire. In addition to the fire damage, many sections of the trail system became overgrown or washed out due to the long-term closure and reduced maintenance.

Since resuming control of the Park, staff has evaluated the trail system to gain a better understanding of the necessary repairs. Staff also researched and contacted various agencies capable of completing the clearance and remediation work, including landscape maintenance contractors, workforce agencies, the Malibu Conservation Camp 13, and the California Conservation Corps. Staff selected MCS for the Agreement due to their

availability to begin the work immediately, experience completing similar trail work on nearby public and private properties, and the low cost due to the associated grant funding.

MCS will complete the clearance work during the initial phase of the project, before completing the remediation work during the second phase. With the remediation work expected to take approximately three to four months to complete, MCS will prioritize popular and high-use trails so that the City can begin to reopen the Park quicker.

Staff recommends the Council authorize the City Manager to execute a Professional Services Agreement with MCS for the trail clearance and remediation work at Charmlee Park.

ATTACHMENT: Professional Services Agreement with Managed Career Solutions, SPC

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of May 26, 2020 by and between the City of Malibu (hereinafter referred to as the "City"), and Managed Career Solutions, Social Purpose Corporation, DBA Managed Career Solutions Rehab & FTI-LA & American Medical Careers (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

RECITALS

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out the clearance and remediation of trails and erosion control and mitigation at Charmlee Wilderness Park.

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

E. The Consultant agrees to complete all work described in Exhibit A of this Agreement at no cost to the City, through the United States Department of Labor's Disaster Recovery National Dislocated Worker Grant administered by the California Employment Development Department.

NOW, THEREFORE, the City and the Consultant agree as follows:

1.0 SCOPE OF THE CONSULTANT'S SERVICES. The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

2.0 TERM OF AGREEMENT. This Agreement will become effective on May 27, 2020 and will remain in effect for a period of one year from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

3.0 CITY AGENT. The City Manager, or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or her designee, has the authority to provide that approval or authorization.

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with

the Scope of Work and fee schedule (Exhibit A). The cost of services shall be \$0. No compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.

4.1 The Consultant shall not submit to the City, its bill incurred during the Agreement.

5.0 CONFLICT OF INTEREST. The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

6.0 GENERAL TERMS AND CONDITIONS.

6.1 Termination. Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any

payments due under this Agreement may be withheld to off-set anticipated damages.

6.2 Non-Assignability. The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.3 Non-Discrimination. The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

6.4 Insurance. The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

- 1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.
- 2) Name and list as additional insured the City, its officers and employees.
- 3) Specify its acts as primary insurance.
- 4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."
- 5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

6.5 Indemnification. Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel

unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

6.6 Compliance with Applicable Law. The Consultant and the City shall comply with all applicable laws, ordinances and codes of the federal, state, county and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

6.7 Independent Contractor. This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

6.7.2 The Consultant is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq, as well as California Code of Regulations, Title 8, Section 16000 et seq ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws. Consultant agrees to fully comply with such Prevailing Wage Laws. Upon request City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Alternatively, Consultant may obtain said rates at www.dir.ca.gov/dlsr/. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

6.8 Copyright. No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

6.9 Legal Construction.

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

6.10 Counterparts. This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

6.11 Final Payment Acceptance Constitutes Release. The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

6.12 Corrections. In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant.

6.13 Files. All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

6.14 Waiver; Remedies Cumulative. Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the

length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

6.15 Mitigation of Damages. In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

6.16 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

6.17 Attorneys' Fees. The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

6.18 Entire Agreement. This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

6.19 Notices. Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

CITY: Reva Feldman
City Manager
City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265-4861
TEL (310) 456-2489 x 224
FAX (310) 456-2760

CONSULTANT: Philip Starr, PsyD
Executive Director
Managed Career Solutions, SPC
3333 Wilshire Blvd. #405
Los Angeles, CA 90010
TEL (213) 355-3512

6.20 Warranty of Authorized Signatories. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)

7.1 Disclosure Required. By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a “consultant” for the purposes of the California Political Reform Act because Consultant’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City’s Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials _____
Consultant Initials _____

7.2 Disclosure not Required. By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

City Initials _____
Consultant Initials PS -

This Agreement is executed on _____, 2020, at Malibu, California, and effective as of May 27, 2020.

CITY OF MALIBU:

REVA FELDMAN, City Manager

ATTEST:

HEATHER GLASER, City Clerk
(seal)

CONSULTANT:

Philip Starr
PHILIP STARR, PsyD, Executive Director

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney

EXHIBIT A

City of Malibu Charmlee Wilderness Park Trail Remediation, Erosion Control and Mitigation Scope of Work

1. Background

Charmlee Wilderness Park, located at 2577 Encinal Canyon Rd, Malibu, CA 90265, is owned by the City of Malibu. The park was heavily affected by the Woolsey Fire in November 2018 and has been closed since that time. The City of Malibu is working with a variety of state, county, and local agencies to reopen the park.

2. Scope of Work

General Specifications

The Consultant shall provide skilled and adequately trained personnel, materials, tools, equipment, and transportation to perform trail remediation, erosion control, and mitigation at Charmlee Wilderness Park.

The Consultant shall be responsible for providing all supplies and equipment, which are required in connection with the services to be performed under this Agreement.

The Consultant shall not subcontract any portion of the Agreement or any additions made to the Agreement without first receiving approval from the Community Services Director. All persons engaged in the scope of work shall be considered employees of the Consultant, with the supervisor being directly responsible for their work.

Location and Trails

The Consultant shall provide trail remediation, erosion control, and mitigation at Charmlee Wilderness Park located at 2577 Encinal Canyon Road, Malibu, CA 90265. The trails and priority areas are outlined in Attachments 1 through 4.

- Charmlee Wilderness Park Blank Trail Map – a reference to all trails without markings (Attachment 1)
- Charmlee Wilderness Park Trail Clearance Priority Map – park trail sections and areas of priority from 1-4 (Attachment 2)
- Charmlee Wilderness Park Trail Clearance Width Map – desired trail width, 6 feet to 12 feet (Attachment 3)
- Charmlee Wilderness Park Trail Remediation Priority Map – areas where trail remediation is needed, prioritized from 1-6 (Attachment 4)

The Consultant will remove overgrown weeds on approximately 6 miles of trails, picnic areas, park roadways, parking lots, and other designated areas outlined in Attachments 1 through 4.

Tools and Clearance

The Consultant shall perform all work by following the best industry standards of landscape maintenance, workmanship, safety practices, and standards of cleanliness. All work shall be performed without the use of poisons, including pesticides, herbicides, insecticides, and rodenticides.

The Consultant may use mechanical methods or hand tools to perform trail remediation, erosion control and mitigation. All work must be completed following the City's Earth-Friendly Management Program.

Vehicles, including utility vehicles (UTVs or RTVs), cannot be used on the trails unless approved by the Community Services Director.

Debris and green waste will be removed by the Consultant and placed in the appropriate waste bins.

The Consultant will notify the Community Services Director and/or his designee of hazardous plants such as poison oak within 15 feet of the park trails.

The Consultant will use existing materials to backfill trail erosion. The introduction of new materials for erosion control methods must be approved by the Community Services Director and/or his designee before installation.

The Consultant will secure and store all tools in the designated on-site storage area each day. The City is not responsible for lost or stolen tools for the duration of the Agreement.

Hours and Access

The Consultant will coordinate priority areas and timelines with the Community Services Director and/or his designee. The timelines must be approved before work is performed and/or scheduled.

The Consultant may work at Charmlee Wilderness Park from 7:00 AM to 4:00 PM Monday through Saturday. The park will remain closed to the general public while the work is being performed. The Consultant cannot work on legal holidays.

The Consultant may park their vehicles in designated parking lots near the primary restroom and Nature Center. The Consultant cannot drive a vehicle through the park trails or other designated areas unless approved by the Community Services Director and/or his designee.

The Consultant shall adequately secure keys, other entry devices, and codes provided by the City. The Consultant shall maintain a record of the keys or codes issued to its employees. The Consultant shall not allow such items to be duplicated or removed from Charmlee Wilderness Park.

Reporting and Communication

The Consultants crew(s) shall work under the supervision of a Contractor designated Lead Worker. All working employees must be at least eighteen (18) years of age. All employees must be able to follow directions and physically capable of the duties assigned to them.

The Consultant will provide at least one satellite phone to the on-site Lead Worker/Supervisor. The telephone number will be given to Community Services Director and/or his designee.

At the request of the Community Services Director and/or his designee, the Consultant may be requested to provide copies of daily inspection forms, log-in sheets, or other reporting documents related to the Scope of Work.

The Consultant will report any park maintenance or safety concerns to the Community Services Director and/or his designee via email or telephone by the next business day.

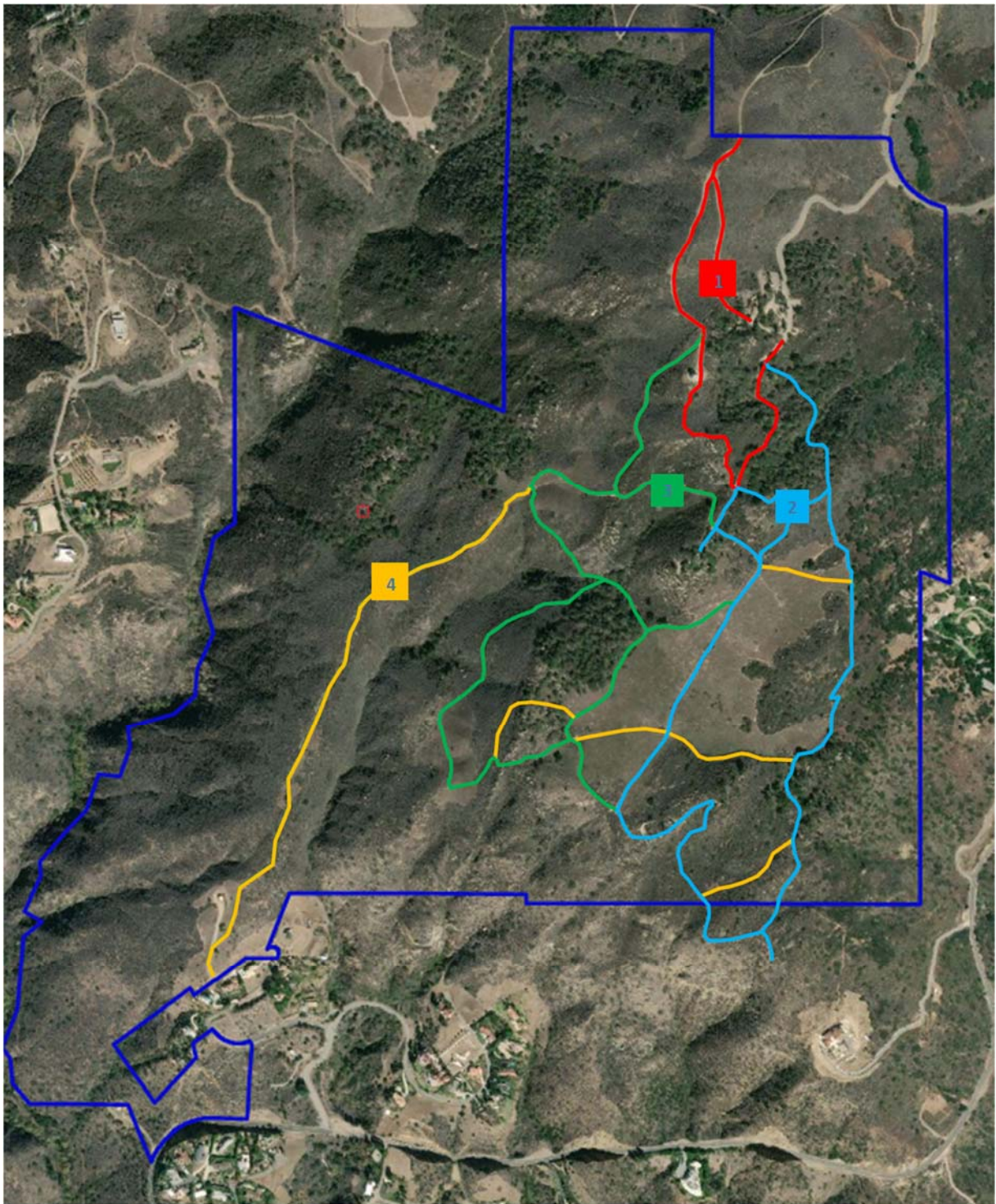
The Consultant will contact the Los Angeles County Sheriff Department Lost Hills Division to report crimes or illegal activity. The Consultant will remain on-site until Sheriff's Deputies arrive and report the incident to the Community Services Director and/or his designee via email or telephone within 12 hours.

Charmlee Wilderness Park Blank Trail Map



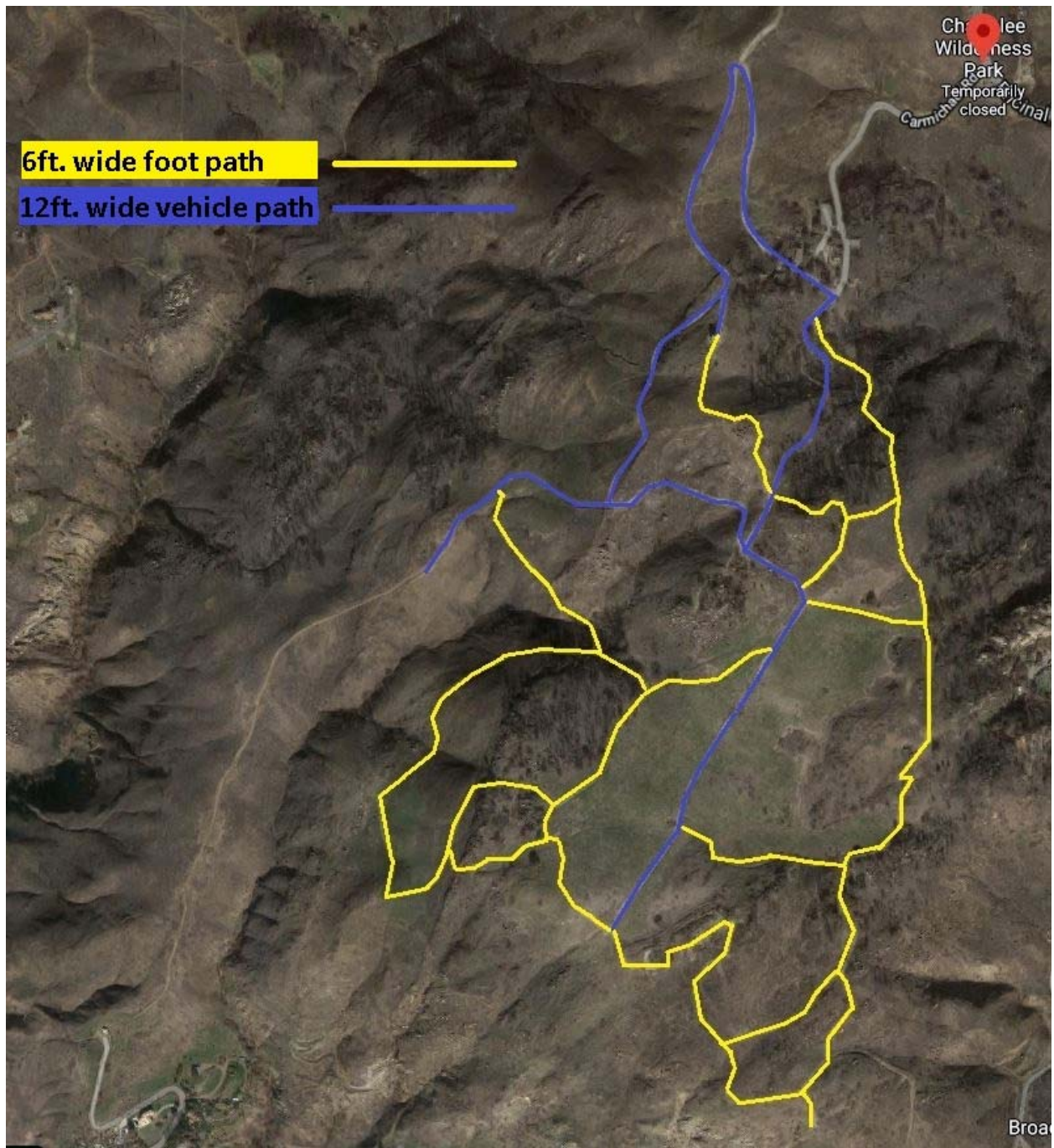
ATTACHMENT 1

Charmlee Wilderness Park Trail Clearance Priority Map



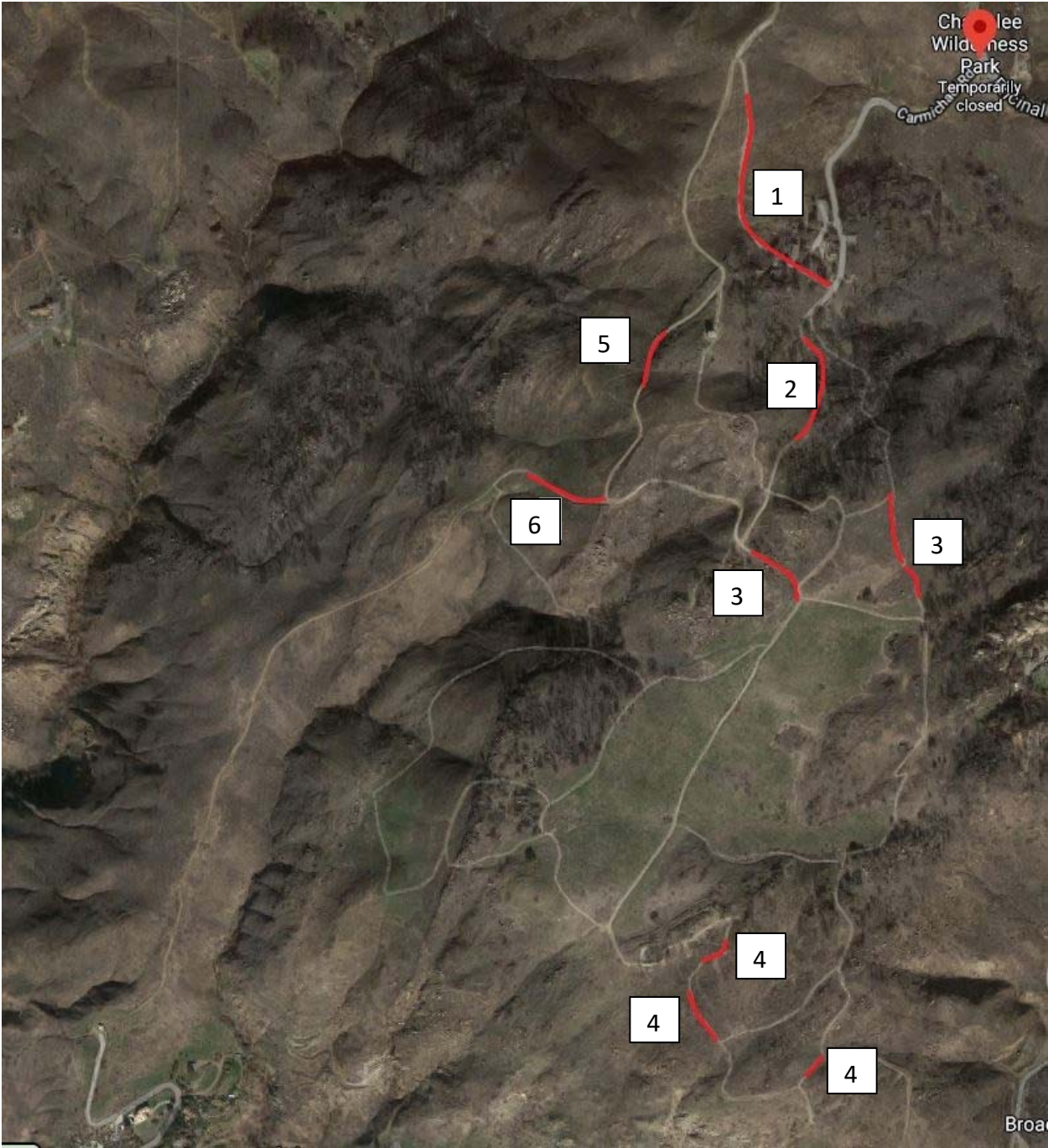
ATTACHMENT 2

Charmlee Wilderness Park Trail Clearance Map



ATTACHMENT 3

Charmlee Wilderness Park Remediation Priority Map



ATTACHMENT 4