

mentAttachment A

COOPERATIVE FUNDING AGREEMENT BETWEEN EAST BAY REGIONAL PARK DISTRICT, CITY OF RICHMOND AND CONTRA COSTA COUNTY FOR THE CONSTRUCTION OF THE WILDCAT CREEK TRAIL OVER-CROSSING OF THE RICHMOND PARKWAY

This Agreement made and entered into on the xxth day of Xxx, 2010, by and between the East Bay Regional Park District, hereinafter referred to as "EBRPD", the City of Richmond, hereinafter referred to as "CITY" and Contra Costa County, hereinafter referred to as "COUNTY."

WITNESSETH

WHEREAS, EBRPD, CITY and COUNTY desire to provide for a safe crossing of the Richmond Parkway for the Wildcat Creek Regional Trail; adjacent to the Contra Costa County Flood Control and Water Conservation District (FCD) Wildcat Creek Channel; and

WHEREAS, the trail currently utilizes an under-crossing, designed and built by the U.S. Army Corps of Engineers to cross the Parkway; and

WHEREAS, the under-crossing is frequently inundated with flows from Wildcat Creek, filling the structure with sediment and debris that severely limit the use of the structure and it is not cost effective or practical to continually clear accumulated debris; and

WHEREAS, EBRPD commissioned an engineering study to analyze the feasibility of retrofitting the existing under-crossing or alternative ways to have the trail cross the Parkway; and

WHEREAS, the study identified only two (2) feasible crossings for the trail, construction of an over-crossing at an estimated cost of \$7-8 million or more frequent dredging of the creek and a reconstruction of the existing under-crossing; and

WHEREAS, the FCD does not have the operational funding needed to increase the frequency of creek dredging at this time and does not expect to have it in the future; and

WHEREAS, the construction of an over-crossing is the remaining and best long-term alternative means for crossing the Parkway and shall hereinafter be referred to as the "PROJECT";

NOW, THEREFORE, it is mutually agreed as follows:

1. **PROJECT OBJECTIVE:** All partners desire to develop an overcrossing that is safe for pedestrian and vehicular traffic, is cost effective to maintain, meets FEMA and Corps flood protection standards, and is an amenity for the community.
2. **RESPONSIBILTIY FOR THE PROJECT:** EBRPD shall be the lead agency for the PROJECT and will work in cooperation with the CITY and COUNTY to identify and acquire the capital funding required for its construction.
3. **PROVISION OF SUITABLE LAND TENURE:** COUNTY shall be responsible for delivering land tenure for the PROJECT on the east side of the Parkway through the land development

process, adequate for the acquisition of grant funds. CITY shall be responsible for delivering land tenure for the PROJECT crossing of the Parkway, adequate for the acquisition of grant funds. COUNTY and EBRPD shall jointly be responsible for delivering land tenure for the PROJECT on the west side of the Parkway, adequate for the acquisition of grant funds.

4. ACQUISITION OF FUNDING: CITY, COUNTY and EBRPD shall cooperatively seek and apply for funds required to design, permit and construct the PROJECT. EBRPD shall be responsible for collecting, accounting, and disbursing all funds received through these fund raising efforts and shall establish and maintain an independent account, to hold these funds. EBRPD shall also enter into any contract or agreement with the granting agency and be responsible for meeting the grant contract/agreement requirements, such as quarterly reporting.
5. REVIEW/APPROVAL: EBRPD shall be responsible for permitting, preparing and processing environmental documents and, developing the final construction plans and specifications for the PROJECT and obtaining approvals as required by the CITY, COUNTY, or FCD prior to advertising for construction bids.
6. WAIVER OF FEES: CITY and COUNTY shall waive all fees for review, permitting and inspection of the PROJECT.
7. OWNERSHIP: At the completion of construction, the CITY will have ownership of the PROJECT and all fixed improvements.

IT IS MUTUALLY AGREED AS FOLLOWS:

- (1) This Agreement may be amended or canceled by written consent of all three parties.
- (2) Notices regarding this agreement shall be sent by first class mail, postage prepaid, to EBRPD at P. O. Box 5381, Oakland, CA 94605-0381 and to CITY at Xxxxxx and COUNTY at Xxxxx.
- (3) This Agreement shall run five (5) years from its effective date, unless otherwise terminated or amended.
- (4) This Agreement contains the entire agreement between the parties with regard to matters described in this Agreement and supersedes all prior agreements, whether written or oral, between the parties with respect to such subject matter.
- (5) This Agreement shall be interpreted and enforced under the laws of the State of California.
- (6) EBRPD agrees to indemnify and hold harmless CITY and COUNTY, its Board of Supervisors, City Council Members, officers, agents, employees and assigns from and against any and all loss, damage, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees regardless of the merits or outcome of the work conducted or performed by EBRPD pursuant to this Agreement.
- (7) CITY agrees to indemnify and hold harmless EBRPD and COUNTY, its Board of Directors, Board of Supervisors, officers, agents, employees and assigns from and against any and all loss, damage, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees regardless of the merits or outcome of the work conducted or performed by CITY pursuant to this Agreement.

(8) COUNTY agrees to indemnify and hold harmless EBRPD and CITY, its Board of Directors, City Council Members, officers, agents, employees and assigns from and against any and all loss, damage, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees regardless of the merits or outcome of the work conducted or performed by COUNTY pursuant to this Agreement.

(9) The parties hereto agree that work on final construction plans and drawings will not commence unless and until full funding for the estimated costs of the design and construction of the Project have been obtained.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, duly authorized, the provisions of which Agreement is effective as of the day, month, and year first hereinabove written.

EAST BAY REGIONAL PARK DISTRICT

Approved as to form:

By
General Manager

By
District Counsel

CONTRA COSTA COUNTY

Approved as to form:

By
County Administrator

By
County Counsel

CITY OF RICHMOND

Approved as to form:

By
City Manager

By
City Attorney