

Funding Reimbursement Agreement between City of Albany and City of Berkeley for the Albany Plateau Owl Habitat Construction Project

This Agreement made and entered into on the ____ day of _____, by and between the City of Albany (“Albany”) and the City of Berkeley (“Berkeley”).

RECITALS

WHEREAS, the five East Bay cities of Albany, Berkeley, El Cerrito, Emeryville, and Richmond entered into a joint powers agreement (“JPA”) on November 12, 2003 to develop sports fields; and

WHEREAS, the one of the sports fields contemplated by the JPA was the Gilman Street Sports Fields (“Project”), which is now known as the Tom Bates Regional Sports Complex (“TBRSC”);

WHEREAS, on behalf of the Project, the East Bay Regional Park District received competitive grants from the California State Department of Parks and Recreation (Prop 40 grants) totaling \$5 million; and

WHEREAS, on July 20, 2007, CBS Outdoors, Inc. executed a sign relocation agreement with the City of Berkeley to provide a capital payment towards the Project in the amount of \$2 million; and

WHEREAS, on October 18, 2005, the City of Berkeley adopted a Mitigated Negative Declaration pursuant to Resolution No. 63,090-N.S. for the Project that required a mitigation for the presence of a burrowing owl at the site to be implemented at the Albany Plateau on Eastshore State Park (jointly owned by the East Bay Regional Park District and the State of California); and

WHEREAS, on May 23, 2006, Albany executed an agreement and obtained an encroachment permit from the East Bay Regional Park District (Exhibit A.1 - “Albany-District MOU”; and Exhibit A.2 - “District Permit”) to construct the 8.1 acre burrowing owl habitat mitigation project (“Owl Project”) at the Albany Plateau, Eastshore State Park, on behalf of the five JPA cities, using the project funding administered by the City of Berkeley, and

WHEREAS, the East Bay Regional Park District issued a Final Acceptance of Work letter for the Owl Project on August 5, 2008; and

WHEREAS, Albany and Berkeley enter into this Agreement for the purpose of reimbursing the Albany for the construction and unfunded expenses related to five

years of maintenance and environmental monitoring of the owl project at the Albany Plateau as required by the Mitigated Negative Declaration.

NOW, THEREFORE, the parties agree as follows:

SECTION I

The City of Albany:

1. Certifies that on August 5, 2008, it completed **construction** of the Owl Project at the Albany Plateau, Eastshore State Park, as described in Exhibit A by providing a Notice of Completion and Acceptance of Public Work.
2. Agrees to comply with the requirements of the Albany-District MOU for **maintenance** of the Owl Project that commences upon final acceptance of the work by the City of Albany, by providing the District with \$25,000 to cover District maintenance activities at the project site for five years.
3. Agrees to comply with the requirements of the District Agreement for **environmental monitoring** of the Owl Project over a five year period by contracting with a qualified environmental consultant to provide monitoring services as provided for in the Agreement for Consultant Services Between the City of Albany and Avocet Research Associates. The monitoring period shall commence upon final acceptance of the work by the District.

SECTION II

City of Berkeley agrees:

1. To reimburse Albany for the Owl Project for construction costs in the amount of \$75,033.02, plus interest of \$5,627.48 accruing as of September 1, 2008 through February 28, 2010, for a total payment of \$80,660.50 for construction, as described in Exhibit B.
2. To make a one-time payment of \$5,891.25 to the City of Albany to cover the estimated shortfall in funding for non-construction costs related to the Owl Project, as described in Exhibit B

SECTION III

It is mutually agreed as follows:

1. Notices

Notices regarding this agreement shall be sent by first class mail, postage prepaid, to City of Albany, 1000 San Pablo Avenue, Albany, CA 94706; and to City of Berkeley, 2180 Milvia Street, 3rd Floor, Berkeley, CA 94704, Attention: Director of Parks, Recreation & Waterfront.

2. Indemnification – City of Albany

Albany, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless Berkeley, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with Albany's operations under this Agreement, or with the performance of this Agreement by Albany or its officers, employees, partners, directors, subcontractors or agents.

3. Non-discrimination

City of Albany hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Agreement, City of Albany agrees as follows:

a. City of Albany shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. City of Albany shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the Berkeley, are necessary to monitor compliance with this non-discrimination provision. In addition, City of Albany shall fill-out, in a timely fashion, forms supplied by the Berkeley to monitor this non-discrimination provision.

4. Nuclear Free Berkeley

City of Albany agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

5. Audit

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of City of Albany's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. In the event of such audit, City of Albany agrees to provide the Berkeley Auditor with reasonable access to Albany's employees and make all such financial, performance and compliance records available to the Auditor's Office. Berkeley agrees to provide City of Albany an opportunity to discuss and respond to any findings before a final audit report is filed.

IN WITNESS WHEREOF, City of Albany and City of Berkeley have executed this Contract as of the date written on the first paragraph of this Contract.

FOR CITY OF ALBANY

Signed by:

Countersigned by:

City Manager

City Finance Director

Approved as to form by:

Attested by:

City Attorney for City of Albany

City Clerk

FOR CITY OF BERKELEY

Signed by:

Countersigned by:

City Manager

City Auditor

Approved as to form by:

Attested by:

City Attorney for City of Berkeley

City Clerk

EXHIBIT A

SCOPE OF SERVICES

1. Memorandum of Agreement between City of Albany and East Bay Regional Park District relating to Burrowing Owl Habitat and Public Access Improvements at Albany Plateau, Eastshore State Park, executed District, May 23, 2006
2. East Bay Regional Park District – Encroachment Permit, dated February 1, 2008, including Burrowing Owl Habitat Project Plans dated 08/20/07, and CEQA Cat Ex. dated 07/28/06, and the Initial Study of July 2006.
3. Letter of Acceptance of Work from City of Albany (Barry Whittaker) to Contractor (T.D. Brickely) dated July 28, 2008
4. Letter of Acceptance of Project from East Bay Regional Park District (Robert Thomas) to City of Albany (Ann Chaney) dated August 5, 2008.
5. Agreement for Consultant Services Between the City of Albany and Avocet Research Associates, dated February 4, 2008, and Monitoring Protocol.
6. Owl Project Final Budget

EXHIBIT B

PAYMENT

Berkeley agrees to reimburse the City of Albany for the Owl Project for a total amount of \$86,551.75 as follows:

Owl Habitat Construction Costs	
TD Brickely - final cost	\$ 59,697.51
Avocet - burrow final design	1,250.00
Fugro West - soil testing	6,632.54
Bid Package	1,812.75
EBRPD Encroachment Fee	750.00
Project Manager	1,740.22
KSR Surveying	3,150.00
Total Construction Costs	\$ 75,033.02
Plus: Interest on construction (18 months at 5%)	5,627.48
Total Construction Reimbursement to Albany	\$ 80,660.50
Non-Construction Project Costs	
Monitoring - (5 years - Avocet, Inc.)	12,891.25
Maintenance - (5 years - EBRPD)	25,000.00
Total Non-Construction Costs	\$ 37,891.25
Less: JPA Contribution - Albany	6,400.00
Less: JPA Contribution - Berkeley	6,400.00
Less: JPA Contribution - El Cerrito	6,400.00
Less: JPA Contribution - Emeryville	6,400.00
Less: JPA Contribution - Richmond	6,400.00
Total contribution from JPA cities	\$ 32,000.00
Non-Construction Shortfall	\$ 5,891.25
Payment to Albany	
Total Construction Reimbursement to Albany	\$ 80,660.50
Non-Construction Shortfall	5,891.25
Total Payment to Albany	\$ 86,551.75