

**FUNDING AGREEMENT BETWEEN THE BALDWIN HILLS REGIONAL CONSERVATION
AUTHORITY AND THE CITY OF CULVER CITY
FOR CONSTRUCTION OF THE HETZLER ROAD
PEDESTRIAN TRAIL PROJECT**

THIS FUNDING AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2015.

BY BALDWIN HILLS REGIONAL CONSERVATION
 AUTHORITY, a California joint powers authority ("BHRCA")

AND CITY OF CULVER CITY, a body corporate and politic
 ("City")

WITNESSETH:

A. BHRCA was established by the County of Los Angeles ("County") and the Santa Monica Mountains Conservancy for the purpose of providing a comprehensive program to acquire, expand, and improve open space, natural habitat, and recreational opportunities within the Baldwin Hills and other natural and recreational areas within the County's Second Supervisorial District.

B. BHRCA has the power to authorize and fund construction, management, and maintenance of recreational and park facilities within the Baldwin Hills.

C. Pursuant to BHRCA Resolution No. 15-04, BHRCA is authorized to enter into a funding agreement with the City to provide City with funds in an amount not to exceed \$100,000 ("Grant Funds") to cover part of the cost of constructing a designated pedestrian trail along Hetzler Road, which will become a segment of the Park to Playa Trail and will provide a key connection from Ballona Creek to the Baldwin Hills Scenic Overlook, all while allowing pedestrians to avoid the use of the roadway and thereby preventing conflicts with vehicular traffic and enhancing safety (collectively, the "Project").

D. The City's Department of Public Works has estimated that the total construction cost for the Project will be approximately \$1,091,000, which will be funded by the Baldwin Hills Conservancy (\$791,000), the Land Water Conservation Fund (\$150,000), Prop A Funding (\$50,000), City (\$50,000) and, BHRCA (\$100,000).

E. City and BHRCA agree that completion the Project, will create a safer environment, enhanced recreational opportunities for trail users and will provide a critical link to the Park to Playa Trail.

F. City and BHRCA have a joint interest in protecting the public.

G. City shall perform all services included in this Agreement in an independent capacity and neither BHRCA nor its employees shall be considered as employees of the City. This Agreement is by and between BHRCA and the City, and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, between City and BHRCA.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto agree as follows:

A. Approved Funding and Purpose

1. BHRCA hereby grants to the City the amount of one hundred thousand dollars (\$100,000) for construction and other related costs associated with the Project.
2. BHRCA funds shall be paid to the City on a reimbursement basis upon the City's submission of invoices for the amount expended for the intended use of the funds.
5. BHRCA funds shall be used by the City for paying the costs of work as described in Section B, Scope of Work of this Agreement.

B. Scope of Work

1. City shall Perform construction of the Project, including, without limitation the following:
 - a) Construction of a 10 foot wide concrete paved pedestrian path adjacent to, but grade separated from, Hetzler Road from Jefferson Blvd. to past the last residential property on Hetzler Road; and
 - b) Construction of two retaining walls (an upper wall and a lower wall).

C. Effective Date/Agreement Term

1. The effective date of this Agreement shall be the date of execution by the Executive Director of BHRCA.
2. This Agreement will remain in force from the effective date of this Agreement until the work as described in Section B, Scope of Work is completed, unless earlier terminated by mutual agreement of the parties.

D. Indemnification

1. City shall indemnify, defend and hold harmless BHRCA, its elected and appointed officers, employees, agents and volunteers (collectively known as "BHRCA Indemnitees") from and against any and all liability including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with City's acts and/or omissions, including those of its appointed or elected officials, employees,

agents, and volunteers, arising, from and/or relating to this Agreement, except for such loss or damage arising from the negligence, gross negligence or willful misconduct of BHRCA.

2. BHRCA shall indemnify, defend and hold harmless the City, its Special Districts, elected and appointed officers, employees, agents and volunteers (collectively known as "City Indemnitees") from and against any and all liability including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with BHRCA's negligent or grossly negligent acts and/or willful misconduct, including those of its appointed or elected officials, employees, agents, and volunteers, arising, from and/or relating to this Agreement, except for such loss or damage arising from the negligence or willful misconduct of the City.

E. Financial Records

1. City agrees to maintain satisfactory financial accounts, documents and records of the expenditure of Grant Funds and to make them available to BHRCA for auditing upon request. City also agrees to retain such financial accounts, documents and records for no less than five (5) years following the expiration or prior termination of this Agreement.
2. City agrees to use a generally accepted accounting system. City also agrees to maintain, and make available for BHRCA inspection, accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.
3. At any time during the term of this Agreement or at any time within five (5) years of the expiration or prior termination of this Agreement, authorized representatives of BHRCA may conduct an audit of City records for the purpose of verifying appropriateness and validity of expenditures of Grant Funds under the terms of this Agreement.
4. City, within thirty (30) days of notification from BHRCA of its audit findings, may dispute the audit findings in writing to BHRCA and provide BHRCA with records and/or documentation to support the expenditure claims. BHRCA shall review this documentation and make a final determination as to the validity of the expenditures.
5. City will provide BHRCA within one hundred twenty (120) days after the end of its fiscal year, a report itemizing actual expenditures funded by monies received pursuant to this Agreement. It is agreed that should BHRCA determine that any funds paid to the City hereunder have been used for purposes other than those authorized by this Agreement, City is required to promptly refund any such improperly used funds to BHRCA.

F. Notices and Approvals

All notices and approvals shall be directed to and made by the following representatives of the parties:

a. To the City:

Charles D. Herbertson,
Public Works Director/City Engineer
City of Culver City
9770 Culver Boulevard
Culver City, CA 90232
Telephone (310) 253-5630

b. To BHRCA:

Mr. Joseph Edmiston, Executive Director
Baldwin Hills Regional Conservation Authority
5750 Rameriz Canyon Road
Malibu, CA 90265
Telephone: (310) 589-3200
Fax: (310) 589-3230

G. Nondiscrimination

City shall not discriminate against any person on the basis of race, color, sex, sexual orientation, age, religious belief, national origin, marital status, physical or mental handicap, medical condition, or place of residence in the use of BHRCA Funds paid to the City pursuant to this Agreement.

H. Severability

If any provision of this Agreement, or the application thereof, is held to be invalid, that invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end the provisions of the Agreement are severable.

I. Governing Law

This Agreement has been negotiated, executed and delivered and will be performed in the State of California and shall be governed by and construed in accordance with its laws.

J. Captions

All captions and headings in this Agreement are for the purposes of reference and convenience only. They will not limit or expand the provisions of this Agreement.

K. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This

Agreement shall not be effective as to any party unless and until it has been executed by or on behalf of each party.

L. Independent Status.

This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between BHRCA and the City. City understands and agrees to bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of City pursuant to this Agreement.

M. Compliance with Law.

City's completion of the Project shall conform to and abide by all County ordinances and all State and Federal laws and regulations insofar as the same or any of them are applicable; and where permits and/or licenses are required for City's work, the same must be first obtained from the regulatory agency having jurisdiction thereover.

[signatures appear on following page]

IN WITNESS WHEREOF, BHRCA has executed this Agreement, or caused it to be duly executed by its authorized representative, and the City by order of _____ on the date and year written below.

BHRCA
Baldwin Hills Regional Conservation Authority

By _____
Executive Director Date

APPROVED AS TO FORM FOR BHRCA:

MARY C. WICKHAM
Interim County Counsel

By _____
Deputy

CITY
City of Culver City

JOHN NACHBAR
City Manager

By John 10/7/15
City Manager Date

APPROVED AS TO FORM FOR CITY:

By [Signature]