

CITY OF OAKLAND
AGENDA REPORT

2011 JUN 30 PM 2: 50

TO: Office of the City Administrator
ATTN: P. Lamont Ewell
FROM: Public Works Agency
DATE: July 12, 2011

RE: Resolution Authorizing the City Administrator to Enter Into a Cooperative Agreement With the County of Alameda For the Implementation of the Bay Trail Project At the High Street Bridge

SUMMARY

A resolution has been prepared authorizing the City of Oakland (City) to enter into a cooperative agreement (Agreement) with the County of Alameda (County) for implementation of the Bay Trail project at the High Street Bridge. This Measure DD-funded project proposes to install a boardwalk beneath the bridge in order to connect trails on both sides without crossing busy High Street. The bridge is owned and operated by the County; therefore, an agreement is necessary if the City is to construct the trail on the County facility.

FISCAL IMPACT

Measure DD funds have already been appropriated for the Bay Trail projects at the bridges (Fund 5321, Project C394810). Hence, there is no new fiscal impact related to design and construction created by this Agreement.

Once constructed, there will be maintenance costs related to this trail project, including graffiti abatement, litter pickup, etc. There are no new funds identified for this work; any new costs will be borne by existing maintenance budgets.

BACKGROUND

The Measure DD program includes construction of segments of the Bay Trail wherever there are gaps in the trail's continuity. At High Street, trail users currently have to walk inland and cross the busy street at an un-signalized intersection. The proposed project will expand the existing maintenance catwalk that runs beneath the bridge and connect it to land on both ends. This route will allow trail users an uninterrupted path along the water, avoiding the street entirely.

KEY ISSUES AND IMPACTS

The High Street Bridge is owned and operated by the County. In order for the City to build the trail on the County facility, an Agreement is needed to outline the responsibilities of both parties.

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In general, the City will design, construct, operate and maintain the trail, with the exception of electrical and security elements, which will be maintained by the County. The City will also indemnify the County against any injuries or other claims by trail users.

Charter Section 504(1) authorizes the City Administrator to enter into intergovernmental agreements such as this Cooperative Agreement with Council approval and intergovernmental agreements are not subject to Oakland's purchasing requirements.

PROJECT DESCRIPTION

The project involves expansion of the existing maintenance catwalk that runs beneath the High Street Bridge, connecting it to land on both ends and opening it for public access. A plan view and photo-simulations are attached as exhibits to this report.

SUSTAINABLE OPPORTUNITIES

Economic: Entering into this Agreement will allow the project to proceed, creating a vital recreational resource that will draw tourists to Oakland's shoreline, generating economic activity.

Environmental: Construction of a continuous off-street Bay Trail will encourage citizens to walk or use a bicycle instead of commuting via automobile, resulting in reduced carbon emissions.

Social Equity: The Bay Trail will link various low and moderate income neighborhoods with Jack London Square, Union Point Park, and other recreational venues.

DISABILITY AND SENIOR CITIZEN ACCESS

The trail will be constructed to meet the standards of the Americans with Disabilities Act (ADA), facilitating shoreline access by senior and disabled citizens.

RECOMMENDATION AND RATIONALE


Staff recommends that City Council approve the resolution authorizing the City to enter into an Agreement with the County, allowing implementation of the Bay Trail project at the High Street Bridge.

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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council approve the resolution.

Respectfully submitted,

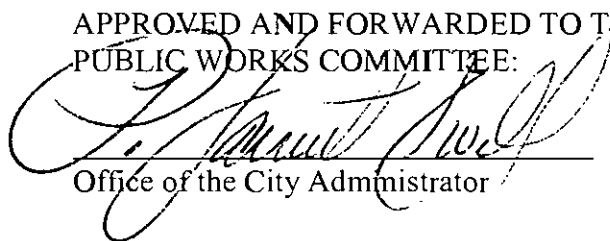


Vitaly Troyan, P.E., Director
Public Works Agency

Reviewed by:
Michael Neary, P.E., Assistant Director, PWA
Department of Engineering and Construction

Prepared by:
Joel Peter, Measure DD Program Manager
Department of Engineering and Construction

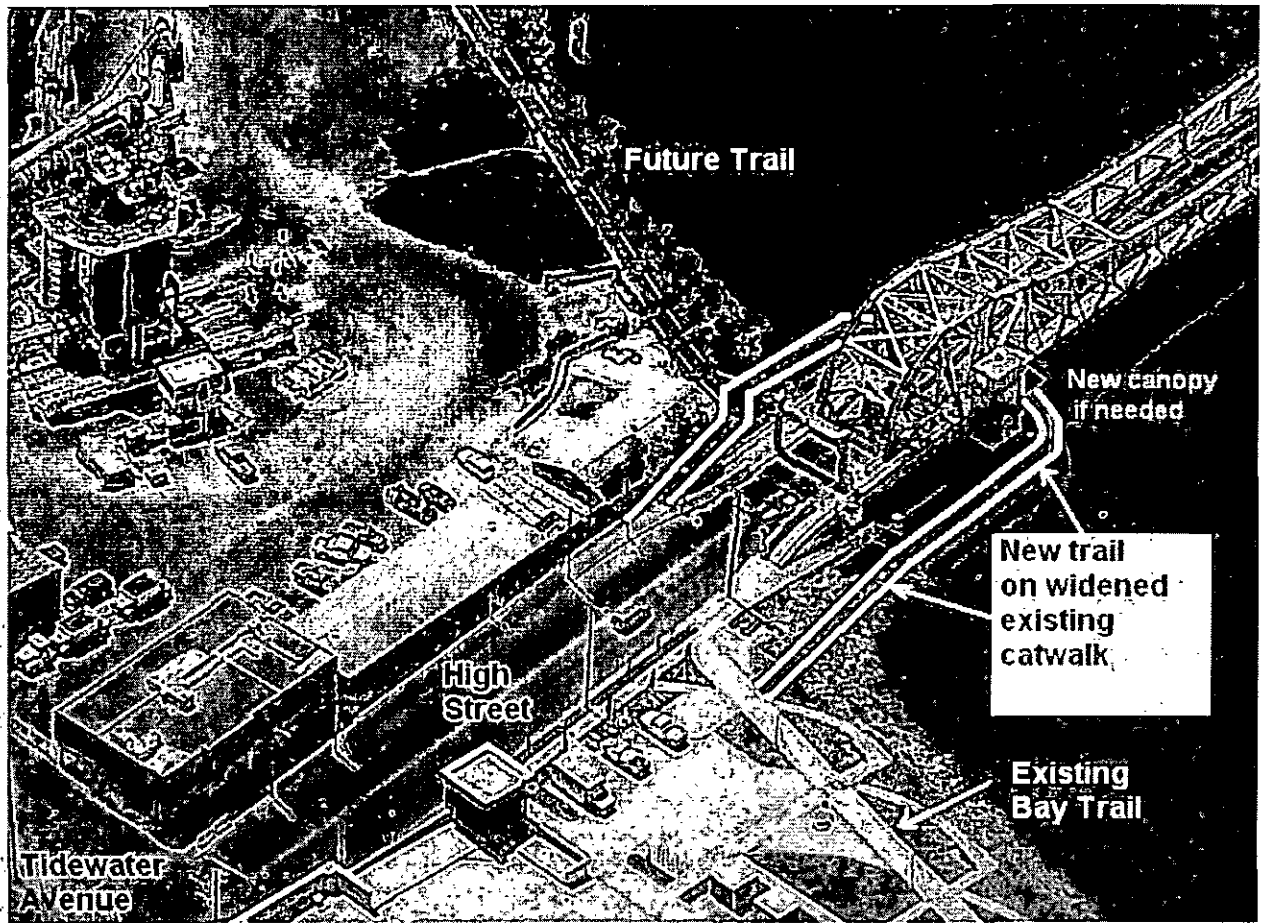
APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:



Office of the City Administrator

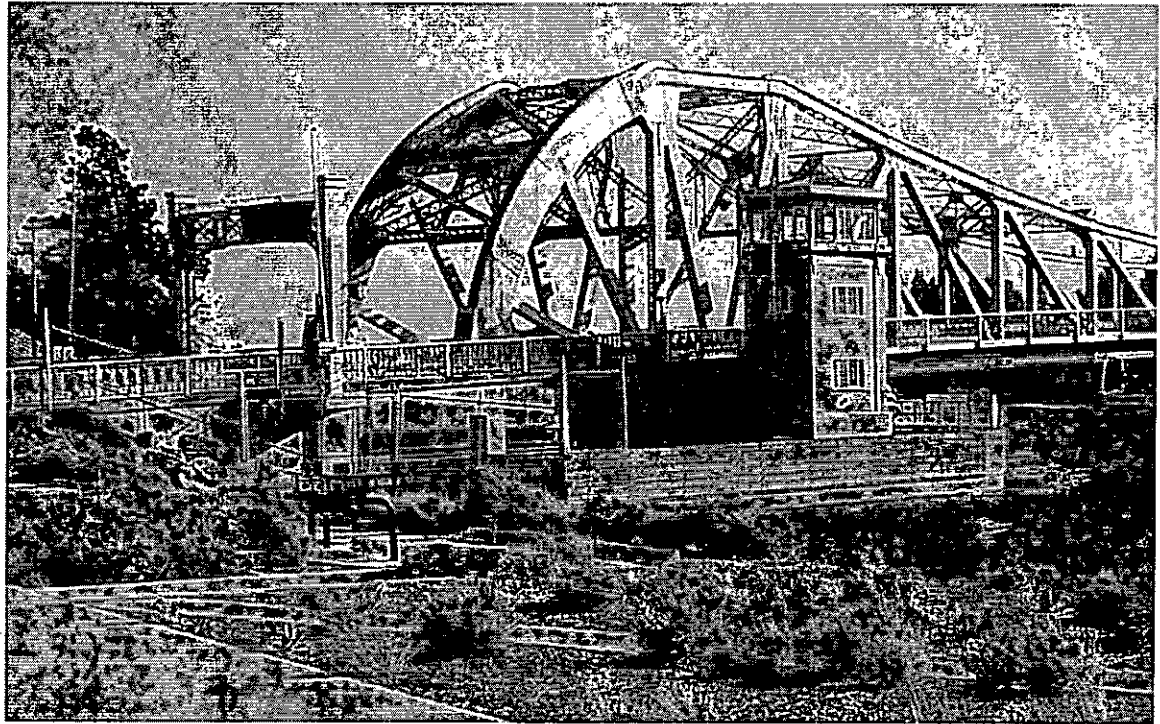
- Attachment A: Plan view of Proposed Bay Trail
- Attachment B: Side view of Proposed Bay Trail
- Attachment C: Front view of Proposed Bay Trail
- Attachment D: Proposed Cooperative Agreement

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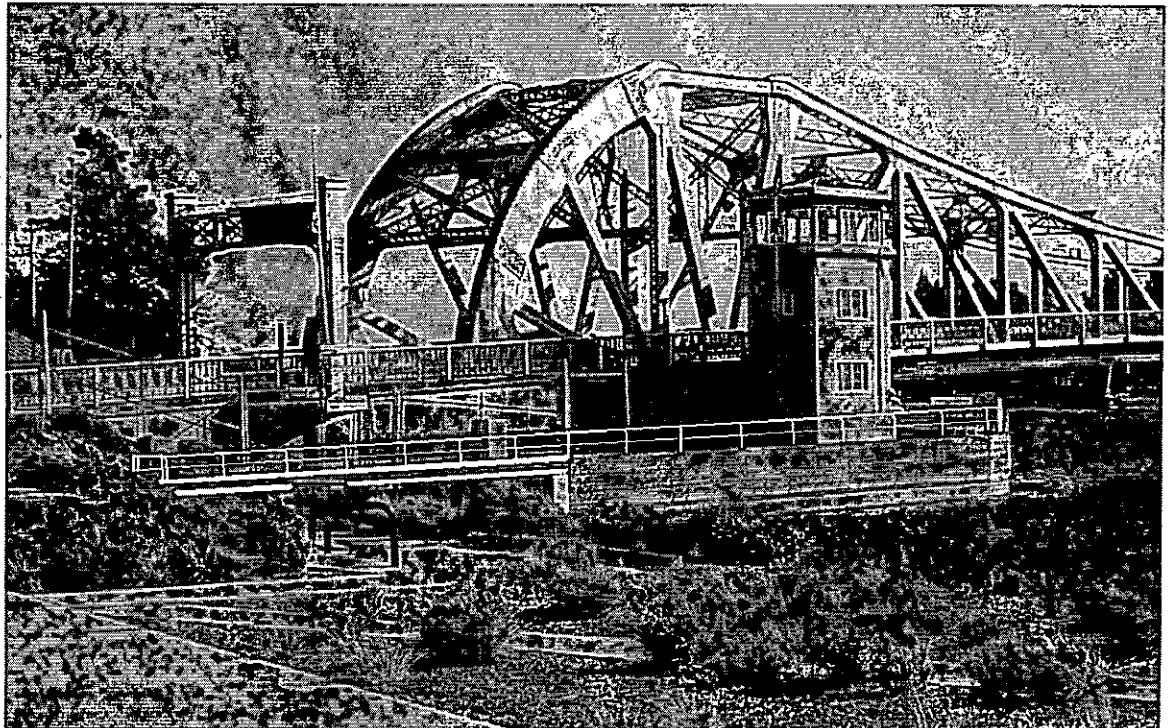


Plan View of Proposed Bay Trail

Attachment A

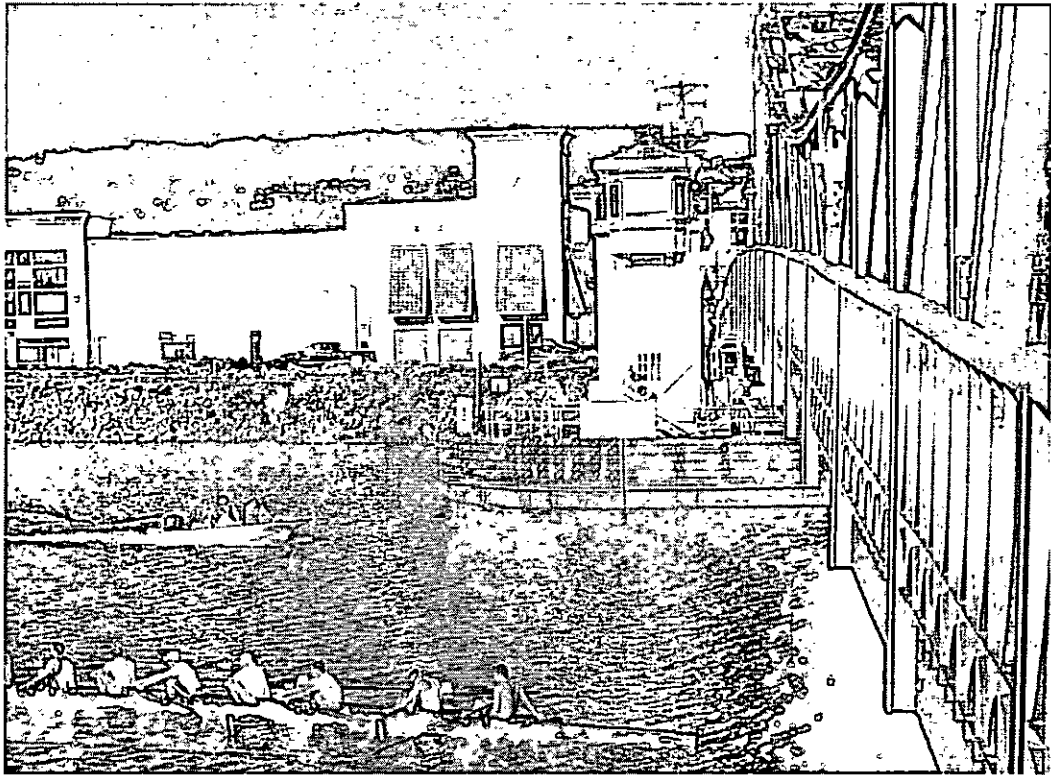


Existing Condition with Catwalk on Fender

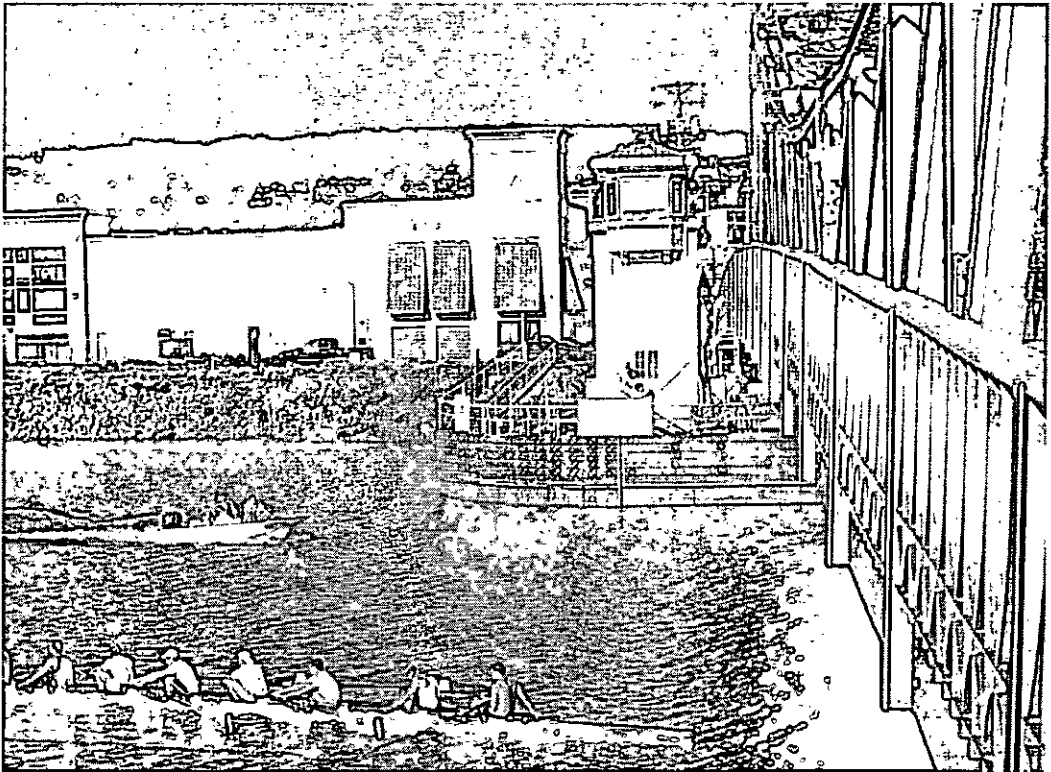


Proposed Widened Catwalk Trail

**Side View of Proposed Trail
Attachment B**



Existing Condition with Catwalk on Fender



Proposed Widened Catwalk Trail

**Front View of Proposed Trail
Attachment C**

DRAFT COOPERATIVE AGREEMENT 6-6-11
BAY TRAIL PROJECT AT HIGH STREET BRIDGE
OAKLAND, CALIFORNIA

This Cooperative Agreement (Agreement) is made this _____ day of _____, 2011, in the City of Oakland, State of California, by and between the City of Oakland, hereinafter referred to as "City" and Alameda County, hereinafter referred to as "County". City and County hereby agree as follows:

A. Purposes

1. The Bay Trail Project at the High Street Bridge will close a gap in the San Francisco Bay Trail that is envisioned to eventually make a 500-mile ring around the Bay. The project will widen the existing maintenance catwalk that runs beneath the bridge, connect it to the land on both ends, and open it for public access. Trail users, who now must cross High Street, will have a continuous off-street route.
2. The existing drawbridge, catwalk, and associated structures are owned, operated and maintained by the County. The County currently conducts maintenance activities related to the safe operation of the drawbridge. The new trail structure, built upon the existing catwalk structure, will be owned by the County and operated and maintained by the City and the County as specified below.
3. The City and its consultants and contractors will design and construct the trail in accordance with applicable standards including County, City, San Francisco Bay Trail, Corps of Engineers etc. standards while maintaining County access for bridge maintenance and operations, using funds from local bond Measure DD, the Oakland Trust for Clean Water and Safe Parks.

B. Scope of Project

The project will involve trail construction activities including driving additional piles, reinforcing and widening the existing catwalk structure, and installing footings on the shoreline, a trail connection to the shore, guardrails, lighting, gates, crossing arms, a security camera and recording system, and other appurtenant items as needed for preventing unsafe access on and to the bridge and the safe operation of the trail. Pre-construction activities will include environmental documentation, permitting, and design.

County and City shall implement those activities for which they are each respectively responsible as follows:

1. The County shall assist City in the preparation, negotiation and securing of the regulatory permits for the Project.
2. The City has completed CEQA review of the project as part of the Measure DD Implementation Project EIR, which was certified in April 2008. The City shall prepare additional technical studies or amendments to this EIR if needed.
3. The City will prepare additional studies, documentation, and exhibits related to NEPA review of the Project.

4. The City and its consultants shall be responsible for the design, preparation of contract plans, specifications and estimates for the project, in accordance with County requirements.
5. The City shall be responsible for the advertisement of the Project for bids, evaluate bid results, award of a construction contract to the lowest responsible bidder, and provide surveying, construction testing and inspection, and contract administration.
6. The City shall be fully responsible for all costs of City, its consultants and contractors, and the County including mitigation costs (if any), associated with the design, construction, and inspection of the Project. County staff costs shall be capped at 5% of the project construction cost.
7. The City shall reimburse County for County staff costs incurred after the date of this agreement and related to the Project, billed quarterly, and subject to the 5% limitation noted in item 6 above.
8. The County shall provide review of the environmental documents prepared by the City for the Project and provide comments and assistance as appropriate.
9. The County, as owner of the bridge, shall assist the City in preparing and submitting environmental regulatory permit applications for the Project.
10. The County shall assist the City in working with the Army Corps of Engineers, if necessary, to make any required revisions to the County's existing real estate license for the bridge.
11. The City shall provide the County with all information requested by the Corps of Engineers.
12. The County shall provide review of the engineering documents prepared by the City or City's consultant for the Project and provide comments as appropriate. The Project shall not proceed unless the County grants written approval for the proposed design plans and specifications.
13. Upon completion of the Project, the City shall assume ownership, operation and maintenance of the trail, with the exception of electrical and security system maintenance and operation, which shall be the responsibility of the County. City's ownership, operation and maintenance of the trail shall not interfere with County's operation of the drawbridge or the passage of vessels through the estuary.
14. County and City shall provide public access to the trail for a term of at least 30 years, subject to reasonable closures due to maintenance, public safety concerns, by order of any State or Federal agency with jurisdiction and superior regulatory authority, or to allow County's continued operation of the drawbridge to remain in compliance with any applicable law, regulation, rule or permit terms. The County, at its sole discretion, may impose reasonable rules, regulations, restrictions or limitations upon public access and use of the trail where such rules, regulations, restrictions or limitations are necessary to ensure public safety, safe operation of the drawbridge, safe passage of vessels through the estuary or to maintain compliance with any applicable law, regulation, rule or permit terms.
15. When, in County's sole determination, the imposition of rules, regulations restrictions or limitations on public access and use of the trail are insufficient to ensure public safety,

safe operation of the drawbridge, safe passage of vessels through the estuary or to maintain compliance with any applicable law, regulation, rule or permit terms, County may demand and City shall install at its sole expense such physical modifications to the trail as reasonably necessary to satisfy one of the aforementioned goals. City may propose alternative physical modifications that may meet the County's goals; however, the selection of physical modifications shall rest with the County. City's failure to make such reasonable physical modifications in the time period requested by County shall relieve County of its obligations under paragraph 14.

16. Should the bridge ownership be transferred to another jurisdiction, the requirements of maintenance and operations of the trail shall also be transferred from the County to the other jurisdiction.

C. Indemnity Provisions

1. The City agrees to defend, indemnify, and hold harmless the County (with legal counsel reasonably acceptable to the County), its Board of Supervisors, its predecessors, successors, assignees, agents, departments, officials, representatives, employees and all persons acting by, through, under or in concert with any of them, and each of them (collectively "County Indemnitees") from any and all acts, claims, liabilities and losses by whomever asserted arising out of City's performance under this Agreement except those arising by reason of the sole negligence or willful misconduct of the County Indemnitees.
2. City shall include a provision in its design and construction contracts with the consultant(s), subconsultant(s), general contractor and its subcontractor(s) on the Project requiring the consultant(s), subconsultant(s), general contractor and its subcontractor(s) to indemnify County, to the fullest extent permitted by law, for damages resulting from the work of the consultant(s), subconsultant(s), general contractor and its subcontractors excluding indemnity for the sole negligence and/or willful misconduct of County. City shall also include a provision in the design and construction contract with the consultant(s), subcontractor(s), general contractor and its subcontractor(s) on the project requiring the general contractor to name County as an additional insured on its CGL insurance coverage. The risk of an inadvertent omission of such provision is on the City. Therefore, the City shall review the design and construction contract prior to bidding to ensure that such provisions have been included in the draft of the bid documents. Consultant(s), subconsultant(s), general contractor(s), and its subcontractor(s) retained by the City shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the County Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise out of their performance associated with the City's activities as outlined in Exhibit A.
3. City shall include a provision in its construction contract with the general contractor to place in its subcontractors' construction contract and cause its subcontractors to agree to indemnify and insurance obligations in favor of County and other County

Indemnitees in the exact form and substance of those contained in this Agreement in paragraph C3.

D. Employer/Employee Relationship

No relationship of employer and employee is created by this Agreement, it being understood that City and County shall act hereunder independently of one another; and that personnel employed or contracted by the City shall not have any claim under this Agreement or otherwise against County for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind; that City shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, Federal and State income taxes, and in connection therewith City shall indemnify and hold County harmless from any and all liability which City may incur because of City's failure to pay such taxes; that City does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the agency concerned.

Personnel employed or contracted by the County shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind; County shall be solely liable for and obligated to pay directly all applicable taxes, including, but not limited to, Federal and State income taxes, and in connection therewith City shall indemnify and hold City harmless from any and all liability which County may incur because of County's failure to pay such taxes; that County does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of City is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the agency concerned.

E. Amendments

If, during the term of this Agreement, it becomes necessary to amend or add to the terms and conditions of this Agreement, such amendments or additions shall be approved by the governing boards of County and City. However, any specific interpretations of the provisions of this Agreement, may be made by and between County and City by means of a memorandum of understanding jointly executed by the Directors of Public Works of County and City, or by equivalent officials, and such memorandum or memoranda shall be deemed incorporated herein and be deemed of equal force and effect with any of the terms and conditions contained herein.

F. Conformity With Law and Safety

County and City shall each observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over the scope of services or any part hereof, including all provisions of the California Occupational Safety and Health Act, and all federal, state, municipal and local safety regulations. All services performed by each party to this Agreement must be in accordance with these laws, ordinances, codes, and regulations.

G. Term of Agreement

The parties in this Agreement agree to work together in the spirit of cooperation and good faith and shall use their best efforts to accomplish the particular obligations set forth herein. Whenever mutual agreement is provided for in this Agreement, no party shall unreasonably withhold their approval.

In the event of any disagreement concerning the interpretation or implementation of this Agreement, the parties shall make good faith efforts to resolve their differences, which efforts may include utilizing non-binding arbitration, with costs to be borne equally by the two contracting parties. Each party shall bear its own attorneys' fees and costs.

H. Insurance/Self Insurance

County and City are self-insured as to any questions under this Agreement. No policies or bonds are required of either party as to any provisions of this Agreement.

I. Workers Compensation

City is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at City's own cost and expense and further, neither City nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

County is aware of and will comply with the requirements of Section 3700 of the Labor Code of the State of California at County's own cost and expense and further, neither County nor its carrier shall be entitled to recover from City any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

J. Choice of Law

This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

K. Notices

All notices required under this Agreement must be in writing, and may be given either personally or by registered or certified mail (return receipt requested), or by facsimile. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto,

designate any other person or address in substitution of the address to which such notice shall be given. Such notices shall be given to the parties at their address set forth below:

County

Daniel Woldesenbet, Ph.D., P.E.
Director of Public Works
399 Elmhurst Street
Hayward, CA 94544
Fax: (510) 670-5541

City of Oakland

P. Lamont Ewell
Interim City Administrator
One Frank Ogawa Plaza, Third Floor
Oakland, CA 94612
Fax: (510) 238-6840

L. Execution

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

ALAMEDA COUNTY

CITY OF OAKLAND,
a local public agency of the State of
California

By: _____
President, Board of Supervisors

By: _____
P. Lamont Ewell
Interim City Administrator

Date: _____

Date: _____

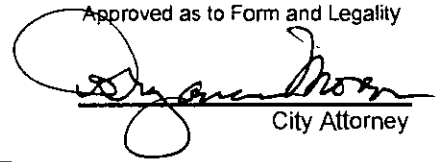
Resolution No. _____ C.M.S.

Approved as to form:
Richard E. Winnie, County Counsel

Approved as to form:

By: _____
Deputy County Counsel

By: _____
Office of the City Attorney


City Attorney

APPROVED
2009 JUN 16 PM 2:50

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE COUNTY OF ALAMEDA FOR THE IMPLEMENTATION OF THE BAY TRAIL PROJECT AT THE HIGH STREET BRIDGE

WHEREAS, City Council has directed staff to implement the Bay Trail project along the Oakland waterfront, including those sections at the bridges that cross to Alameda per Council Resolution 82096 C.M.S. on June 16, 2009; and

WHEREAS, the proposed Bay Trail at High Street will be integral to and require modification of Alameda County's High Street Bridge facility; and

WHEREAS, a Cooperative Agreement is required to formalize the partnership between the City of Oakland (City) and the County of Alameda (County) in order to define division of responsibilities for funding, design, construction, operation, maintenance, and public liability; and

WHEREAS, Charter Section 504(1) authorizes the City Administrator to enter into intergovernmental agreements such as this Cooperative Agreement with Council approval, and intergovernmental agreements are not subject to Oakland's purchasing requirements; now, therefore, be it

RESOLVED, that the City Council authorizes the City Administrator or his designee to enter into a Cooperative Agreement with the County to implement the Bay Trail Project at the High Street Bridge; and be it

FURTHER RESOLVED, that the Agreement shall be reviewed and approved by the City Attorney for form and legality and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and **PRESIDENT REID**

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California