

FUNDING AGREEMENT WITH THE
GEORGETOWN DIVIDE RECREATION DISTRICT

AGREEMENT #654-S0311

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and the Georgetown Divide Recreation District duly organized in accordance with Section 58000 et seq. of the Government Code of the State of California, and El Dorado County Resolution No. 432-88 (hereinafter referred to as "GDRD");

RECITALS

WHEREAS, GDRD is the sole owner of the Bayley House, originally built in 1861, and currently listed on the National Register of Historic Places, the Bayley House Barn, and other historic property, situated on a 10-acre park grounds solely owned and operated by the GDRD. The Bayley House Barn was recently renovated in 1998 and is now open to the public and regularly used for community events.

WHEREAS, GDRD desired to renovate the Bayley House to its original condition and to preserve and rehabilitate the Bayley House as an area museum, library and cultural center for the use of the public. The work was divided into four phases, including stabilization (hereinafter Phase 1 Stabilization Project), weatherproofing (Phase 2), exterior and interior preservation and rehabilitation (Phase 3) and establishment of a community cultural center, museum and library (Phase 4).

WHEREAS, the Phase 1 Stabilization Project would restore lateral stability of the partially collapsed north wall, add new reinforced concrete footings and temporary floor to floor shoring, and other work to stabilize the remaining structure and protect the integrity of the structure from possible collapse due to weather or seismic activity. GDRD's project engineer has estimated the cost of construction for the Phase 1 Stabilization Project to be approximately \$240,000.

WHEREAS, GDRD applied for and was awarded a grant under the California Heritage Grant Fund in the amount of \$140,000.00 from the State of California to fund in part the actual construction costs of the Phase I Stabilization Project, conditioned on GDRD providing matching funds in the amount of \$140,000. ("California Heritage Grant"). As a condition of this award, the GDRD has pledged to the Phase 1 Stabilization Project \$40,000 in the form of an in-kind match, consisting in part of donated engineering and project management time and expenses by a registered engineer(s), who will be volunteering his/her/their time to the project to complete all necessary and desirable design engineering and project management work.

WHEREAS, County determined that it was in the best interest of the public and the residents of El Dorado County to assist the GDRD by contributing \$100,000.00 to the actual construction of the Phase 1 Stabilization Project in order that the integrity of the Bayley House may be preserved and protected and the California Heritage Grant funding may be fully utilized in this project; and

County and GDRD entered into a Funding Agreement with the Georgetown Divide Recreation District, dated April 8, 2003 for that purpose, said funding agreement attached hereto and incorporated by reference herein ("Funding Agreement"); and

WHEREAS, that Funding Agreement by its terms has expired but the work has not completed as contemplated thereunder, and therefore the parties agree to enter into a new agreement restating the parties obligations for the purpose of completing the work as proposed in the original Funding Agreement.

NOW, THEREFORE, County and GDRD mutually agree as follows:

(1) Restatement of Original Agreement The Funding Agreement, attached hereto and incorporated by reference as though fully set forth herein, is hereby restated in its entirety, and except as amended hereinafter, the County and GDRD agree that all terms and conditions of that agreement are valid and enforceable.

(2) Use of Funds: All references in Article II, Use of Funds, to June 30, 2004 are hereby amended to state December 30, 2006.

(3) Extension of Term: Article III of the Funding Agreement is hereby amended to extend the term to December 30, 2006.

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As modified herein, all terms and conditions of the Funding Agreement are in full force and

effect and shall constitute binding obligations of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Restated Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: 11-8-05

By: Charlie Paine
Charlie Paine, Chair
Board of Supervisors
"County"

ATTEST:
Cindy Keck, Clerk
of the Board of Supervisors

By: [Signature] Date: 11-8-05
Deputy Clerk

-- GEORGETOWN DIVIDE RECREATION DISTRICT --

12-01-06 Dated:

By: [Signature]
Carl Clark
General Manager

ATTEST:

By: _____ Date: _____
Clerk of the Board of the District

ORIGINAL

FUNDING AGREEMENT WITH THE
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WHEREAS, GDRD desires to renovate the Bayley House to its original condition and to preserve and rehabilitate the Bayley House as an area museum, library and cultural center for the use of the public. The work will be divided into four phases, including stabilization (hereinafter Phase 1 Stabilization Project), weatherproofing (Phase 2), exterior and interior preservation and rehabilitation (Phase 3) and establishment of a community cultural center, museum and library (Phase 4).

WHEREAS, the Phase 1 Stabilization Project will restore lateral stability of the partially collapsed north wall, add new reinforced concrete footings and temporary floor to floor shoring, and other work to stabilize the remaining structure and protect the integrity of the structure from possible collapse due to weather or seismic activity. GDRD's project engineer has estimated the cost of construction for the Phase 1 Stabilization Project to be approximately \$240,000.

WHEREAS, GDRD applied for and was awarded a grant under the California Heritage Grant Fund in the amount of \$140,000.00 from the State of California to fund in part the actual construction

costs of the Phase I Stabilization Project, conditioned on GDRD providing matching funds in the amount of \$140,000. ("California Heritage Grant"). As a condition of this award, the GDRD has pledged to the Phase I Stabilization Project \$40,000 in the form of an in-kind match, consisting in part of donated engineering and project management time and expenses by a registered engineer(s), who will be volunteering his/her/their time to the project to complete all necessary and desirable design engineering and project management work.

WHEREAS, County has determined that it is in the best interest of the public and the residents of El Dorado County to assist the GDRD by contributing funds to the actual construction of the Phase I Stabilization Project in order that the integrity of the Bayley House may be preserved and protected and the California Heritage Grant funding may be fully utilized in this project;

NOW, THEREFORE, County and GDRD mutually agree as follows:

ARTICLE I

Payment of Funds: County will contribute the sum of \$100,000.00 to GDRD for use solely on construction of the Phase I Stabilization Project at such times and under the terms and conditions set forth below:

1. Within five days after execution of this Agreement by County, County will segregate funds in the amount of \$100,000.00 into an interest bearing trust account set up by County to partially fund, on a dollar for dollar match to the California Heritage Grant funds, the actual costs of construction of the Phase I Stabilization Project.
2. Prior to County disbursing any funds to GDRD, GDRD shall perform all of the following: GDRD shall (a) enter into a Heritage Grant contract for the provision of \$140,000.00 to augment and match the County's contribution in order to fully fund the project. A fully executed copy of the complete contract shall be provided to the County; (b) comply with the California Environmental Quality Act and all state, local planning and land use regulations; (c) provide a project director to oversee all elements of the Phase I Stabilization Project (including to perform regular site visits to monitor project progress, regularly report to the GDRD and if requested to the County's Board of Supervisors and manage the project schedule and budget) and will select engineering and architectural consultants through a competitive process; (d) provide sufficient administrative personnel and resources to manage grant reporting work for the duration of the project; (e) after consultation with civil and structural engineers and architects, establish a final project schedule and budget; and (f) select a contractor through an appropriate competitive bidding process for an actual construction cost not to exceed the engineer's current estimate of \$240,000.00, and enter into a contract that meets all statutory requirements for public works projects including but not limited to prevailing wage requirements. The selected contractor shall be required to provide payment and performance bonds in the amount of 100% of the project costs and shall be required to be insured at a minimum at the levels and kind of insurance meeting the requirements at a minimum of Exhibit "A".

3. The Phase 1 Stabilization Project shall consist of, at a minimum, completion of an in-wall pilaster system from ground to roof level tied with steel channel at each floor level, new reinforced concrete footings placed in existing footings trenches, a temporary floor to floor shoring tower which will support each framing level in the vicinity of the collapsed wall, and all other necessary and appropriate related work, all to be sufficient to restore the stability of the remaining building to protect the building from further collapse due to weather conditions or seismic activity.

4. Within 10 days of the submission of a copy of the fully executed construction contract(s) and/or other proof or evidence by GDRD, satisfactory to County, which documents and/or other proof or evidence shall be accompanied by an attestation of an authorized officer of the GDRD under penalty of perjury that the documents are true and accurate copies of the originals and that GDRD has committed to the construction contract for the project at a cost of \$240,000.00 or less, County will transfer to GDRD the sum of \$100,000.00 to be utilized to pay actual construction costs of the Phase 1 Stabilization Project under the terms and conditions set forth herein.

5. Each dollar of actual construction costs paid by GDRD to the selected contractor will be paid first from an equal combination of the California Heritage Grant funds and the County's contribution. The next \$40,000.00 of project costs will be paid from California Heritage Grant funds. Any construction costs in excess of \$240,000.00 shall be expressly assumed and provided by GDRD. In no event shall County's obligation under this Agreement exceed \$100,000.00.

ARTICLE II

Use of Funds: GDRD will use the funds to be paid by the County solely for actual construction costs of the Phase 1 Stabilization Project. GDRD shall complete the Phase 1 Stabilization Project in accordance with the project performance limits set forth in the California Heritage Grant contract, but in no event later than June 30, 2004. In the event GDRD and the State of California do not enter into a grant contract for \$140,000.00 of matching funds, or the GDRD does not provide the in-kind match of \$40,000.00 or does not complete construction of the Phase I Stabilization Project by June 30, 2004, County's obligation for payment shall be null and void, and upon written demand by the County, GDRD shall return all funds it has received from the County within 30 days of mailing of written demand by County. Further, in the event the actual construction costs for completion of the project are less than the engineer's estimate of \$240,000.00, the difference between the engineer's estimate and the actual construction costs shall be refunded to County on a pro-rate dollar for dollar basis with the State of California.

Commencing on the 10th day of the first full month immediately following the day funds are paid by County to GDRD and each 10th of the month thereafter, GDRD shall submit to County its statement noting the actual construction costs incurred and the percentage completion of the project. Such statement shall be substantially in form of Attachment "B" to this Agreement and signed under penalty of perjury by an authorized officer of GDRD.

ARTICLE III

Term: This Agreement shall become effective when fully executed by both parties ("Effective Date") and shall expire on December 31, 2004.

ARTICLE IV

Audit: For a period of three (3) years after the termination of this Agreement, GDRD will keep and maintain an accurate financial account, in accordance with generally accepted accounting principals, and meeting the requirements of the California Heritage Grant contract, of all funds expended by the GDRD for the project. Such accounting records shall be available for inspection by the County's designee, during normal business hours at the offices of GDRD, or offices of its financial consultant.

ARTICLE V

Compliance with Applicable Law: GDRD will comply with all Federal, State, and local laws and ordinances which are applicable to the project, including but not limited to: prevailing wage and competitive bidding requirements, license requirements, equal opportunity and non-discrimination laws, building codes and CEQA, land use and planning and zoning regulations.

ARTICLE VI

Independent GDRD Liability: GDRD is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of GDRD's employees, associates, and contractors in connection with respect to the Phase 1 Stabilization Project.

ARTICLE VII

No Third Party Beneficiary: Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

ARTICLE VIII

Termination: County may terminate this Agreement in the event GDRD ceases to operate, or otherwise becomes unable to substantially perform any terms or conditions of the Agreement. In the event of early termination of the Agreement, funds previously received from County shall be returned to County within thirty (30) days of termination.

ARTICLE IX

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

County of El Dorado
360 Fair Lane
Placerville, CA 95667
ATTN: Director of General Services

or to such other location as the County directs.

Notices to GDRD shall be addressed as follows:

Georgetown Divide Recreation District
P. O. Box 1418
Georgetown, CA 95634
ATTN: Bill Berger

or to such other location as GDRD directs.

ARTICLE X

Indemnity: The GDRD shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including, but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the GDRD ownership, construction, use, or operation of the Bayley House or the Phase 1 Stabilization Project. This duty of GDRD to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778, and survives the expiration of the term of this Agreement.

ARTICLE XI

Insurance: GDRD shall provide proof of a policy of insurance or self insured program satisfactory to the El Dorado County Risk Manager and documentation evidencing that GDRD maintains insurance or self-insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of GDRD as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage.
- C. Automobile liability insurance of not less than the minimum required by the State of California in the event motor vehicles are used by the GDRD in performance of the Agreement.
- D. Completed operations coverage.
- E. Theft insurance, protecting the GDRD from loss by reason of theft or embezzlement by an employee of GDRD in the minimum amount of \$250,000.00, or in lieu thereof present fiscal policies or practices of the GDRD, which in the sole discretion of County are adequate to protect against the theft or embezzlement of the funds contributed to the GDRD pursuant to this Agreement

- F. Property insurance covering the project for its full value during the term of this Agreement or the California Heritage Grant, whichever is longer.
- G. GDRD shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

The insurance shall be issued by an insurance company acceptable to the Risk Management Division of County, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division of County. GDRD agrees that the insurance required above shall be in effect at all times during the term of this Agreement.

ARTICLE XII

Change to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto

ARTICLE XIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Craven Alcott, Director, General Services, or successor.

ARTICLE XIV

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XV

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

ARTICLE XVI

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. GDRD waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XVII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

ARTICLE XVIII

Time is of the Essence: The parties hereto acknowledge and agree that time is of the essence.

ARTICLE XIX

Taxpayer Identification: GDRD's tax identification number is 68-02 06 970

REQUESTING DEPARTMENT CONCURRENCE:

By:  Dated: 3/26/03
Craven Alcott
Director of General Services

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: April 8, 2003

By: Helen Baumann
Helen Baumann, Chair
Board of Supervisors
"County"

Dated: April 8, 2003

ATTEST:
Dixie L. Foote, Clerk
of the Board of Supervisors

By: Margaret E. Moody April 8, 2003
Deputy Clerk

-- GEORGETOWN DIVIDE RECREATION DISTRICT --

Dated: 3/20/03

By: J. P. Chan
Chair
"GDRD"

ATTEST:

By: [Signature] Date: 3.20.03
Board Secretary

EXHIBIT A
INSURANCE REQUIREMENTS FOR CONTRACTOR

Insurance: Contractor shall be required to maintain the following minimum insurance during the course of construction of the Project and shall provide proof of a policy of insurance satisfactory to the GDRD and which meets the requirements under the California Heritage Grant:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the GDRD as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the GDRD, or be provided through partial or total self-insurance likewise acceptable to the GDRD.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of the Project. In the event said insurance coverage expires at any time or times during the term, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the GDRD and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, GDRD may, in addition to any other remedies it may have, terminate their agreement with Contractor upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to GDRD, and;
 - 2. The GDRD, its officers, officials, employees, and volunteers are included as

additional insured, but only insofar as the operations under the construction agreement are concerned. This provision shall apply to all liability policies except workers' compensation and professional liability insurance policies.

- I. The Contractor's insurance coverage shall be primary insurance as respects the GDRD, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the GDRD, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the GDRD, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the GDRD, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the GDRD, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the GDRD, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of the construction agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of the construction agreement for not less than three (3) years following completion of performance of the construction agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the GDRD, either independently or in conjunctions with the California Heritage Grant requirements.

ATTACHMENT B

Dated: _____

Ms. Craven Alcott
Director of General Services
County of El Dorado
360 Fair Lane
Placerville, California 95667

Re: Georgetown Divide Recreation District

Dear Ms. Alcott:

This letter will certify that as of the above date the Georgetown Divide Recreation District has completed _____% of the Phase I Stabilization Project at the approximate cost indicated. Through the last day of the preceding month, the Georgetown Divide Recreation District has made progress payments to the contractor in total sum of \$ _____, of the funds granted to it by the County of El Dorado. This will further certify that as of the above date, the Georgetown Divide Recreation District has advanced \$ _____ in matching funds from the District and _____ \$ of funds from the California Heritage Fund Grant.

\$

I declare under penalty of perjury under the laws of the State of California that the foregoing certification is true and correct. Executed the date written above in El Dorado County, State of California

By: _____

(Print name & Title)