



**Contra
Costa
County**

To: Contra Costa County Flood Control District Board of Supervisors

From: Brian M. Balbas, Public Works Director/Chief Engineer

Date: January 21, 2020

Subject: Approve Agreement with American Rivers for the Three Creeks Parkway Restoration Project, Brentwood area. Project No. 7562-6D8490

RECOMMENDATION(S):

APPROVE and AUTHORIZE the Chief Engineer, Contra Costa County Flood Control and Water Conservation District (District), or designee, to execute an agreement with American Rivers, Inc. (American Rivers), subject to approval by the County Administrator and approval as to form by County Counsel, for implementation of the Three Creeks Parkway Restoration Project (Project).

FISCAL IMPACT:

Property acquisitions under the agreement with American Rivers (Agreement) will cost an estimated \$200,000, which will be paid with Drainage Area (DA) 130 funds. The District will also incur costs to complete a portion of the Project work if the Board, in a later action, awards a contract to complete that work. Those costs would be paid with DA 130 funds, and reimbursed in part by American Rivers. The District will advise the Board of the District's share of the costs of the Project at that time.

BACKGROUND:

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **01/21/2020** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: January 21, 2020

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Stacey M. Boyd, Deputy

Contact: Gus Amirzehni, (925)
313-2128

The Three Creeks Parkway Restoration Project (Project), a joint effort

BACKGROUND: (CONT'D)

by the District and American Rivers, involves the widening of Marsh Creek and installation of native landscaping in and alongside three reaches of the creek in the Brentwood area, starting at the Union Pacific Railroad overcrossing and ending at Dainty Avenue. The Project is an expansion of a smaller project, originally proposed by American Rivers and called the Three Creeks Restoration Project, for which the DWR in 2016 provided a grant to both American Rivers and the Flood Control District. In March 27, 2018, the District and American Rivers entered into an agreement to share costs of completion of the smaller project. Under that agreement, American Rivers was to bear the bulk of the costs of the smaller project through a number of grants, and retain contractors to complete all of the civil/earth work and landscaping work. The District was to make a contribution in the form of in-kind services to complete an environmental review of the project. The proposed agreement (Agreement) would supersede the 2018 agreement and set forth cost sharing and responsibilities to complete the larger project. Key provisions of the Agreement are as follows:

1. Property acquisitions. The District will be obligated to utilize its best efforts to acquire interests in real property adjacent to Marsh Creek that have been determined to be needed to complete the Project. The Agreement provides that the Project will be terminated if one of these real property interests is not obtained. In that event, American Rivers and the District would proceed with the smaller Three Creeks Restoration Project instead.
2. Funding; funding assessments. District staff has identified \$1,677,533 in DA 130 funds as available to contribute to the civil/earth work portion of the Project. American Rivers' has secured approximately \$5.4 million, primarily from state and federal grants, to contribute toward Project costs. The estimated cost of the Project work as a whole is approximately \$6.6 million. Because of the potential for bids to come in higher than estimates, the Project work was broken into base bids and bid alternates, allowing for portions of the work to proceed even if all of it cannot be completed due to insufficient funding. Under the Agreement's funding assessment process, the District and American Rivers will evaluate the sufficiency of funding after bids are opened and then determine what parts of the Project can be funded, in an agreed order of priority. If funding earmarked for civil/earth work is not sufficient to fund even the base bid portion of the civil/earth work, the Project will be terminated, and the District and American Rivers will proceed to complete the DWR-funded smaller project instead.
3. Design plans. Under the Agreement, American Rivers is responsible for providing and paying the cost of design plans for the civil/earth work and landscaping work. Both sets of plans are to be submitted to the Board for approval.
4. Bidding and contracting; permits. Under the Agreement, bidding and contracting for the civil/earth work is the responsibility of the District. American Rivers will be responsible for soliciting bids and contracting for the landscaping work. The District will obtain permits from state and federal agencies, while American Rivers will obtain permits from local

agencies, including an encroachment permit from the District.

5. Project work responsibilities. Under the Agreement, depending on the sufficiency of funding, property acquisitions and conditioned upon the Board's approval of a contract with a civil/earth work contractor, the District will be responsible for completing the civil/earth work portion of the Project that can be funded. American Rivers will be responsible for completing the corresponding landscaping portion of the Project, and then maintaining the landscaping through establishment. After establishment (at approximately the 6-year mark), the District will be responsible for maintaining the landscaping at its cost.

6. District cost. As noted above, \$1,677,533 in District funding has been identified for contribution to the civil/earth work portion of the Project, subject to Board approval. However, the Agreement also provides that both the District and American Rivers can elect to contribute more funding toward the Project. This provides an avenue to avoid termination of the Project for lack of sufficient funding. If District staff elects to utilize this provision, District's proposed contribution for civil/earth work will be calculated during the funding assessment. When the District submits a proposed contract award to the Board for consideration, the Board will be advised of the District's proposed contribution, which will be District's share of the costs under the contract. The remainder of the costs would be the responsibility of American Rivers. The District would recover those costs through an invoicing and reimbursement process.

7. Flood control safeguards. Because the Project is taking place in a flood control channel, the Agreement contains standards designed to prevent landscaping from becoming too dense and thereby slow the flow of stormwater. There are also requirements in the Agreement to design the landscaping work so that there are clear areas through which maintenance crews can enter in order to inspect and maintain the creek.

8. Indemnification. American Rivers will be required to defend and indemnify the District against liabilities caused by the American Rivers, and the District will be required to defend and indemnify American Rivers against liabilities caused by the District.

CONSEQUENCE OF NEGATIVE ACTION:

If the Agreement is not approved, American Rivers and the District will remain obligated under their existing agreement to complete the smaller DWR-funded project.