

## **Attachment A**

# **JOINT EXERCISE OF POWERS AGREEMENT PURSUANT TO GOVERNMENT CODE SECTIONS 6500 ET.SEQ. FOR IMPLEMENTATION OF AN AGREEMENT TO ACQUIRE, DEVELOP AND MAINTAIN SPORTS FIELDS**

THIS JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is made and entered into \_\_\_\_\_, 2003 by and between the Cities of Albany, Berkeley, Emeryville, Richmond and El Cerrito or any combination thereof (collectively "Cities").

### **RECITALS**

WHEREAS, there is a regional need among the Cities to provide sports fields and other parkland for the joint recreational use and enjoyment of its residents;

WHEREAS, the Cities have the authority and expertise to acquire, develop, restore, operate and maintain sports fields and other parkland for public benefit; and

WHEREAS, the land within the Eastshore State Park (as included in the adopted State Park Plan), and within the jurisdictional boundaries of the Cities, constitutes a unique and valuable economic, environmental, scientific, educational and recreational resource that should be held in trust for present and future generations; and

WHEREAS, the Cities find and determine that it would be to their mutual advantage and the public benefit to coordinate their power and authority and expertise to facilitate the acquisition, restoration, development, maintenance and operation of lands within their jurisdictional boundaries for sports fields and parkland (hereafter "Facilities"); and

WHEREAS, the Cities desire to engage in a collaborative effort to obtain funding to pursue the objectives of this Agreement from grants and other sources of funding and not from the general funds of the Cities; and

WHEREAS, the first Facility contemplated by the Cities is the Gilman Street Sports Field Project ("Gilman Project"), a description of which is attached as Exhibit A; and

WHEREAS, it is the intent of the Cities that the sports fields designated in the Eastshore State Park Plan will not be constructed as long as the Gilman Project results in the creation of sports fields; and

WHEREAS, the East Bay Regional Park District ("District") intends to apply for grants, including but not limited to, those under the Murray-Hayden Urban Parks Grant Program

("Murray-Hayden Grant") and the Urban Park ("Urban Park Grant") Act of 2001 on behalf of the Cities to facilitate the development, operation and maintenance of the Gilman Project;

NOW THEREFORE, the Cities mutually agree as follows:

## **SECTION 1. TERM OF AGREEMENT**

- 1.0. This Agreement shall become effective upon the date executed by the first two cities. This Agreement shall remain in full force and effect between the Cities unless terminated in accordance with the provisions of Section 6 of this Agreement.

## **SECTION 2. PURPOSE OF AGREEMENT**

- 2.0. The primary purpose of this Agreement is for the Cities to unite in a collaborative effort to acquire, restore, develop, operate and maintain additional sports fields and necessary related facilities, including any necessary mitigation, to meet the needs of the Cities on a regional basis or to operate and maintain existing facilities with the consent of the governing body of the city in whose jurisdiction such facility currently exists. Nothing in this Agreement shall preclude Cities from independently acquiring and operating Facilities in their own jurisdictions, and such Facilities shall not be subject to this Agreement.
- 2.1. The other purpose of this agreement is to assure that the grants obtained by the Cities shall be used for Facilities which are developed, operated, and maintained in an environmentally benign manner and that generate sufficient revenue to cover their operating and maintenance costs, while also assuring that any adverse impacts on wildlife or habitat values are less than significant.
- 2.2. The Cities agree to forfeit any and all rights to acquire, lease, restore, develop, operate, or maintain sports fields in the Eastshore State Park as defined in the December 2002 Eastshore State Park Master Plan included in the approved State Park Plan upon the approval of the Gilman Project (Exhibit "A"), including modifications adopted during the CEQA process, and upon execution by the City of Berkeley of a lease with the District for operation of Facilities at the Gilman Project site.
- 2.3. Regarding areas within the Eastshore State Park and areas within one thousand (1,000) feet of the December 2002 boundary of the Eastshore State Park that are west of Highway 580 except within the existing Golden Gate Fields, the Cities may only exercise their powers at the Gilman Street site or the Albany Plateau site that have been designated for the development of playing fields as shown on the attached Exhibit "B", and the Cities shall not exercise their authority for any other areas within Eastshore State Park and/or areas within one thousand (1,000) feet of the December 2002 boundary of the Eastshore State Park that are west of Highway 580 except within the existing Golden Gate Fields property.

### **SECTION 3. DEVELOPMENT, MAINTENANCE AND OPERATION**

- 3.0 All costs of developing, operating and maintaining Facilities arising from this Agreement shall be paid for from the grants obtained by the District or Cities and from user fees. Except as otherwise provided in this Agreement or any subsequent agreement, no City shall be obligated to contribute any of its own funds for the development, operation and maintenance of any Facilities, unless otherwise agreed to in writing by the Cities subject to any required approvals of their City Councils.
- 3.1 The monies from the Murray-Hayden and Urban Parks grants and other grant funds or funding sources that the District or Cities may receive will be used by the Cities to develop, operate and maintain the Gilman Project pursuant to a further written agreement on such development and operation as further set forth in this section 3.
- 3.2 Upon receipt of such funds under 3.1, each of the Cities independently or jointly may conduct a preliminary financial feasibility analysis of the Gilman project in order to determine how much of a financial commitment, if any, would be entailed in proceeding to implement the Gilman Project. None of the Cities shall be deemed financially committed to expend any funds on the Gilman Project unless they enter into an agreement ("Agreement 2"), approved by their city councils to make such financial or other commitments.
- 3.3 If Agreement 2 is approved and executed as provided in Section 3.2 above with the City of Berkeley a party, the City of Berkeley shall be the lead agency to process the Gilman Project through land use approvals in the City of Berkeley, including, if necessary a vote of the people. The provisions of 4.2 and 4.3 shall be substantially incorporated into the land use approvals for such project and approved by the voters at the time such project is submitted to the voters. Upon the completion of such approvals, each of the Cities independently or jointly may conduct a further financial feasibility analysis of the Gilman project in order to determine how much of a further financial commitment, if any, would be entailed in proceeding to implement the Gilman Project. None of the Cities shall be deemed financially committed to expend any funds on the Gilman Project unless they enter into an agreement ("Agreement 3"), approved by their city councils to make such financial or other commitments.
- 3.4 If Agreement 3 is executed with the City of Berkeley as a party, and the City of Berkeley has determined that the Gilman Project is feasible, it shall lease the land on which the Gilman Project will be located from the District.
- 3.5 The City of Berkeley's obligations under section 3 are contingent on its financial feasibility analyses and the execution of Agreements 2 and 3 between the Cities, to which the City of Berkeley is a party, that the Cities shall on a reasonably commensurate basis share the costs of development and operation of the Gilman Project. In the absence of such an agreement for reasonable contributions to cover the anticipated costs of the Gilman Project, the City of Berkeley will be absolved of all further responsibilities under this agreement.

- 3.6 For other future Facilities, the city within whose jurisdiction the sports fields and park land is located shall be the lead agency to acquire, lease and operate the Facility, unless the Cities decide by written agreement otherwise. That lead city's agreement in this regard shall be contingent on financial feasibility analyses similar to those required for the Gilman Project and the execution of agreements between the Cities including the lead city, that the Cities shall on a reasonably commensurate basis share the costs of development and operation of such project. In the absence of such agreement for reasonable contributions to cover the anticipated costs of the Facility, the lead city will be absolved of all further responsibilities under this agreement with respect to such Facility.
- 3.7 For all Facilities, including the Gilman project, the residents of each of the Cities shall have the right to use any of the sports fields and park land developed, operated and maintained pursuant to this Agreement and will be accorded the same privileges and benefits that would accrue to residents of the jurisdiction within which the project is located, regardless of where such Facility is located.

#### **SECTION 4. CITY APPROVAL OF PROJECTS**

- 4.0 Prior to applying for any grant for any Facility other than the Gilman Project, the city in which such Facility is to be located, shall have the right, by resolution of the City Council, after public hearing, to reject the project, in concept, within 60 days of written request that the Cities apply for such grant to locate a Facility in that City's jurisdiction.
- 4.1 Notwithstanding any other provision of this Agreement, the Cities shall not proceed with any project under this Agreement without full compliance with the California Environmental Quality Act, and zoning and/or development review and building codes of the City in which the project is located.
- 4.2 For projects covered by this Agreement, the Cities shall have no power to approve a project if an environmental impact report prepared on that project identifies a significant, unavoidable and unmitigable adverse impact (whether project-specific or cumulative) on biological resources regardless of whether the project could otherwise be approved pursuant to a statement of overriding considerations under Public Resources Code Section 21081(b).
- 4.3 For projects covered by this Agreement, the Cities shall have no power to approve a project if an initial study, negative declaration, mitigated negative declaration, notice of exemption or environmental impact report prepared on that project identifies a potentially adverse impact on a population or habitat of a species listed under the Federal Endangered Species Act or the California Endangered Species Act, if the mitigation measures identified do not wholly mitigate for the identified impact and provide a substantial benefit for any affected listed species.

## **SECTION 5. MEETINGS OF GOVERNING BODY REPRESENTATIVES**

- 5.0 At the time of approval of this Agreement, the Cities shall appoint a member of their City Councils and an alternate to meet with one another to act as a clearinghouse and point of contact for the Cities. Written notice of any replacement of a representative shall be provided to each City at least 10 days prior to the effective date of the replacement. The representatives will not have the power to bind the city councils of the Cities but shall act as a conduit of information to and from Cities regarding the implementation of this Agreement. Where the representatives agree among themselves as to further steps that may be taken to implement the Agreement, they must take the proposed action back to their city councils for approval. The representatives shall meet as often as necessary to implement the projects under this Agreement. Input from representatives of the field users and of environmental groups shall be solicited to the maximum extent practicable.
- 5.1 Each city council member shall be responsible for keeping the city council of his or her respective city apprised of the progress of the implementation of this Agreement and shall propose any necessary actions to the city council for its approval.

## **SECTION 6. TERMINATION**

- 6.0. Any City may withdraw from this Agreement after a minimum of six (6) months prior notice.
- 6.1 This Agreement shall terminate if a majority of Cities withdraw.
- 6.2 This Agreement shall terminate automatically as to any project other than the Gilman Project, if Cities materially amend Sections 4.2 or 4.3 of this Agreement, such that they no longer provide the environmental protection that these sections envision. This Agreement shall automatically terminate as to the Gilman Project, if provisions of Section 3.3 of the Agreement requiring the incorporation of the material environmental protections of sections 4.2 and 4.3 into the land use and voter approvals of the Gilman Project are amended or repealed. This Agreement shall automatically terminate if this subsection is repealed or materially altered

## **SECTION 7. NOTICES**

- 7.0 Any notices required under this Agreement shall be sent by facsimile and U.S. Mail (first class with postage prepaid) and shall be effective upon receipt of facsimile, provided the facsimile and the mailed notice are sent to the following:

Phil Kamlarz, Acting City Manager  
City of Berkeley  
2180 Milvia Street  
Berkeley, Ca. 94704  
Fax: (510) 981-7099

Beth Pollard, City Administrator  
City of Albany  
1000 San Pablo Avenue  
Albany, Ca. 94706  
Fax: (510) 528-5797

John Flores, City Manager  
City of Emeryville  
333 Park Ave  
Emeryville, Ca. 94608  
Fax: (510) 596-3724

Isiah Turner  
City Manager  
City of Richmond  
2600 Barrett Avenue  
Richmond, Ca. 94608  
Fax : (510) 620-6542

City of El Cerrito

## **SECTION 8. GOVERNING LAW**

- 8.0 This Agreement shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in Alameda County, California.

## **SECTION 9. MODIFICATION TO AGREEMENT**

- 8.0 Except as provided in section 6, the terms and conditions of this Agreement shall not be altered or otherwise modified, except by a written amendment to this Agreement executed by Cities after approval of their governing boards.

## **SECTION 10. AUTHORIZATION**

10. The signatories to this Agreement represent they are authorized by their respective governing bodies to enter into and bind their Cities to its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative.

Approved as to Form:

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

Title: \_\_\_\_\_

City of: \_\_\_\_\_

Date: \_\_\_\_\_



Approved as to Form:

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

Title: \_\_\_\_\_

City of: \_\_\_\_\_

Date: \_\_\_\_\_

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City Attorney

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