

REIMBURSEMENT AGREEMENT
BETWEEN THE CITY OF ALBANY
AND GOLDEN GATE LAND HOLDINGS LLC REGARDING THE
GREEN TECHNOLOGY COLLABORATIVE AT GOLDEN GATE FIELDS PROJECT

This Reimbursement Agreement (hereinafter “Agreement”) is made by and between the City OF ALBANY (hereinafter “City”) and Golden Gate Land Holdings LLC, a California limited liability company (hereinafter “Landowner”).

RECITALS

WHEREAS, Landowner owns in fee, the real property listed in Exhibit “A”, attached hereto and incorporated herein by this reference (the “Subject Property”); and

WHEREAS, Landowner is developing a proposal for locating a second campus of the Lawrence Berkeley National Laboratory and ancillary development and open space on the Subject Property; and

WHEREAS, the Landowner desires consultation and other pre-application services of City staff and City consultants for a project generally referred to as the “Green Technology Collaborative at Golden Gate Fields” (hereinafter, the “Project” and the “Project-Related Services”); and

WHEREAS, in accordance with Albany Municipal Code Section 20.100.010C *Fees*, the City and Landowner are entering into this Reimbursement Agreement to specifically provide for City to recover its costs in providing the Project-Related Services referenced above including, but not limited to, the costs attributable to the services of City Staff and professionals under contract with the City (“Retained Consultants”) where such services involve pre-application consultation regarding the Project.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Purpose of Agreement.** The purpose of this Agreement is to provide for payments by Landowner of all City-related internal and “out-of-pocket” costs of the City directly or indirectly related to the development of the Project.
2. **Term of Agreement.** The term of this Agreement shall commence on execution by City and shall continue until terminated, or modified, as provided for in other sections herein.

3. No Approvals. Nothing in this Agreement shall be construed as preliminary or final approval of any land use or related decision. This Agreement specifically does not commit the City to any decisions or approvals not yet authorized by the City.

4. Consultants' Work and Payments. Landowner acknowledges that in addition to City staff time, Retained Consultants will be necessary to assist City in providing information and related services associated with development of the proposed Project. Retained Consultants shall be retained by the City, shall report to the City, and shall remain independent of Landowner. However, it is agreed that Retained Consultants shall be available to meet with Landowner on an as-needed basis. No Project-Related Services shall be provided nor costs incurred for such services unless and until Landowner and City shall have agreed in writing as to the scope of work, budget and amount of required deposit (see Section 7 below). All Project-Related Services to be provided by Retained Consultants shall be funded in accordance with a payment schedule that is part of the scope of work and budget approved by City and Landowner prior to the commencement of any such work.

City shall use its best efforts to negotiate a payment schedule with each Retained Consultant that divides the work to be performed into phases with invoices to be submitted by the Retained Consultant upon completion of each phase and with invoices to be paid by City out of the GGF Project Services Reimbursement Account, as defined in Section 7 below, upon review and acceptance by City of each phase of work as complete and performed in accordance with the applicable scope of work and budget. Unless otherwise agreed in writing by the parties, all Retained Consultants shall be compensated on a "time and materials" basis and City shall retain the right to stop work and/or terminate the contractual relationship upon written notice to the Retained Consultant, provided that all Project-Related Services performed prior to such notice being received by a Retained Consultant shall be funded out of the GGF Project Services Reimbursement Account if accepted by City as complete and performed in accordance with the applicable scope of work and budget.

5. Computation of Required Reimbursement for Services of Retained Professionals and City Staff. Unless otherwise agreed in writing by the parties, the funds to be paid to City by Landowner to reimburse City for costs incurred in connection with the performance of Project-

Related Services by Retained Consultants will be based upon an hourly rate for the services performed at the normal hourly rate which said professionals routinely bill the City for like services.

Funds to be paid to City by Landowner to reimburse City for staff time and related costs incurred in performing the Project-Related Services will be based upon the City's Master Fee Schedule.

6. The Amended Contract Agreement with Fern Tiger Associates. The parties to this Agreement acknowledge that on June 20, 2011, the Albany City Council approved "Amendment No. 1 To Contract Agreement No. C08-10 For Professional Services Between The City Of Albany And Fern Tiger Associates For Project: Waterfront Visioning Process." This amendment contemplates the provision of certain professional services by Fern Tiger Associates ("FTA") relating to the Green Technology Collaborative at Golden Gate Fields. Landowner agrees to reimburse City for the costs of services provided by FTA pursuant to amended Contract Agreement No. C08-10 commencing June 5, 2011.

7. Initial Contribution to City. Landowner will, concurrently with its execution of this Agreement, make a contribution to City in the amount of Seventy-Five Thousand and no/100 Dollars (\$75,000), which contribution will be held by City in a separate account (the "GGF Project Services Reimbursement Account") and used by City for the sole purpose of reimbursing the City's expenses incurred for the services to be provided to Landowner by City and Retained Consultants under this Agreement.

The initial contribution and all subsequent contributions to the GGF Project Services Reimbursement Account will be deposited as a separate designated line item in the same interest bearing fund pool as the City's General Fund revenues.

8. Additional Contributions to City. Landowner shall make additional contributions to the GGF Project Services Reimbursement Account as necessary to maintain a minimum balance on deposit with City of Twenty-Five Thousand and No/100 Dollars (\$25,000). City shall determine if and when an additional contribution is required from Landowner in order to assure that sufficient funds are on deposit to maintain the minimum balance. If City determines an

additional contribution is required, the Finance Director of City shall promptly issue to Landowner a request for payment which shall include an accounting of:

- (a) the amounts expended out of the GGF Project Services Reimbursement Account during the period following Landowner's last contribution;
- (b) the balance of funds remaining on deposit in the GGF Project Services Reimbursement Account; and
- (c) the additional contribution required to maintain the minimum balance.

Landowner shall deposit such additional contribution with City within ten (10) business days of receipt of the notice from the Finance Director requesting payment. If Landowner fails to make such additional contribution within ten (10) business days of receipt of notice, or within such greater period of time as may be provided for by the Finance Director in said notice, then Finance Director may direct that all work performed by the Retained Professionals and City Staff be suspended until Landowner deposits the requisite contribution or City and Landowner have negotiated an amendment to this Agreement as provided in Section 17 below.

City shall require the Retained Professionals to provide City with billing statements, in a form acceptable to City, describing the Project-Related Services that each of them provided to City in connection with the providing of services under this Agreement including the dates such services were provided, the time periods involved, the individuals performing the services, and the compensation due for the Project-Related Services that have been performed and are the subject of the billing statement. City will provide copies of the billing statements to Landowner for review not later than fifteen (15) days after the statements have been received by the City; provided, however, the billing statements may be redacted to eliminate references to matters that fall within the attorney-client privilege or the work product privilege available to City and the City Attorney under the Evidence Code of the State of California. In addition, the Finance Director will maintain a written record describing the City Staff services that are performed for which reimbursement is required under this Agreement, including the date and time periods involved and the staff members performing the services.

On or about the fifteenth day of each calendar month during the term of this Agreement, City shall provide Landowner with a written statement containing the following information:

- (a) the balance of funds held by the City in the GGF Project Services Reimbursement Account on the first day of the previous calendar month;
- (b) a detailed list of all deposits made to the GGF Project Services Reimbursement Account from donations made to the City for that purpose by Landowner during the previous calendar month;
- (c) a detailed list of all payments made from the GGF Project Services Reimbursement Account by the City during the previous calendar month; and
- (d) the balance of funds held by the City in the GGF Project Services Reimbursement Account at the close of business on the last day of the previous calendar month.

9. Return of Unexpended Funds. If, upon the completion of the Project-Related Services, any funds remaining in the GGF Project Services Reimbursement Account have not been expended or committed for expenditures authorized by this Agreement for the Project-Related Services, City shall return to Landowner such unexpended or uncommitted funds.

10. Termination of Agreement by City. City may terminate this Agreement at any time if Landowner fails to comply with the terms of this Agreement. Before terminating this Agreement for any reason, City shall give Landowner not less than fifteen (15) days written notice of Landowner's default under this Agreement and of City's intent to terminate and shall afford Landowner the right to cure any default in its performance during this 15-day period. If Landowner does not commence to cure the default within fifteen (15) days of such notice and continue to cure the default to completion, the City may terminate this Agreement by written notice to Landowner and shall have no further obligations hereunder.

11. Suspension of Project Services or Termination of Agreement by Landowner. Landowner may suspend the Project-Related Services for which provision is made in this Agreement by giving City written notice of Landowner's election to stop work on the performance of Project-Related Services. Landowner may also terminate this Agreement at any time by giving City written notice of its election to terminate this Agreement. Neither the suspension of work under this Agreement nor the termination of this Agreement by Landowner shall relieve Landowner of any obligation to make payments to the City for reimbursable costs and liabilities that City has

incurred before the effective date of the receipt of the notice of suspension or termination.

Landowner shall reimburse City for all such obligations; provided, however, that City shall not incur additional liabilities for such services after receiving notice from Landowner of its election to suspend work under or terminate this Agreement. Any portion of the funds not utilized by the City in accordance with this Agreement shall be returned to Landowner.

12. No General Fund Liability. It is understood and agreed that all costs of Project-Related Services shall be borne by Landowner. It is further understood that such obligations are not obligations of the City or any of its departments, and the City shall not be liable for any costs of Project-Related Services from its general fund, or any other fund, except for funds obtained from Landowner.

13. Assignment. The Parties acknowledge that the Subject Property may be conveyed or transferred to a new landowner as part of a larger transaction involving The Stronach Group and MI Developments Inc. In the event such a conveyance or transfer does take place, Landowner shall have the full right to assign this Agreement in connection therewith. Upon the express written assignment by Landowner and assumption by the assignee of the assignment, Landowner shall be released from any further liability or obligation hereunder and the assignee shall be deemed to be the "Landowner," with all rights and obligations related thereto, with respect to the Subject Property.

14. Attorney's Fees. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs and expenses incurred.

15. Counterparts. This Agreement may be signed in counterparts and when signed by all parties hereto shall constitute a binding agreement on the parties.

16. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

17. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

18. Severability. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

19. Jurisdiction and Venue. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

20. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services to be performed for this project. This Agreement supersedes all prior negotiations, representations, or agreements.

21. Notices. All notices to be given hereunder shall be in writing and may be served, either personally or by certified or registered mail, return receipt requested, postage prepaid, to the persons and addresses set forth below or to any other address provided by one to the other from time to time in writing.

CITY: Beth Pollard
City Manager
City of Albany
1000 San Pablo Avenue
Albany, CA 94706

LANDOWNER: Dr. Michael Bumby
VP, Corporate Development
The Stronach Group
337 Magna Drive
Aurora, Ontario L4G 7A9
Canada

With a copy to: Robert Hartman
General Manager
Golden Gate Fields
1100 Eastshore Highway
Berkeley, CA 94710

20. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Landowner and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF ALBANY

GOLDEN GATE LAND HOLDINGS LLC

By: Beth Pollard
Title: City Manager
Date: 7/6/11

By: [Signature]
Title: SVP - Finance
Date: 7/18/11

Attest:

By: Judith R. Paul
Title: CITY CLERK
Date: 7/6/2011

Michael Bumb
[Signature]
VP. Corp Development
July 13, 2011

Approved As To Form:

Robert Zuecher
By: Robert Zuecher
Title: City Attorney
Date: 7/5/11

Exhibit "A" - Subject Property

EXHIBIT A

LEGAL DESCRIPTION OF GOLDEN GATE FIELDS PROPERTY

Parcel 1:

Real Property partly in the city of Albany, and partly in the city of Berkeley, County of Alameda, State of California.

An irregular shaped parcel of land in the cities of Albany and Berkeley, County of Alameda, State of California, being portions of Lots 13, 14, 22; 23, 24, 25, and 26, in section 33, Township 1 North, Range 4 West, Mount Diablo Base & Meridian, and of the uplands, formerly called South Cerrito, now know as Point Fleming and adjacent Marsh Lands easterly of the Meander line of ordinary high tide, as shown on that certain map entitled "Map No. 4 of Salt Marsh and Tide Lands situated in the County of Alameda, State of California", certified copies of which are on file with the State Lands Commission of California and with the Recorder of the City and County of San Francisco; portions of lots 5 and 6, section 4, Township 1 South, Range 4 west, Mount Diablo Base & Meridian and a portion of the land granted to Berkeley Waterfront Company described in Article II of Agreement dated March 10, 1936, recorded in Book 3306 Page 437, Official Records of said County, said Parcel being more particularly described as follows:

Commencing at the intersection of the boundary line between the cities of Berkeley and Albany with the westerly line of said section 33; thence north $75^{\circ}39'55''$ east, 154.82 feet to a line that is parallel with and distant easterly 150.00 feet at right angles from said westerly section line, which point is the true point of beginning for this description; thence from said true point of beginning, along said parallel line due north, a distance of 3171.10 feet, to its intersection with the southerly line of Buchanan Street (80.00 feet wide); thence due east thereon, a distance of 1095.46 feet to the beginning of a tangent curve therein concave southwesterly, having a radius of 580.00 feet; thence southeasterly along said curve, a distance of 545.12 feet; thence along the southwesterly line of said Street, tangent to said curve, south $36^{\circ}09'00''$, east 63.49 feet; thence along a northwesterly line of said Street, which is the northeasterly prolongation of a radial line of a curve therein concave southwesterly, having a radius of 765.00 feet, south $53^{\circ}44'02''$ west, 5.89 feet; thence southeasterly, along said last mentioned curve Street line, a distance of 326.67 feet; thence along a westerly line of said Street, tangent to said curve, south $11^{\circ}47'58''$ east, 596.12 feet to the beginning of a non-tangent curved westerly line of east shore state highway, which is a curve concave easterly, having a radius of 3060.00 feet (a radial to said point bears south $83^{\circ}00'49''$ west); thence southerly along said last mentioned westerly curved line, a distance of 206.19 feet to the end thereof (a radial to said point bears south $79^{\circ}09'11''$ west); thence continuing along said westerly highway line, the following described courses: south $12^{\circ}01'20''$ east, 97.96 feet to the beginning of a non-tangent curve concave easterly, having a radius of 5052.0 feet (a radial to said point bears south $80^{\circ}03'14''$ west); thence southerly, along said last mentioned curve, a distance of 266.64 feet; thence tangent to said curve, south $12^{\circ}58'12''$ east, 33.08 feet to the beginning of a tangent curve concave westerly, having a radius of 9948.00 feet; thence southerly, along said last mentioned curve, a distance of 202.56 feet; thence tangent to said curve, south $11^{\circ}48'12''$ east, 367.34 feet; thence south $9^{\circ}53'35''$, east 679.01 feet; then south $4^{\circ}16'44''$ east, 597.54 feet to the beginning of a tangent curve concave easterly, having a radius of 3052.00 feet; thence southerly along said last mentioned curve, a distance of 418.62 feet; thence tangent to said curve, south $12^{\circ}08'16''$ east, 43.12 feet to the beginning of a tangent curve concave northwesterly, having a radius of 40.00 feet; thence along said last mentioned curve, a distance of 61.29 feet; thence along northerly line of said highway, tangent

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to said curve, south 75°39'25" west 80.63 feet to a westerly line of said highway; thence south 14°20'35" east thereon, 23.00 feet to its intersection with a northerly line of Gilman Street (80.00 feet wide); thence south 75°39'25" west thereon, 400.00 feet to the easterly line of Parcel 1 described in the Deed to the City of Berkeley, recorded as Reel 195, Image 217, Official Records of said County; thence north 14°20'35" west thereon, 90.00 feet to the northerly line of said Parcel 1; thence south 75°30'25" west thereon, 446.78 feet; thence north 25°59'00" west, 1418.53 feet to said boundary line between the cities of Berkeley and Albany; thence south 75°39'55" west thereon, 770.00 feet to the true point of beginning

Excepting therefrom, that the portion lying within the land described in that certain final order of condemnation recorded March 17, 1949, Book 5753, Page 171 Official Records.

A.P. Nos. 066-2680-003-01
 066-2680-003-05
 066-2686-016
 066-2686-017
 066-2535-001