

JOINT EXERCISE OF POWERS AGREEMENT

BY AND BETWEEN

THE COUNTY OF CONTRA COSTA

AND

THE EAST BAY REGIONAL PARK DISTRICT

RELATING TO THE

CONTRA COSTA COUNTY OPEN SPACE FUNDING AUTHORITY

CONTRA COSTA COUNTY OPEN SPACE FUNDING AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

This Joint Exercise of Powers Agreement (“Agreement”), dated _____ (“Effective Date”), is entered into by and between the **EAST BAY REGIONAL PARK DISTRICT**, a special district duly organized and existing under the laws of the State of California (the “EBRPD”), and the **COUNTY OF CONTRA COSTA**, a political subdivision of the State of California (the “County”).

WITNESSETH:

WHEREAS, Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title I of the Government Code of the State of California authorizes the EBRPD and the County to create a joint exercise of powers entity which has the power to jointly exercise the powers common to the EBRPD and the County;

WHEREAS, the EBRPD and the County are each empowered by law to undertake certain projects and programs;

WHEREAS, the EBRPD and the County have a common interest in acquiring, improving, and maintaining land for park, recreational or open space purposes;

WHEREAS, the EBRPD and the County are authorized to create assessment districts in order to fund projects and programs that provide benefits to properties within their jurisdictions;

WHEREAS, by this Agreement, the EBRPD and the County desire to create and establish the Contra Costa County Open Space Funding Authority for the purposes set forth herein and to exercise the powers described herein;

WHEREAS, the EBRPD and the County intend that revenues to be collected and utilized pursuant to this Agreement be used to augment expenditures by the EBRPD, the County, and other entities operating in Contra Costa County for projects such as those described in this Agreement and not supplant or reduce the level of such expenditures.

NOW, THEREFORE, the EBRPD and the County, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

SECTION 1 **DEFINITIONS**

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings specified herein.

“Assessment District” means the assessment district to be formed by the Authority pursuant to the Landscaping and Lighting Act of 1972 (Sts. & Hy. Code § 22500 et seq.).

“Authority” means the Contra Costa County Open Space Funding Authority created by this Agreement.

“Board” means the governing board of the Authority.

“Citizens’ Oversight Committee” means the advisory committee that will provide recommendations to the Executive Committee on the awarding of grants pursuant to this Agreement.

“County” means the County of Contra Costa, a political subdivision of the State of California.

“EBRPD” means the East Bay Regional Park District, a special district duly organized and existing under the laws of the State of California.

“Engineer’s Report” means the report to be prepared by a certified assessment engineer as a basis for establishing assessments pursuant to Streets and Highways Code section 22565, and any subsequent engineer’s reports prepared pursuant to Streets & Highways Code section 22622. The Engineer’s Report will specify the funding allocations, determine special benefit, and establish a procedure for calculating the amounts to be assessed from properties subject to the Assessment District.

“Executive Committee” means the committee established by the Authority to oversee and approve the granting of funds raised pursuant to this Agreement.

“Framework For an Open Space Protection and Enhancement Funding Measure for Contra Costa County”, dated May 25, 2004 (“Framework”), means the document that was drafted through a public advisory process to recommend creation of a funding measure for open space purposes., The Framework describes the recommended funding allocations and general operating procedures and provides a guide for preparation of the Engineer’s Report.

“Law” means Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title I of the Government Code of the State of California (Sections 6500-6599).

“Projects” means improvements as defined by the Landscaping and Lighting Act

of 1972, including but not limited to the installation of park or recreational improvements, maintenance of improvements and acquisition of land for park, recreational or open space purposes.

SECTION 2 **PURPOSE**

This Agreement is made pursuant to the Law for the purposes set forth below:

- A. To establish an Assessment District to obtain funds for Projects.
- B. To identify Projects to be funded by assessments consistent with the Engineer's Report and the Framework.
- C. To allocate funding for implementation of the Projects, consistent with the Engineer's Report and the Framework.
- D. To exercise all the powers referred to in the recitals hereof and described in Section 6 herein.

SECTION 3 **TERM AND TERMINATION**

A. This Agreement shall become effective as of the Effective Date and shall continue in full force for 35 years or until terminated or rescinded, whichever occurs first.) The Agreement may be terminated by either party, in its sole discretion upon ninety-day advance written notice thereof to the other, and may be terminated or rescinded immediately by a written supplemental mutual agreement of the parties hereto.

SECTION 4 **AUTHORITY**

A. Creation of Authority. There is hereby created pursuant to the Law an agency and public entity to be known as the "Contra Costa County Open Space Funding Authority." As provided in the Law, the Authority shall be a public entity separate from the EBRPD and the County. The debts, liabilities and obligations of the Authority shall not constitute the debts, liabilities or obligations of the EBRPD or the County.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement and any amendment hereof to be prepared and filed with the office of the Secretary of State of

the State of California in the manner set forth in Section 6503.5 of the Law.

B. Governing Board. The Authority shall be administered by the Board, whose members shall be elected members of the governing bodies of the County and the EBRPD. The County shall have five (5) representatives on the Board and the EBRPD shall have two (2) representatives on the Board. The five members of the County Board of Supervisors shall be the County's representatives on the Board. The EBRPD representatives on the Board shall be appointed by the governing body of the EBRPD. Board members appointed by the EBRPD shall serve at the pleasure of the governing body of the EBRPD. Vacant EBRPD positions on the Board shall be filled by the governing body of the EBRPD. The term of office as a member of the Board of any Board member shall terminate when such member shall cease to be an elected official of the governing body of the party which such member represents.

Duties of the Board include, but are not limited to, annual approval of the Authority budget and annual approval of an Engineer's Report.

Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board shall determine that such expense shall be reimbursed and there are unencumbered funds available for such purpose.

If requested by the Authority, the County or the EBRPD will provide staff to support the activities of the Authority, the costs of such staff to be reimbursed by the Authority from its funds.

C. Meetings of Board

(1) Regular Meetings. The Board shall hold a regular meeting on the 4th Tuesday of April and October and, by resolution, may provide for the holding of regular meetings at more frequent intervals. If the Chair determines that there will be no business to transact at any meeting or that a scheduling conflict exists, such meeting may be canceled or rescheduled. The hour and place at which each such regular meeting shall be held shall be fixed by resolution of the Board.

(2) Legal Notice. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)) or any successor legislation hereinafter enacted, and the County's Better Government Ordinance.

(3) Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the County and the EBRPD.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time.

D. Officers: Duties; Bonding.

(1) The Board members shall select from the members a Chair who shall serve as Chair of the Authority and a Vice Chair who shall serve as Vice Chair of the Authority. The Chair and the Vice Chair shall have the duties set forth in the By-Laws of the Authority.

(2) The Secretary of the Authority shall be the County Community Development Director. The Secretary shall keep the records of the Authority, shall act as Secretary at the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office.

(3) The County Treasurer is hereby designated as Treasurer of the Authority. Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law.

(4) The Auditor Controller, who performs the functions of auditor and controller for the County, is hereby designated as Controller of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law. The Controller shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(5) The County shall be reimbursed upon approval of the Board of charges to be made against the Authority for the services of the Secretary, Treasurer, and Controller.

(6) The Treasurer and Controller of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer shall file an official bond in the amount each such officer determines is necessary as required by Section 6505.1 of the Law, provided, that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than \$1,500.00.

(7) The Treasurer and Controller of the Authority are hereby authorized and directed to prepare or cause to be prepared: (a) a special audit as required pursuant to Section 6505 of the Law every year during the term of this Agreement; and (b) a report in writing on the first day of February, May, August and November of each year to the Board, the EBRPD and the County, which report shall

describe the amount of money held by the Treasurer and Controller of the Authority, the amount of receipts since the last such report, and the amount paid out since the last such report.

(8) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

SECTION 5 COMMITTEES

A. Executive Committee. The Authority shall establish an Executive Committee which shall have nine (9) members. Five members shall be the members of the County Board of Supervisors. Two members shall be elected board members from the EBRPD and shall be appointed by the EBRPD. Two members shall be public members and shall be appointed by the Board. The Board shall solicit nominations of individuals to serve as public members from the Contra Costa County Mayor's Conference. The seven elected members of the Executive Committee shall serve at the pleasure of their respective governing bodies. The terms of the public members of the Executive Committee shall be established by the Board.

The Board shall delegate to the Executive Committee the following responsibilities:

- Selection of Projects to be funded with revenues from the Assessment District, consistent with the Engineer's Report and the Framework;
- Approval of contracts between the Authority and other entities, within the parameters of annual Authority budgets approved by the Board, and effecting the intent of this Agreement to augment expenditures made by the entities with which the Authority contracts for projects such as those described in this Agreement, and not supplant or reduce the level of such expenditures;
- Appointment of members of the Citizens' Oversight Committee.

B. Citizens' Oversight Committee. The Authority shall establish a Citizens' Oversight Committee to review prospective Projects, make recommendations to the Executive Committee regarding approval of contracts, and make other recommendations consistent with the Framework. Members of the Citizens' Oversight Committee shall be appointed by the Executive Committee in accordance with guidelines to be established by the Board and consistent with the Framework.

C. Legal Notice. All meetings of committees shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)) or any successor legislation hereinafter enacted, and the County's Better Government Ordinance.

D. The Board may establish other advisory committees it deems appropriate to advise the Authority on matters related to this Agreement, provided that the purpose and function of any such committee shall be specified by the Board.

SECTION 6 POWERS

The Authority shall have all of the powers granted to joint powers authorities in Articles 2 and 4 of the Law. Additionally, the Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts; to employ agents and employees; to sue and be sued in its own name; to acquire real property and improvements thereon by any lawful means other than eminent domain; and to sell and lease real and personal property to the EBRPD and the County and to buy and hire real and personal property from the EBRPD and the County.

Except as otherwise provided herein, such power shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon the EBRPD or the County in the exercise of similar powers, as provided in Section 6509 of the Law.

Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

SECTION 7 TERMINATION OF POWERS

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement or until the EBRPD and the County shall have rescinded this Agreement.

SECTION 8 FISCAL YEAR

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to the following June 30.

SECTION 9
DISPOSITION OF ASSETS

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 7, and after the repayment of advances and contributions in accordance with Section 10, all assets of the Authority shall be distributed to the parties in equal shares. Notwithstanding the foregoing, any real property held by the Authority shall be transferred to EBRPD, with EBRPD assuming any and all financing liens or encumbrances incurred by the Authority to acquire the property.

SECTION 10
CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the County and the EBRPD for any of the purposes of this Agreement. Any such advance shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the County or the EBRPD, as the case may be, and the Authority at the time of making such advance. Notwithstanding anything in this Agreement to the contrary, the parties agree that any and all incidental expenses (as that term is described in Section 22526 of the Streets & Highways Code) incurred by either party related to formation of the Assessment District, including but not limited to the costs of engineering, balloting and ballot tabulation, and attorney's fees, shall be treated as an advance under this Section and shall be promptly repaid by the Authority following the first collection of assessments. It is mutually understood and agreed that, except as otherwise expressly provided in this Agreement, neither the County nor the EBRPD has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either party may do so. The County and the EBRPD may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

SECTION 11
ACCOUNTS AND REPORTS

The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by the County and the EBRPD and their representatives. The Authority shall give an audited written report of all financial activities for each fiscal year to the County and to the EBRPD within twelve (12) months after the close of each fiscal year.

To the extent required by Section 6505.6 of the Law, the Controller of the Authority shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority in compliance with Section

6505.6 of the Law. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the County, the EBRPD and, if required by Section 6505.6 of the Law, with the County Auditor/Controller of the County of Contra Costa. Such report shall be filed within twelve (12) months of the end of the fiscal year or years under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

In any year the Authority may, by unanimous request of the Board, replace the annual special audit with an audit covering a two-year period.

SECTION 12 **CONFLICT OF INTEREST CODE**

The Conflict of Interest Code for the Authority shall be the Conflict of Interest Code for the County.

SECTION 13 **INDEMNIFICATION AND DEFENSE**

Each party to this Agreement shall defend, hold harmless and indemnify the other party, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses or liability arising out of, or in connection with, any acts performed under this Agreement and caused by the negligence or willful misconduct of the indemnitor, its officers, agents or employees.

Notwithstanding the provisions of Section 10 of this Agreement, the Authority shall have the power to require the parties to this Agreement to contribute funds for the legal defense to challenges to the formation of the Authority or the Assessment District in the event the Board determines that the Authority lacks sufficient funds to pay the cost of such legal defense. At the direction of the Authority, each party to this Agreement shall contribute funds to pay for attorney's fees and costs that may be incurred in such defense of the Authority, which contributions shall be in equal amounts. If funds are available following the conclusion of any litigation, the Authority shall return such contributions to both parties on a pro rata basis at a time and in a manner to be determined by the Board in its sole discretion.

SECTION 14
BREACH

If default shall be made by the County or the EBRPD in any covenant contained in this Agreement, such default shall not excuse either the County or the EBRPD from fulfilling its obligations under this Agreement and the County and the EBRPD shall continue to be liable for the performance of all conditions herein contained. County and EBRPD shall be entitled to seek any and all legal and equitable remedies against the other in response to any alleged default under this Agreement. Each and all of the remedies given to the Parties hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Parties to any or all other remedies.

SECTION 15
SEVERABILITY

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

SECTION 16
SUCCESSORS; ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 17
AMENDMENT OF AGREEMENT

This Agreement may be amended by supplemental agreement executed by the County and the EBRPD at any time.

SECTION 18
FORM OF APPROVALS

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of the County, by resolution duly and regularly adopted by the members of the Board of Supervisors, and, in the case of the EBRPD, by resolution duly and regularly adopted by the Board of Directors of the EBRPD, and, in the case of the Authority, by resolution duly and regularly adopted by

the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 19
NOTICES

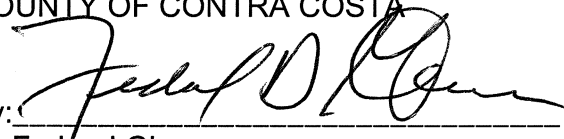
Notices to the EBRPD hereunder shall be sufficient if delivered to the General Manager of the EBRPD and notices to the County hereunder shall be sufficient if delivered to the Community Development Department and Clerk of the County.

SECTION 20
SECTION HEADINGS

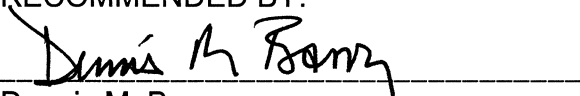
All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

COUNTY OF CONTRA COSTA

By: 
Federal Glover
Chair, Board of Supervisors

ATTEST: 
John Sweeten
Clerk of the Board of Supervisors

RECOMMENDED BY:

Dennis M. Barry
Community Development Director

FORM APPROVED:

Silvano B. Marchesi
County Counsel

By: 

Linda Wilcox
Deputy County Counsel

EAST BAY REGIONAL PARK DISTRICT

By: 

Douglas Siden
President, Board of Directors

ATTEST:

By: 

Clerk of the Board of Directors

FORM APPROVED:

By: 

Ted Radosevich
District Counsel