

JOINT EXERCISE OF POWERS AGREEMENT

CHULA VISTA PUBLIC FINANCING AUTHORITY

THIS JOINT EXERCISE OF POWERS AGREEMENT dated as of April 4, 1995, is by and between the CITY OF CHULA VISTA, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and the REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA, a public body corporate and politic organized and existing under the laws of the State of California (the "Agency");

WITNESSETH:

WHEREAS, agencies formed under Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Joint Powers Law") are permitted to provide financing for any of their members or other local public agencies in the State of California in connection with the acquisition, construction and improvement of public capital improvements, working capital requirements or insurance programs of such members or other local agencies; and

WHEREAS, the City and the Agency wish to form an agency under the Joint Powers Law, to be known as the Chula Vista Public Financing Authority, for the purpose of providing an entity which can assist in providing financing for purposes which are authorized under the Joint Powers Law;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the City and the Agency do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified.

"**Agreement**" means this Joint Exercise of Powers Agreement, as originally entered into or as amended from time to time in accordance with Section 5.06.

"**Authority**" means the Chula Vista Public Financing Authority established pursuant to Section 2.02.

"Board" means the Board of Directors referred to in Section 2.03, which shall be the governing body of the Authority.

"Bond Act" means the provisions of Article 4 of the Joint Powers Law (commencing with Section 6584).

"Bonds" means bonds, notes or other obligations of the Authority issued pursuant to the Bond Act or pursuant to any other provision of law to finance the acquisition, construction and improvement of Public Capital Improvements, or for any other purposes authorized under the Bond Act.

"By-Laws" means any by-laws, rules and regulations adopted by the Board pursuant to Section 2.07, as amended from time to time pursuant to resolution of the Board.

"Fiscal Year" means the period from July 1 in any calendar year to and including June 30 in the succeeding calendar year.

"Joint Powers Law" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

"Local Agency" means each of the Members, and any other city, county, city and county, agency, special district or other public corporation of the State of California.

"Members" means, collectively, the City and the Agency.

"Public Capital Improvements" has the meaning given such term in Section 6585(g) of the Bond Act.

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Purpose. This Agreement is entered into pursuant to the Joint Powers Law. The purpose of this Agreement is to provide for the financing for the acquisition, construction and improvement of Public Capital Improvements of any Local Agency, or for any other financing purposes authorized under the Bond Act.

Section 2.02. Creation of Authority. Pursuant to the Joint Powers Law, there is hereby created a joint powers agency to be known as the "Chula Vista Public Financing Authority". The Authority shall be a public entity separate and apart from the Members, and shall administer this Agreement.

Section 2.03. Board.

(a) Composition of Board. The Authority shall be governed by a Board of five (5) directors, unless and until changed by amendment of this Agreement. The directors shall consist the members of the City Council of the City, each of whom shall be a member of the Board by virtue of being a member of the City Council of the City. The Board shall be called the "Board of Directors of the Chula Vista Public Financing Authority". All voting power of the Authority shall reside in the Board.

(b) Call, Notice and Conduct of Meetings. All meetings of the Board, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act of the State of California (constituting Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California).

(c) 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 from time to time. The affirmative votes of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board.

Section 2.04. Chief Financial Officer. Pursuant to Section 6505.5 of the Joint Powers Law, the person performing the functions as chief financial officer of the City is hereby designated as the Chief Financial Officer of the Authority and, as such, shall perform the functions of the treasurer of the Authority and the functions of the auditor of the Authority, as such functions are set forth in Section 6505.5 of the Joint Powers Law. Pursuant to Section 6505.1 of the Joint Powers Law, the Chief Financial Officer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto. As treasurer of the Authority, the Chief Financial Officer shall have custody of all of the accounts, funds and money of the Authority from whatever source.

In the event, but only in the event, that the Chief Financial Officer holds moneys for the account of the Authority or the Members, the Chief Financial Officer shall verify and report in writing on the first day of July, October, January and April of each year to the Authority and the Members the amount of money held for the Authority by the Chief Financial Officer, the amount of receipts since the last such report, and the amount paid out since the last such report. The Members hereby acknowledge and agree that the initial financing proposed to be undertaken by the Authority for the purpose of refinancing various issues of assessment bonds of the City is not intended to result in any such moneys being held by the Chief Financial Officer for the account of the Authority or the Members, as a consequence of which no such report shall be required to be given by the Chief Financial Officer under this paragraph.

As auditor of the Authority, the Chief Financial Officer shall draw warrants to pay demands against the Authority when the demands have been approved by the Board and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority.

Section 2.05. Officers of the Authority. The officers of the Authority shall consist of a Chairman, Vice-Chairman, Executive Director and Secretary, who shall consist of the Mayor, Vice-Mayor, City Manager and City Clerk of the City, respectively. Said officers shall perform such functions as shall be customary in the exercise of such positions, and as may be more specifically provided by the Authority from time to time. The Chairman shall sign all contracts on behalf of the Authority, except as may otherwise be provided by resolution of the Board. The Vice Chairman shall act, sign contracts and perform the duties of the Chairman in the absence of the Chairman. The Executive Director shall have charge of the day-to-day administration of the Authority and shall execute the directives of the Board. The Secretary shall have charge of the records of the Authority and shall be responsible for recording the minutes of all meetings of the Board

The officers of the Authority shall consist of a Chairman, Vice-Chairman, Executive Director and Secretary. The Mayor of the City shall serve *ex officio* as the Chairman of the Authority; the Vice Mayor of the City shall serve *ex officio* as the Vice-Chairman of the Authority; the City Manager of the City shall serve *ex officio* as the Executive Director of the Authority; and the City Clerk of the City shall serve *ex officio* as the Secretary of the Authority. Said officers shall perform such functions as shall be customary in the exercise of such positions, and as may be more specifically provided in the By-Laws. The Board shall appoint an attorney, who may also represent either the City or the Agency, to act as the legal advisor of the Authority; such attorney shall perform such duties as may be prescribed by the Board.

Section 2.06. Bonding of Officers. From time to time, the Board may designate officers of the Authority having charge of, handling or having access to any records, funds or accounts or other assets of the Authority, and the respective amounts of the official bonds of such officers and such other persons pursuant to Section 6505.1 of the Joint Powers Law. In the event that any officer of the Authority is required to be bonded pursuant to this Section 2.06, such bond may be maintained as a part of or in conjunction with any other bond maintained on such person by any Member, it being the intent of this Section 2.06 not to require duplicate or over-lapping bonding requirements from those bonding requirements which are otherwise applicable to the Members.

Section 2.07. By-laws. The Board may adopt By-laws providing for the conduct of its meetings and the designation and duties of the officers of the Authority, as the Board may deem necessary or advisable for the purposes hereof. This provision shall not be construed to require the adoption of any By-laws by the Board.

ARTICLE III

POWERS

Section 3.01. General Powers. The Authority shall exercise the powers granted to it under the Joint Powers Law, including but not limited to the powers set forth in the Bond Act and the powers common to each of the Members, as may be necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 3.03. As provided in the Joint Powers Law, the Authority shall be a public entity separate and apart from the Members.

Section 3.02. Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to any or all of the following:

- (a) to make and enter into contracts;
- (b) to acquire, construct, manage, maintain or operate any Public Capital Improvement, including the common power of any of the Members to acquire any Public Capital Improvement by any lawful means;
- (c) to sue and be sued in its own name;
- (d) to issue Bonds and otherwise to incur debts, liabilities or obligations;
- (e) to apply for, accept, receive and disburse grants, loans and other assistance from any agency of the United States of America or of the State of California;
- (f) to invest any money in the treasury pursuant to Section 6505.5 of the Joint Powers Law that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code of the State of California;
- (g) to make and enter into agreements, assignments and other documents of any nature whatsoever as may be necessary or convenient in the exercise of its powers hereunder or under the Joint Powers Law;
- (h) to make loans to any Local Agency for the purposes hereof, or to refinance indebtedness incurred by any Local Agency in connection with any of the purposes hereof; and

(i) to exercise any and all other powers as may be provided in the Joint Powers Law or in the Bond Act.

Section 3.03. Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Joint Powers Law and in the Bond Act, and, except for the exercise of those powers set forth in the Bond Act, shall be subject (in accordance with Section 6509 of the Joint Powers Law) to the restrictions upon the manner of exercising such powers that are imposed upon the Member for whose benefit such power is being exercised by the Authority.

Section 3.04. Non-Liability of Members and Directors For Obligations of Authority. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Members. No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or premium or interest on any obligations of the Authority or be subject to any personal liability or accountability by reason of any obligations of the Authority; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligations of the Authority.

In addition, no Member shall assume any liability or responsibility for any debts, liabilities or obligations which may be incurred by the other Member in connection with the issuance of Bonds or other obligations of the Authority for the benefit of such other Member.

ARTICLE IV

CONTRIBUTION: ACCOUNTS AND REPORTS: FUNDS

Section 4.01. Contributions. The Members may, but are not required to: (a) make contributions from their treasuries for any of the purposes set forth herein, (b) make payments of public funds to defray the cost of such purposes, (c) make advances of public funds for such purposes, such advances to be repaid as provided herein, or (d) use their personnel, equipment or property in lieu of other contributions or advances. The provisions of Government Code 6513 are hereby incorporated into this Agreement. With respect to contributions required to pay the costs of maintaining the Authority, including but not limited to costs of annual audits or other reports, such contributions shall be made by the Members for each Fiscal Year during the term of this Agreement on a pro rata basis based on the aggregate principal amount of any Bonds or other obligations of the Authority (if any) which are outstanding for the benefit of each of the respective Members as of the first (1st) day of such Fiscal Year.

Section 4.02. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Chief Financial Officer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust instrument entered into with respect to the proceeds of any Bonds issued by the Authority. The books and records of the Authority in the hands of a trustee or the Chief Financial Officer shall be open to inspection at all reasonable times by representatives of any of the Members. The trustee appointed under any trust agreement shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement. Said trustee may be given such duties in said trust instrument as may be desirable to carry out this Agreement.

Section 4.03. Funds. Subject to the applicable provisions of any instrument or agreement which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Chief Financial Officer of the Authority shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.01. Term. This Agreement shall become effective, and the Authority shall come into existence, on the date of execution and delivery hereof, and this Agreement and the Authority shall thereafter continue in full force and effect so long as either (a) any Bonds or other obligations remain outstanding or any material contracts to which the Authority is a party remain in effect, or (b) the Authority shall own any interest in any Public Capital Improvements.

Section 5.02. Disposition of Assets. Upon the termination of this Agreement, all property of the Authority, both real and personal, shall be divided between the Members in such manner as shall be agreed upon by the Members.

Section 5.03. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to:

City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

Attention: City Manager

Redevelopment Agency of the City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: Executive Director

Section 5.04. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 5.05. Law Governing. This Agreement is made in the State of California under the Constitution and laws of the State of California, and is to be so construed.

Section 5.06. Amendments. This Agreement may be amended at any time, or from time to time, except as limited by contract with the owners of Bonds issued by the Authority or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including without limitation addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 5.07. Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

Section 5.08. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction 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 portions or provisions shall not be affected thereby.

Section 5.09. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Members. No Member may assign any right or obligation hereunder without the written consent of the other Member.

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.

CITY OF CHULA VISTA

Shirley Horton
Mayor

Attest:

Suzanne A. Bechelet
City Clerk

**REDEVELOPMENT AGENCY OF THE
CITY OF CHULA VISTA**

Shirley Horton
Chairman

Attest:

Ch. Salomone
Secretary

1. Copy of record moved to JPA folder for reporting to LAFCO