

JOINT EXERCISE OF POWERS AGREEMENT

FONTANA PUBLIC FINANCING AUTHORITY

THIS AGREEMENT (this "Joint Exercise of Powers Agreement") is dated as of April 1, 1989, by and between the City of Fontana (the "City") and the Fontana Redevelopment Agency (the "Agency"), each duly organized and existing under the laws of the State of California;

W I T N E S S E T H:

WHEREAS, the City and the Agency from time to time undertake the financing of public capital improvements and working capital requirements, and the City and the Agency wish to form a joint powers authority under the Joint Exercise of Powers Law of the State of California (constituting Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California) for the purpose of establishing a vehicle which may reduce local borrowing costs and promote the greater use of existing and new financial instruments and mechanisms;

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.

"Act" 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.

"Agreement" means this Joint Exercise of Powers Agreement.

"Authority" means the Fontana Public Financing Authority established pursuant to Section 2.02 of this Agreement.

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

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 of the Act (commencing with Section 6584), as now or hereafter amended, or any other law hereafter legally available for use by the Authority in the authorization and issuance of bonds to finance the acquisition of Local Obligations and to provide financing to the City or the Agency for Public Capital Improvements and for Working Capital.

"Bond Purchase Agreement" means an agreement between the Authority and the City or the Agency, pursuant to which the Authority agrees to purchase Local Obligations from the City or the Agency, as the case may be.

"Bonds" means bonds of the Authority issued pursuant to the Act.

"Directors" means the representatives of the City and the Agency appointed to the Board pursuant to Section 2.03.

"Fiscal Year" means the period from and including July 1 to and including the following June 30.

"Local Obligations" means "Bonds", as such term is defined in Section 6585(c) of the Bond Law, which are issued by the Agency, the City or any public agency in California.

"Public Capital Improvement" has the meaning given to such term in Section 6585(g) of the Bond Law.

"Secretary" means the Secretary of the Authority appointed pursuant to Section 3.01.

"Treasurer" means the Treasurer of the Authority appointed pursuant to Section 3.02.

"Working Capital" has the meaning given to the term in Section 6585(i) of the Bond Law.

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Purpose. This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the City and the Agency. The purpose of this Agreement is to provide for the financing of Public Capital Improvements and Working Capital for the City, the Agency and such other public agencies in California as the Board shall determine, the purchase by the Authority of Local Obligations pursuant to Bond Purchase Agreements, or the loan of funds to the City, the Agency or such public agencies in California as the Board shall determine, in those instances in which the City or the Agency, as the case may be, determines that there are "significant public benefits" for taking such action, within the meaning of Section 6586 of the Bond Law.

Section 2.02. Creation of Authority. Pursuant to the Act, there is hereby created a public entity to be known as the "Fontana Public Financing Authority". The Authority shall be a public entity separate and apart from the City and the Agency, and shall administer this Agreement.

Section 2.03. Board of Directors. The Authority shall be administered by a Board of Directors consisting of five (5) Directors, unless and until such number is changed by amendment of this Agreement. The members of the City Council of the City and the members of the governing body of the Agency shall *ex officio* constitute the Directors of the Authority. The Board shall be called the "Board of Directors of the Fontana Public Financing Authority". All voting power of the Authority shall reside in the Board.

Section 2.04. Meetings of the Board.

(a) Regular Meetings. The Board shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each of the City and the Agency.

(b) Special Meetings. Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(c) 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 Government Code of the State of California.

Section 2.05. Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to the City and the Agency.

Section 2.06. Voting. Each Director shall have one vote.

Section 2.07. Quorum; Required Votes; Approvals. Directors holding a majority of the votes 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 four (4) of the Directors shall be required to take any action by the Board.

Section 2.08. Bylaws. The Board may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

ARTICLE III

OFFICERS AND EMPLOYEES

Section 3.01. Chair, Vice–Chair and Secretary. The Board shall elect a Chair and Vice–Chair from among the Directors, and shall appoint a Secretary who may, but need not, be a Director. The officers shall perform the duties normal to said offices. The Chair shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Board. The Vice–Chair shall sign contracts and perform all of the Chair’s duties in the absence of the Chair. The Secretary shall countersign all contracts signed by the Chair or Vice–Chair on behalf of the Authority, perform such other duties as may be imposed by the Board and cause a copy of this Agreement to be filed with the Secretary of State pursuant to the Act.

Section 3.02. Treasurer. Pursuant to Section 6505.6 of the Act, the Finance Director of the City of Fontana is hereby designated as the Treasurer of the Authority. The Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in Sections 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. As provided in Section 6505 and Section 6505.6 of the Act, the Treasurer shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

Section 3.03. Officers in Charge of Records, Funds and Accounts. Pursuant to Section 6505.1 of the Act, the Treasurer 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; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 3.04. Bonding Persons Having Access to Public Capital Improvements. From time to time, the Board may designate persons, in addition to the Secretary and the Treasurer, having charge of, handling or having access to any records, funds or accounts or any Public Capital Improvement of the Authority, and the respective amounts of the official bonds of the Secretary and the Treasurer and such other persons pursuant to Section 6505.1 of the Act.

Section 3.05. Legal Advisor. The City Attorney of the City shall act as the legal advisor of the Authority.

Section 3.06. Other Employees. The Board shall have the power by resolution to appoint and employ such other consultants and independent contractors as may be necessary for the purposes of this Agreement.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of the Authority to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Agreement.

None of the officers, agents, or employees directly employed by the Board shall be deemed, by reason of their employment by the Board to be employed by the City or the Agency or, by reason of their employment by the Board, to be subject to any of the requirements of the City or the Agency.

Section 3.07. Assistant Officers. The Board may by resolution appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Director), and may by resolution provide for the appointment of additional officers of the Authority who may or may not be Directors, as the Board shall from time to time deem appropriate.

ARTICLE IV

POWERS

Section 4.01. General Powers. The Authority shall exercise in the manner herein provided the powers which are common to each of the City and the Agency and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.04.

As provided in the Act, the Authority shall be a public entity separate from the City and the Agency. The Authority shall have the power to acquire and to finance the acquisition of Public Capital Improvements necessary or convenient for the operation of the City or the Agency.

Section 4.02. Power to Issue Bonds. The Authority shall have all of the powers provided in the Act, including the power to issue Bonds thereunder.

Section 4.03. 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 employ agents or employees;
- (c) to acquire, construct, manage, maintain or operate any Public Capital Improvement, including the common power of the City and the Agency to acquire any Public Capital Improvement by the power of eminent domain;
- (d) to sue and be sued in its own name;
- (e) to issue Bonds and otherwise to incur debts, liabilities or obligations, provided that no such Bond, debt, liability or obligation shall constitute a debt, liability or obligation of any of the City and the Agency;
- (f) to apply for, accept, receive and disburse grants, loans and other aids from any agency of the United States of America or of the State of California;
- (g) to invest any money in the treasury pursuant to Section 6505.5 of the Act which 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;
- (h) to carry out and enforce all the provisions of this Agreement;
- (i) to make and enter into Bond Purchase Agreements;
- (j) to make loans to the City or the Agency, to the extent the City or the Agency (as the case may be) is authorized by law to borrow moneys, to be used to pay for Public Capital Improvements or Working Capital, or to refinance indebtedness incurred by the City or the Agency in connection with Public Capital Improvements undertaken and completed; and
- (k) to exercise any and all other powers as may be provided in the Act or in the Bond Law.

Section 4.04. Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Act and in the Bond Law, and, except for those powers set forth in the Bond Law, shall be subject (in accordance with Section 6509 of the Act) to the restrictions upon the manner of exercising such powers that are imposed upon the City of Fontana in the exercise of similar powers.

Section 4.05. Obligations of Authority. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City and the Agency.

ARTICLE V

METHODS OF PROCEDURE; CREDIT TO MEMBERS

Section 5.01. Assumption of Responsibilities By the Authority. As soon as practicable after the date of execution of this Agreement, the Directors shall give notice (in the manner required by Section 2.04) of the organizational meeting of the Board. At said meeting the Board shall provide for its regular meetings as required by Section 2.04 and elect a Chair and Vice-Chair, and appoint the Secretary.

Section 5.02. Delegation of Powers. The City and the Agency hereby delegate to the Authority the power and duty to acquire, by lease, lease-purchase, installment sale agreements, or otherwise, such Public Capital Improvements as may be necessary or convenient for the operation of the City or the Agency.

Section 5.03. Credit to City and the Agency. All accounts or funds created and established pursuant to any instrument or agreement to which the Authority is a party, and any interest earned or accrued thereon, shall inure to the benefit of the City and the Agency in the respective proportions for which such funds or accounts were created.

ARTICLE VI

CONTRIBUTION: ACCOUNTS AND REPORTS; FUNDS

Section 6.01. Contributions. The City and the Agency may in the appropriate circumstance when required hereunder: (a) make contributions from their treasuries for 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 its personnel, equipment or property in lieu of other contributions or advances. The provisions of Government Code Section 6513 are hereby incorporated into this Agreement by reference.

Section 6.02. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement 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 Treasurer shall be open to inspection at all reasonable times by representatives of the City and the Agency. The Treasurer, within 180 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the City and the Agency to the extent such activities are not covered by the report of such trustee. The trustee appointed under any indenture or 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 indenture or trust agreement as may be desirable to carry out this Agreement.

Section 6.03. 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 Treasurer of the Authority shall receive, have custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, and shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

ARTICLE VII

TERM

Section 7.01. Term. This Agreement shall become effective, and the Authority shall come into existence, on the date of execution hereof by the City and the Agency, and this Agreement and the Authority shall thereafter continue in full force and effect so long as either (a) any Bonds remain outstanding or (b) the Authority shall own any interest in any Public Capital Improvements.

Section 7.02. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in such manner as shall be agreed upon by the parties.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to:

City of Fontana
8353 Sierra Avenue
Fontana, California 92335
Attention: City Manager

Fontana Redevelopment Agency
8353 Sierra Avenue
Fontana, California 92335
Attention: Executive Director

Section 8.02. 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 8.03. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 8.04. 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 8.05. 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 both 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 8.06. 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 8.07. 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 8.08. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the City or the Agency, respectively. Neither the City nor the Agency may assign any right or obligation hereunder without the written consent of the other.

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, on the day and year set opposite the name of each of the parties.

CITY OF FONTANA

Date of Execution: May 2, 1989

Nathan A. Simon
Mayor

ATTEST:

Martha R. Sturdevant
City Clerk

(SEAL)

Read and Approved:

Clark H. Alsop
Clark H. Alsop
Agency Counsel

I, Phyllis Woods, Secretary of the Fontana Redevelopment Agency, by the attestation hereof, do certify that the above and foregoing Agreement is a full, true and correct copy, without change, modification or alterations, or the Agreement as approved by official action of the Agency pursuant to Resolution No. FRA-28, as approved on May 2, 1989.

Phyllis Woods
Secretary

FONTANA REDEVELOPMENT AGENCY

Date of Execution: May 2, 1989

Gay E. Bzdek
Chairman

ATTEST:

Phyllis Woods
Secretary

(SEAL)