

JOINT EXERCISE OF POWERS AGREEMENT

by and between the

CITY OF SANTA ROSA, CALIFORNIA

and the

**REDEVELOPMENT AGENCY OF THE
CITY OF SANTA ROSA, CALIFORNIA**

Dated September 1, 2004

(Santa Rosa Public Financing Authority)

JOINT EXERCISE OF POWERS AGREEMENT

SANTA ROSA PUBLIC FINANCING AUTHORITY

THIS JOINT POWERS AGREEMENT (the "Agreement"), dated September 1, 2004, is by and between the CITY OF SANTA ROSA, a municipal corporation and charter city organized and existing under the laws of the State of California (the "City"), and the REDEVELOPMENT AGENCY OF THE CITY OF SANTA ROSA, CALIFORNIA, a public body organized and existing under the laws of the State of California (the "Agency");

WITNESSETH:

WHEREAS, the City and the Agency from time to time undertake the financing of public capital improvements, 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.

"Agreement" means this Joint Exercise of Powers Agreement, as originally entered into or as amended from time to time.

"Authority" means the Santa Rosa 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 Law" means the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 of the Act (commencing with section 6584), as now in effect or hereafter amended, Article 2 of the Act as now in effect or hereafter amended, or any other law available for use by the Authority in the authorization and issuance of bonds to provide for the financing of Obligations and/or Public Capital Improvements.

"Bond Purchase Agreement" means an agreement between the Authority and a Member or a Local Agency, pursuant to which the Authority agrees to purchase Obligations from a Member.

"Bonds" means bonds, notes or other obligations of the Authority issued pursuant to the Bond Law or pursuant to any other provision of law to finance the acquisition and construction of Public Capital Improvements, to make loans to the Members to finance the acquisition, construction and improvement of Public Capital Improvements, to purchase Obligations.

"By-Laws" means the by-laws, rules and regulations adopted by the Board pursuant to Section 2.05, 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 California Government Code.

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

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

"Obligations" has the meaning given to the term "Bonds" in section 6585(c) of the Bond Law.

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

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Purpose. This Agreement is made pursuant to the Joint Powers Law providing for the joint exercise of powers common to the Members, and for other purposes as permitted under the Joint Powers Law, the Bond Law and as agreed by one or more of the parties hereto. The purpose of this Agreement is to provide for the financing of Public Capital Improvements for the Members through the acquisition by the Authority of such Public Capital Improvements and/or the purchase by the Authority of Obligations of either of the Members pursuant to Bond Purchase Agreements and/or the lending of funds by the Authority to a Member.

Section 2.02. Creation of Authority. Pursuant to the Joint Powers Law, there is hereby created a public entity to be known as the "Santa Rosa 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. The Authority shall be administered by a Board of seven (7) Directors, unless and until changed by amendment of this Agreement. The sitting members of the City Council of the City shall, *ex officio*, constitute the Directors of the Authority. The Board shall be called the "Board of Directors of the Santa Rosa Public Financing Authority". All voting power of the Authority shall reside in the Board.

Section 2.04. Meetings of the Board. (a) 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 sections 54950 *et seq.* of the California Government Code (the "Ralph M. Brown Act").

(b) Quorum. 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 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 2.05. Bylaws. The Board may adopt, from time to time, such bylaws and other rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

ARTICLE III

OFFICERS AND EMPLOYEES

Section 3.01. Chairman, Vice-Chairman, Executive Director and Secretary. The Mayor of the City shall serve as Chairman of the Board. The Vice Mayor of the City shall serve as the Vice Chairman of the Board. The City Manager shall serve as the Executive Director of the Authority. The City Clerk shall serve as Secretary of the Authority. The officers shall perform the duties normal to said offices. The Chairman, the Executive Director, or the Auditor and Treasurer shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Board. The Vice-Chairman shall act, sign contracts and perform all of the Chairman's duties in the absence of the Chairman. The Secretary shall countersign all contracts signed by the Chairman, Executive Director or Vice-Chairman 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 of the State of California pursuant to the Joint Powers Law.

Section 3.02. Treasurer. Pursuant to section 6505.6 of the Joint Powers Law, the Director of Administrative Services of the City is hereby designated as the Auditor and Treasurer of the Authority. The Auditor and 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 Joint Powers Law and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority.

Section 3.03. Officers in Charge of Records, Funds and Accounts. Pursuant to section 6505.1 of the Joint Powers Law, 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 Joint Powers Law.

Section 3.05. Legal Advisor. The Board shall have the power to appoint the legal advisor of the Authority who shall perform such duties as may be prescribed by the Board. Such legal advisor may be the City Attorney of the City.

Section 3.06. Other Employees. The Board shall have the power 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 them to the same degree and extent while engaged in the performance of any of the functions and other duties 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 either of the Members or, by reason of their employment by the Board, to be subject to any of the requirements of either of the Members.

Section 3.07. Assistant Officers. The Board may appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Director) 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 common to the Members, or as otherwise permitted under the Joint Powers Law, 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 Joint Powers Law, the Authority shall be a public entity separate from the Members. The Authority shall have the power to acquire and to finance the acquisition of Public Capital Improvements necessary or convenient for the operation of a Member, and to acquire Obligations of a Member.

Section 4.02. Power to Issue Bonds. The Authority shall have all of the powers provided in the Joint Powers Law, including but not limited to Article 4 of the Joint Powers Law (commencing with section 6584), and including the power to issue Bonds under the Bond Law.

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 Members 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 the Members;
- (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 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 California Government Code;
- (h) to apply for letters of credit or other form of financial guarantees in order to secure the repayment of Bonds and enter into agreements in connection therewith;

- (i) to carry out and enforce all the provisions of this Agreement;
- (j) to make and enter into Bond Purchase Agreements;
- (k) to purchase Obligations of a Member; and
- (l) to exercise any and all other powers as may be provided in the Joint Powers Law.

Section 4.04. 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 Law and, except for those powers set forth in Article 4 of the Joint Powers Law, 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 City in the exercise of similar powers.

Section 4.05. 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.

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 of the organizational meeting of the Board.

Section 5.02. Delegation of Powers. The Members hereby delegate to the Authority the power and duty to acquire, by lease, lease-purchase, installment sale agreements, or otherwise, or make loans to finance, such Public Capital Improvements as may be necessary or convenient for the operation of the Members and to exercise the power of condemnation of the City as necessary in connection therewith.

Section 5.03. Credit to Members. 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 Members in the respective proportions for which such funds or accounts were created.

ARTICLE VI

CONTRIBUTION; ACCOUNTS AND REPORTS; FUNDS

Section 6.01. Contributions. The Members 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 section 6513 of the California Government Code are hereby incorporated into this Agreement.

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 Members. The Treasurer within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such fiscal year to the Members to the extent such activities are not covered by the report of such trustee. 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 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 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.

Section 6.04. Annual Budget and Administrative Expenses. The Board may adopt a budget for administrative expenses, which shall include all expenses not included in any financing issue of the Authority, annually prior to July 1st of each year. The estimated annual administrative expenses of the Authority shall be allocated by the Authority to the Members equally.

ARTICLE VII

TERM

Section 7.01. 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 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 7.02. Disposition of Assets. Upon 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.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to the notice address of each party hereto for legal notices or as otherwise provided by a party hereto in writing to each of the other parties hereto.

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 certificates of participation in payments to be made by the Authority or a Member 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 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 Members. Neither Member 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 first set forth above.

CITY OF SANTA ROSA, CALIFORNIA

By _____
Mayor

(S E A L)

ATTEST:

City Clerk

REDEVELOPMENT AGENCY OF THE
CITY OF SANTA ROSA, CALIFORNIA

By _____
Chairman

(S E A L)

ATTEST:

Secretary