

DUPLICATE ORIGINAL

**THIRD AMENDED AND RESTATED  
JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE  
PUBLIC FACILITIES FINANCING AUTHORITY  
OF THE  
CITY OF SAN DIEGO**

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SAN DIEGO, CALIFORNIA

THIRD AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

THIS Third Amended and Restated Joint Exercise of Powers Agreement (the "Agreement"), dated as January 1, 2013, is made between and among, the CITY OF SAN DIEGO, a municipal corporation duly organized and existing under the laws of the State of California (herein called the "City"), the CITY OF SAN DIEGO, SOLELY IN ITS CAPACITY AS THE DESIGNATED SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a former public body, corporate and politic, duly organized and existing under the laws of the State of California (herein called the "Successor Agency"), and the HOUSING AUTHORITY OF THE CITY OF SAN DIEGO, a public body, corporate and politic, duly organized and existing under the laws of the State of California (herein called the "Housing Authority")(collectively, the "Parties"). This Agreement amends and supersedes the agreement filed with the Secretary of State on January 3, 2003, entitled "SECOND AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF SAN DIEGO AND THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO."

WITNESSETH:

WHEREAS, on May 14, 1991, the City and the Redevelopment Agency of the City of San Diego (the "Agency") entered into an agreement pursuant to Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title I of the Government Code of the State of California (the "Joint Exercise of Powers Act" or the "Act") to create a joint exercise of powers entity (herein called the "Public Facilities Financing Authority of the City of San Diego" or the "Authority") which has the power to jointly exercise any powers common to the City and the Agency; and

WHEREAS, the Agreement that created and established the Authority has been amended from time to time; and

WHEREAS, the Agency has been dissolved pursuant to Assembly Bill ABx1 26 ("AB 26") and the City has elected to become the Successor Agency to the Agency; and

WHEREAS, pursuant to AB 26, the joint exercise of powers agreement between the City and the Agency remains valid, however, the Parties recognize that the Successor Agency will terminate pursuant to State law at some future date and that a joint exercise of powers agreement must have at least two members; and

WHEREAS, the City, the Successor Agency and the Housing Authority are each empowered by law to undertake certain projects and programs; and

WHEREAS, the City is authorized to issue bonds, expend bond proceeds, and borrow and loan money for certain public purposes pursuant to the Government Code of the State of California and the City Charter; and

WHEREAS, the Successor Agency is authorized to issue refunding bonds for certain public purposes pursuant to the Health and Safety Code of the State of California; and

WHEREAS, the Housing Authority is authorized to issue bonds, expend bond proceeds, borrow and loan money, execute contracts, and purchase, hold, sell, lease, exchange or transfer any real or personal property for any of its purposes pursuant to the provisions of the Housing Authorities Law of the State of California; and

WHEREAS, Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Marks-Roos Local Bond Pooling Act of 1985") authorizes and empowers the Authority to purchase Bonds, as defined in the Marks-Roos Local Bond Pooling Act of 1985, issued by the City, the Successor Agency, or the Housing Authority for financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the City, Successor Agency, or the Housing Authority; and

WHEREAS, the Marks-Roos Local Bond Pooling Act of 1985 further authorizes and empowers the Authority to sell Bonds so purchased to public or private purchasers at public or negotiated sale; and

WHEREAS, by this Agreement, the City, the Successor Agency and the Housing Authority desire to amend and restate the Agreement as set forth herein and to exercise the powers described herein; and

NOW, THEREFORE, the City, the Successor Agency, and the Housing Authority, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

#### SECTION 1. PURPOSE

This Agreement is made pursuant to the provisions of the Act, relating to the joint exercise of powers common to public agencies for the purpose of assisting the financing of certain public capital facilities improvements of the City, the Successor Agency or the Housing Authority by exercising the powers referred to in the recitals hereof and described in Section 4 herein.

#### SECTION 2. TERM

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by a supplemental agreement of the City, the Successor Agency

and the Housing Authority, provided that in no event shall the Agreement terminate while any payments are due by the City, the Successor Agency or the Housing Authority to the Authority under any lease or sale of any real or personal property from the Authority to the City, the Successor Agency, or the Housing Authority or while any bonds of the Authority issued pursuant to the Act are outstanding.

### SECTION 3. AUTHORITY

#### A. CREATION OF AUTHORITY

There is hereby created pursuant to the Act an agency and public entity to be known as the "Public Facilities Financing Authority of the City of San Diego." As provided in the Act, the Authority shall be a public entity separate from the City, the Successor Agency and the Housing Authority. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the City, the Successor Agency or the Housing Authority.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment 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 Act.

#### B. COMMISSION

The Authority shall be administered by a Commission (the "Commission") whose members shall at all times, be the members of the City Council of the City. The term of office, as a member of the Commission, of each Councilmember of the City shall terminate when such member of the Commission shall cease to be a City Councilmember and the successor of the City Councilmember shall become a member of the Commission. The Commission shall be the administering agency of this Agreement, and, as such, shall be vested with the powers set forth herein, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein.

Members of the Commission 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 Commission shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

#### C. OFFICERS; DUTIES; OFFICIAL BONDS

The President of the City Council shall serve as the Chair of the Authority and the Council President Pro Tem shall serve as the Vice-Chair of the Authority. The Chair and the Vice-Chair shall have the duties set forth in the rules and regulations of the Authority.

The Secretary of the Authority shall be the City Clerk of the City. The Secretary shall keep the records of the Authority, shall act as the Secretary at the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority, and shall perform all duties incident to the office.

The Chief Financial Officer of the City shall be the treasurer and controller of the Authority (the "Treasurer") and shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

Subject to the applicable provisions of any resolution, indenture or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all money of the Authority, from whatever source derived.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount each such officer determines is necessary as required by Section 6505.1 of the Act; 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.

The City Attorney shall be the General Counsel to the Authority.

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

The Commission shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to delegate any of its functions to one or more of the members of the Commission or officers or agents of the Authority and to cause any of said members, officers or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Commission or the Authority.

#### D. MEETINGS OF THE COMMISSION

##### (1) Regular Meetings.

The Commission shall provide for its regular meetings in accordance with the calendar of regular meetings adopted by the City Council; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Commission and a copy of such resolution shall be filed with each party hereto; provided that if the Chair determines that there will be no business to transact at such meeting, such meeting shall be cancelled.

(2) Special Meetings.

Special meetings of the Commission may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(3) Ralph M. Brown Act.

All meetings of the Commission shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California).

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of all meetings of the Commission and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Commission.

(5) Quorum.

A majority of the members of the Commission shall constitute a quorum for the transaction of business. No action may be taken by the Commission except upon the affirmative vote of a majority of the members of the Commission, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Authority may adopt, from time to time, by resolution of the Commission such rules and regulations for the conduct of its meetings and affairs as may be required.

SECTION 4. POWERS

The Authority shall have the power to purchase, with the amounts received or to be received by it pursuant to a Bond Purchase Agreement, Bonds issued by the City, the Successor Agency or the Housing Authority at public or negotiated sale, for the purposes set forth in Section 1 hereof all in accordance with the Act. Any such bonds so purchased may be held by the Authority or sold to public or private purchasers at public or negotiated sale, in whole or in part. The Authority shall set any other terms and conditions on any purchase or sale contemplated herein as it deems to be necessary, appropriate and in the public interest, in furtherance of the Act.

The Authority is hereby authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts,

contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; to sue and be sued in its own name; and generally to do any and all things necessary or convenient to accomplish the purposes set forth in Section 1 hereof. Without limiting the generality of the foregoing, the Authority may issue or cause to be issued bonded and other indebtedness, and pledge any property or revenues as security to the extent permitted under the Act, including Article 4 or any other applicable provision of law.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner of exercising such power as are imposed upon the Agency in the exercise of similar powers, as provided in Section 6509 of the Act.

#### SECTION 5. FISCAL YEAR

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year as established from time to time by the Authority, being, at the date of this Agreement, the period from July 1 to and including the following June 30.

#### SECTION 6. DISPOSITION OF ASSETS

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2 hereof after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the City.

#### SECTION 7. BONDS

The Authority shall issue Bonds for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement. Said Bonds may, at the discretion of Authority, be issued in series.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The fees and expenses of such counsel, consultants, advisors, and the expenses of the City, the Successor Agency, or the Housing Authority and the Commission shall be paid from the proceeds of the Bonds or any other unencumbered funds of the Authority available for such purpose.

#### SECTION 8. BONDS ONLY LIMITED AND SPECIAL OBLIGATIONS OF AUTHORITY

The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of the City, the Successor Agency or the Housing Authority or pledge of the faith and credit of the City, the Successor Agency, the Housing Authority, or the Authority. The Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Bonds or the respective project costs except from revenues

and other funds pledged therefor. Neither the City, the Successor Agency, the Housing Authority, nor the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the City, the Successor Agency, Housing Authority nor the Authority shall be pledged to the payment of the principal of, premium, if any, or interest on the Bonds nor shall the City, the Successor Agency, the Housing Authority, or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any member of the Commission, or any officer, agent or employee of the Authority in his individual capacity and neither the Commission of the Authority nor any officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

#### SECTION 9. ACCOUNTS AND REPORTS

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by the City, the Successor Agency, the Housing Authority and their representatives.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Agency by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Act. 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 accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the City and also with the county auditor. Such report shall be filed within 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 that purpose.

In any Fiscal Year the Commission may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

The Treasurer of the Authority, within 12 months after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the



Authority to the extent such activities are not covered by the reports of the trustees for the Bonds. The trustee appointed under each Indenture shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out this Agreement.

#### SECTION 10. FUNDS

Subject to the applicable provisions of each Indenture, 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 pursuant to the accounting procedures developed under Section 9 hereof, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions or purposes of this Agreement.

#### SECTION 11. NOTICES

Notices and other communications hereunder to the City, the Successor Agency and the Housing Authority shall be sufficient if delivered to the clerk of the City Council.

#### SECTION 12. INDEMNIFICATION

To the full extent permitted by law, the City shall indemnify, protect, and hold harmless any person who is or was a member or alternate member of the Commission, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member or alternate member of the Commission, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances

#### SECTION 13. CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the parties hereto for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Authority and the party making such advance at the time of such advance.

#### SECTION 14. IMMUNITIES

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of the City, the Successor Agency, and Housing Authority when performing their respective functions, shall apply to them to the same degree and extent while engaged as members of the Commission or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

#### SECTION 15. AMENDMENTS

This Agreement shall not be amended, modified, or altered except by a written instrument duly executed by the City, the Successor Agency, and the Housing Authority.

#### SECTION 16. PARTIAL INVALIDITY

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

#### SECTION 17. SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Party may assign any right or obligation hereunder without the consent of the other Parties.

#### SECTION 18. TERMINATION OF SUCCESSOR AGENCY

At such time as the Successor Agency terminates as a matter of law, this Agreement shall remain in full force and effect and the members of the Authority thereafter shall be the City and the Housing Authority.

#### SECTION 19. MISCELLANEOUS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

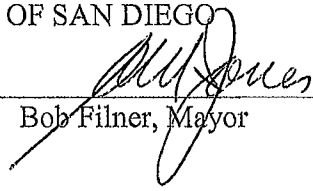
Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement is made in the State of California, under the Constitution and laws of such state and is to be so construed.

This Agreement is the complete and exclusive statement of the agreement between the Parties hereto, which supersedes and merges all prior proposals, understandings, and other agreements, including, without limitation, the Initial Agreement and the First and Second Amended and Restated Joint Exercise of Powers Agreements, whether oral, written, or implied in conduct, between and among the Parties relating to the subject matter 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.

CITY OF SAN DIEGO

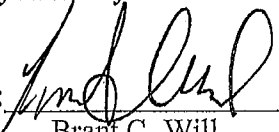
By   
Bob Filner, Mayor

ATTEST:


By   
Elizabeth Maland, City Clerk

APPROVED AS TO FORM AND LEGALITY

Jan I. Goldsmith  
City Attorney

By:   
Brant C. Will  
Deputy City Attorney

CITY OF SAN DIEGO, SOLELY IN ITS  
CAPACITY AS THE DESIGNATED  
SUCCESSOR AGENCY TO  
REDEVELOPMENT OF THE CITY OF  
SAN DIEGO,

By:   
Bob Filner, Mayor

ATTEST:

By: Elizabeth Maland  
Elizabeth Maland, Secretary

APPROVED AS TO FORM AND LEGALITY

Jan I. Goldsmith  
City Attorney

By: Kevin Reisch  
Kevin Reisch  
Deputy City Attorney

HOUSING AUTHORITY OF THE CITY  
OF SAN DIEGO

By: Rick Gentry  
Rick Gentry, Executive Director

ATTEST:

By: Pari Ryan  
Pari Ryan, Secretary

APPROVED AS TO FORM AND LEGALITY:

Jan I. Goldsmith  
City Attorney and  
General Counsel to the Housing Authority

By: Leslie Fitzgerald  
Leslie Fitzgerald  
Deputy City Attorney and  
Deputy General Counsel to the Housing Authority