

JOINT EXERCISE OF POWERS AGREEMENT

by and between the

CITY OF ANTIOCH

and the

ANTIOCH DEVELOPMENT AGENCY

creating the

CITY OF ANTIOCH PUBLIC FINANCING AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated as of April 27, 1993, by and between the CITY OF ANTIOCH, a charter city duly organized and existing under the its charter and the Constitution of the State of California (the "City"), and the ANTIOCH DEVELOPMENT AGENCY, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Agency"),

W I T N E S S E T H:

WHEREAS, Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act") authorize the City and the Agency to create a joint exercise of powers entity (the "City of Antioch Public Financing Authority" or the "Authority") which has the power to jointly exercise any powers common to the City and the Agency and to exercise the powers granted to it under the Act;

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

WHEREAS, the City is authorized to buy, sell and lease property and 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;

WHEREAS, the Agency is authorized to buy, sell and lease property and to issue bonds, expend bond proceeds, and borrow and loan money for any of its corporate purposes pursuant

to the provisions of the Community Redevelopment Act of the State of California;

WHEREAS, Article 4 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 issue bonds and to purchase bonds issued, or to make loans to, the Agency or the City for financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the Agency;

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

WHEREAS, by this Agreement, the City and the Agency desire to create and establish the City of Antioch Public Financing Authority for the purposes set forth herein and to exercise the powers described herein;

NOW, THEREFORE, the City and the Agency, 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 herein specified.

Act

The term "Act" shall mean Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

Agency

The term "Agency" shall mean the Antioch Development Agency, a public body, corporate and politic, duly organized and existing under and by virtue of the laws of the State of California.

Authority

The term "Authority" shall mean the City of Antioch Public Financing Authority created by this Agreement.

Board

The term "Board" shall mean the governing board of the Authority.

Bond Purchase Agreement

The term "Bond Purchase Agreement" shall mean an agreement of the Authority to purchase bonds of the Agency or the City solely from funds received from the Authority's simultaneous sale of such bonds to the purchaser or purchasers named therein, on the terms and conditions set forth therein.

Bonds

The term "Bonds" shall mean bonds and any other evidence of indebtedness of the Authority authorized and issued pursuant to the Act.

City

The term "City" shall mean the existing municipal corporation known as the City of Antioch, a general law city duly organized and existing under and by virtue of the laws and the constitution of the State of California.

Law

The term "Law" means the Community Redevelopment Law of the State of California (being Part I of Division 24 of the Health and Safety Code of the State of California, as amended) and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, and all laws amendatory thereof or supplemental thereto.

SECTION 2. PURPOSE

This agreement is made pursuant to the Act and for the purpose of assisting the City in financing and refinancing public capital improvements, including but not limited to refunding the installment sale payments (the "Prior Obligations") payable by the City of Antioch to the Antioch Development Agency under an installment sale agreement dated as of January 1, 1988 (the "Prior Agreement"), between the City and the Agency, and to pay costs of issuance incurred in connection with the issuance, sale and delivery of the Series 1993 Bonds. The Authority will carry

out such purposes by exercising the powers referred to in the recitals hereof and described in Section 5 herein.

SECTION 3. TERM

Subject to the provisions of Section 16, 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 Agency and the City; provided, however, that in no event shall this Agreement terminate while any notes or bonds of the Authority remain outstanding under the terms of the trust agreement or other instrument pursuant to which such bonds are issued. In any event, the Authority shall cause all records regarding its formation, existence, any notes or bonds purchased, sold or issued by it and proceedings pertaining to its termination to be retained for at least six years following termination of the Authority or final payment of any bonds issued by the Authority, whichever is later.

SECTION 4. AUTHORITY

A. Creation of Authority

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

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. Governing Board

The Authority shall be administered by the Board whose members shall be, at all times, the Mayor of the City and the members of the City Council; serving *ex officio*. The term of office as a member of the Board shall terminate when such member of the Board shall cease to be the Mayor or a member of the City Council, respectively; and the successor to the Mayor or such member of the City Council shall become a member of the Board.

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 expenses shall be reimbursed and there are unencumbered funds available for such purpose.

C. Meetings of Board

(1) Regular Meetings. The Board shall hold a regular meeting on the last Tuesday of April, of each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals; provided that if the Chair determines that there will be no business to transact at such meeting, such meeting may be canceled. 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 1 of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)) or any successor legislation hereinafter enacted.

(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 City and the Agency.

(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; Bonds

(1) The officers of the Authority shall be the Chair, Vice-Chair, Executive Director, Secretary, Treasurer and Controller. With the exception of the Treasurer and Controller, the officers of the Authority shall be the persons specified in the By-Laws of the Authority adopted by the Board and shall have the powers vested in them pursuant to such By-Laws and such other powers as may be granted by the Board from time to time by resolution.

(2) The Director of Financial Services of the City is hereby designated as Treasurer of the Authority. Subject to the applicable provisions of any trust agreement, 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 Act.

(3) The Director of Financial Services of the City, who performs the functions of auditor and controller for the City, 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 Act. The Controller shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(4) The City shall determine the charges to be made against the Authority for the services of the treasurer and controller.

(5) 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 of \$25,000 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 \$500.00 (excluding amounts held by a trustee or other fiduciary in connection with any Bonds).

(6) The Controller of the Authority is hereby authorized and directed to prepare or cause to be prepared:

(a) a special audit as required pursuant to Section 6505 of the

Act every year during the term of this Agreement; and (b) a report in writing on the first day of July, October, January, and April of each year (commencing [July], 1993) to the Board, the City and the Agency which report shall describe the amount of money held by the Treasurer and Controller of the Authority for the Board, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee of other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provides regular reports covering such amounts).

(7) 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. 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 Agency under the Law or bonds issued by the City at public or negotiated sale, for the purposes set forth in Section 2 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 of bonds contemplated herein as it deems to be necessary, appropriate and in the public interest, in furtherance of the Act.

The Authority shall have the power, in its own name, to buy, sell or lease property and to issue, sell and deliver Bonds for any purpose authorized under the Act.

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; and to sue and be sued in its own name.

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 City in the exercise of similar powers, as provided in Section 6509 of the Act.

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

SECTION 6. TERMINATION OF POWERS

Subject to the provisions of Section 16, the Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement or until the City and the Agency shall have mutually rescinded this Agreement.

SECTION 7. 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 June 30, 1993.

SECTION 8. DISPOSITION OF ASSETS

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 6 hereof, all assets of the Authority shall be distributed to the Agency, subject to Section 9 hereof.

SECTION 9. CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the City and the Agency 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 shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the City or the Agency, as the case may be, and the Authority at the time of making such advance. It is mutually understood and agreed that neither the City nor the Agency 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 may do so. The City or the Agency may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

SECTION 10. AGREEMENT NOT EXCLUSIVE

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the City and the Agency, except as the terms of this Agreement

shall conflict therewith, in which case the terms of this Agreement shall prevail.

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 City and the Agency and their representatives.

SECTION 12. CONFLICT OF INTEREST CODE

The Authority, to the extent required by law, shall adopt a Conflict of Interest Code.

SECTION 13. BREACH

If default shall be made by the City or the Agency in any covenant contained in this Agreement, such default shall not excuse either the City or the Agency from fulfilling its obligations under this Agreement and the City and the Agency shall continue to be liable for the payment of contributions and the performance of all conditions herein contained. The City and the Agency hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the City and the Agency hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority 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 Authority to any or all other remedies.

SECTION 14. 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 15. 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 16. AMENDMENT OF AGREEMENT

This Agreement may be amended, and the Authority may be terminated or its powers may be changed, restricted or eliminated by supplemental agreement executed by the City and the Agency at any time; provided, that such supplemental agreement shall be subject to any restrictions contained in any Bonds or documents related to any Bonds to which the Authority is a party.

SECTION 17. 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 Agency, by resolution duly adopted by the members of the Agency, and, in the case of the City, by resolution duly adopted by the City Council of the City, and, in the case of the Authority, by resolution duly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 18. NOTICES

Notices to the City hereunder shall be sufficient if delivered to the City Clerk and notices to the Agency hereunder shall be sufficient if delivered to the Secretary of the Agency.

SECTION 19. 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.

CITY OF ANTIOCH

By David S. Rawlands
City Manager

[SEAL]

Attest:

Florence Randall
City Clerk

ANTIOCH DEVELOPMENT AGENCY

By David S. Rawlands
Executive Director

[SEAL]

Attest:

Florence Randall
Secretary

**BY-LAWS
OF THE
CITY OF ANTIOCH PUBLIC FINANCING AUTHORITY**

Adopted April 27, 1993.

CITY OF ANTIOCH PUBLIC FINANCING AUTHORITY
RESOLUTION NO. 93/93

A RESOLUTION ADOPTING THE BY-LAWS OF THE AUTHORITY; CONFIRMING THE CHAIR, VICE-CHAIR, EXECUTIVE DIRECTOR, SECRETARY, TREASURER AND CONTROLLER, RESPECTIVELY, OF THE AUTHORITY; ESTABLISHING THE TIME AND PLACE OF REGULAR MEETINGS OF THE AUTHORITY; DIRECTING CERTAIN ACTIONS TO BE TAKEN REGARDING A CONFLICT OF INTEREST CODE; AND RETAINING COUNSEL FOR THE AUTHORITY

WHEREAS, the City of Antioch (the "City") and the Antioch Development Agency (the "Agency") have heretofore executed a Joint Exercise of Powers Agreement, dated as of April 27, 1993 (the "Agreement"), by and between the City and the Agency, which Agreement creates and establishes the City of Antioch Public Financing Authority (the "Authority");

NOW, THEREFORE, the Governing Board of the City of Antioch Public Financing Authority resolves as follows:

Section 1. The By-Laws attached hereto as Exhibit A are adopted as the By-Laws of the Authority.

Section 2. Pursuant to Section 2.2 of the By-Laws, the Mayor of the City shall be Chair of the Authority.

Section 3. Pursuant to Section 2.3 of the By-Laws, the Vice Mayor of the City shall be Vice-Chair of the Authority.

Section 4. Pursuant to Section 2.4 of the By-Laws, the City Manager shall be Executive Director of the Authority.

Section 5. Pursuant to Section 2.5 of the By-Laws, the City Clerk of the City shall be Secretary of the Authority.

Section 6. Pursuant to Section 4(D) of the Agreement, the Director of Financial Services of the City shall be Treasurer and Controller of the Authority.

Section 7. The regular meetings of the Authority shall be held at City of Antioch, City Hall, Third and H Streets,

Antioch, CA 94509, or such other place as the Governing Board of the Authority may designate from time to time, at such time as may be designated by appropriate notice.

Section 8. Pursuant to Section 4(D)(7) of the Agreement, the City Attorney of the City of Antioch is hereby retained as counsel to the Authority.

Section 9. Whenever an officer of the Agency or the City is designated an officer of the Authority, the assistants and deputies of such officer from time to time shall also be, ex officio, officers of the Authority; and whenever a power is granted to, or a duty imposed upon, such officer, the power may be exercised, or the duty performed, by such assistant or deputy.

Section 10. The Authority hereby determines that the Authority is not subject to the provisions of Chapter 7 of the Political Reform Act of 1974 requiring the adoption of a conflict of interest code in that it has no "designated employees" within the meaning of the Political Reform Act of 1974. Such determination is based on the following facts: (1) the Authority does not have regulatory, quasi-regulatory, permit, licensing or planning authority functions; (2) the Authority will not acquire real property in the foreseeable future; and (3) the annual operating budget exclusive of salaries for the Authority is less than \$70,000, as set forth in 2 Cal. Code of Regs. Section 18751(d). Accordingly, the Authority hereby authorizes and directs the Secretary of the Authority to file an application with the City Council of the City of Antioch, as the code reviewing body of the Authority, for a determination that the Authority is exempt from adopting a conflict of interest code pursuant to the requirements of the Political Reform Act of 1974.

Section 11. The Board hereby determines that an audit shall be caused to be performed every year by the Treasurer and Controller of the Authority as provided by Section 6505 of the Government Code of the State of California. Such audit shall be filed with the Secretary of the Authority.

Section 12. This resolution shall take effect from and after its adoption.

PASSED AND ADOPTED BY THE GOVERNING BOARD OF THE CITY OF ANTIOCH FINANCING AUTHORITY, THIS 27TH DAY OF APRIL, 1993 BY THE FOLLOWING VOTE, TO WIT:

AYES: BOARD MEMBERS FREITAS, RIMBAULT, ROCHA AND CHAIRMAN KELLER

NOES: BOARD MEMBER HERNANDEZ

ABSENT: NONE

ABSTAIN: NONE

Glennett Randall
Secretary

ARTICLE II - OFFICERS

Section 2.1. Officers. The Officers of the Authority shall be the Chair, Vice-Chair, Executive Director, Secretary, Treasurer and Controller.

Section 2.2. Chair. The Chair of the Authority shall be the member who is the Mayor of the City. The term of office shall be the same as the term of the Mayor of the City. The Chair shall preside at all meetings of the Authority, and shall submit such information and recommendations to the Board as he or she may consider proper concerning the business, policies and affairs of the Authority.

Section 2.3. Vice-Chair. The Vice-Chair shall be the member who is the Vice Mayor of the City. The term of office shall be the same as the term of the Vice Mayor of the City. The Vice-Chair shall perform the duties of the Chair in the absence or incapacity of the Chair. In case of the resignation or death of the Chair, the Vice-Chair shall perform such duties as are imposed on the Chair, until such time as the members shall elect a new Chair.

Section 2.4. Executive Director. The Executive Director shall be the person who is the City Manager. The term of office shall be the same as the term of the City Manager. The Executive Director shall serve as the chief executive officer of the Authority and shall be responsible for execution and supervision of the affairs of the Authority. Except as otherwise authorized by resolution of the Board, the Executive Director or

any power or authority to bind the Authority by any contract, to pledge its credit, or to render it liable for any purpose in any amount.

ARTICLE III - EMPLOYEES AND AGENTS

Section 3.1. Appointment of Employees and Agents. The Authority may from time to time request from the City of Antioch (the "City") or the Agency the services of such personnel, counsel or agents, permanent or temporary, as may be necessary to carry out the business and affairs of the Authority. The Board may in addition employ temporary professional and technical personnel on such terms and at such rates of compensation as the Board may determine, for the performance of Authority business and affairs, provided that adequate sources of funds are identified for the payment of such temporary professional and technical services.

ARTICLE IV - MEETINGS

Section 4.1. Regular Meetings. Regular meetings shall be held at the business office of the Authority, or at such other place as the Chair may designate, on dates and at a time as fixed by Resolution of the Authority. If at any time any regular meeting falls on a legal holiday, such regular meeting shall be held on the next business day at the same time. At least 72 hours before a regular meeting, an agenda containing a brief general description of each item of business to be transacted or discussed shall be posted at a location freely accessible to members of the public. The agenda shall specify the time and location of the regular meeting. No action shall be taken on any

Section 4.4. Public Hearings. All public hearings held by the Board shall be held during regular or special meetings of the Board.

Section 4.5. Adjourning Meetings and Continuing Public Hearings to Other Times or Places. The Board may adjourn any meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all Board members are absent from any regular meeting or adjourned regular meeting the Secretary or Acting Secretary of the Authority may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided for special meetings unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.

Any public hearing being held, or any hearing noticed or ordered to be held at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting in the same manner and to the same extent set forth herein for the adjournment of the meetings; provided, that if the hearing is

Section 4.9. Parliamentary Procedure. The rules of parliamentary procedure set forth in Robert's Rules of Order shall govern all meetings of the Authority, except as otherwise herein provided.

ARTICLE V - AMENDMENTS

Section 5.1. Amendments to By-Laws. These by-laws may be amended by the Board at any regular or special meeting by majority vote, provided that a description of the proposed amendment to any particular section is included in the notice of such meeting.

CERTIFICATE OF THE SECRETARY OF THE
CITY OF ANTIOCH PUBLIC FINANCING AUTHORITY


I, FLORENCE RUNDALL, Secretary of the City of Antioch Public Financing Authority (the "Authority"), hereby certify that the foregoing Resolution Nos. 93/93, 93/94 and 94/95 are full, true and correct copies of resolutions duly adopted at a special meeting of the Authority duly held in Antioch, California on April 27, 1993, of which meeting all of the members of said Authority had due notice.

I further certify that I have carefully compared the foregoing copies with the original minutes of said meeting on file and of record in my office; that said copies are full, true and correct copies of the original resolutions adopted at said meeting and entered in said minutes; and that said resolutions have not been amended, modified, rescinded or revoked in any manner since the date of its adoption, and the same is now in full force and effect.

An agenda of said meeting was posted at least 72 hours before the meeting at City of Antioch, City Hall, 3rd & H Streets, Antioch, CA 94509, Antioch, California 94509, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

Notice of said meeting was delivered to each member of the Governing Board of the Authority at least 24 hours before said meeting.

Dated: May 12, 1993.



Secretary of the City of
Antioch Public
Financing Authority