

## JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated as of August 1, 2008, is between the TOWN OF FAIRFAX, a general law city organized and existing under the laws of the State of California (the "Town"), and the CALIFORNIA MUNICIPAL FINANCE AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California ("CMFA")

### BACKGROUND:

1. Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act") authorize the Town and CMFA to create a joint exercise of powers entity which has the power to exercise any powers common to the Town and CMFA and to exercise additional powers granted to it under the Act.

2. The Town and CMFA are each empowered by law to undertake certain projects and programs.

3. The Town is authorized to buy, sell and lease property and to issue bonds, expend bond proceeds, and borrow and loan money for certain public purposes under Chapter 4 (commencing with section 43600) of Division 4 of Title 4 of the California Government Code and Article 3.7 (commencing with section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code.

4. CMFA 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 under the Act and a Joint Exercise of Powers Agreement, dated as of January 1, 2004, among the County of San Diego, the City of Santa Clarita and the City of Oakland.

5. 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 a joint powers agency formed under the Act to issue bonds and to purchase bonds issued by, or to make loans to, the Town or CMFA for financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the Town or CMFA.

6. The Town and CMFA wish to enter into this Agreement to establish the Fairfax Financing Authority for the purposes and having the powers set forth herein.

### AGREEMENT:

For and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Definitions.* Unless the context otherwise requires, the terms defined in this Section 1 have the meanings herein specified.

"Act" means Articles 1, 2 and 4 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.

"Agreement" means this Joint Exercise of Powers Agreement, as it may be amended from time to time, creating the Authority.

"Authority" means the Fairfax Financing Authority created by this Agreement.

"Board" means the governing board of the Authority.

"Bonds" means bonds and any other evidence of indebtedness of the Authority authorized and issued under the Act.

"By-Laws" means the By-Laws which are adopted by the Board, as amended from time to time.

"CMFA" means California Municipal Finance Authority, a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California.

"Town" means Town of Fairfax, a general law city organized and existing under the laws of the State of California.

"Member" or "Members" means the Town and/or CMFA, as appropriate.

SECTION 2. *Purpose.* This agreement is entered into under the Act for the purpose of assisting the financing and refinancing of certain public programs and projects of the Town and for the purpose of aiding in the financing and refinancing of public capital improvements, as defined in the Act, for the benefit of the Town by exercising the powers referred to in the recitals hereof and described in Section 5.

SECTION 3. *Term.* This Agreement takes effect as of the date hereof and continues in full force and effect until terminated by a supplemental agreement of CMFA and the Town; provided, however, that in no event shall this Agreement terminate while any Bonds or other obligations of the Authority remain outstanding under the terms of any indenture, trust agreement, contract, agreement, lease, sublease or other instrument under which such Bonds are issued or other obligations are incurred. The Authority shall cause all records regarding its formation, existence, any Bonds issued by it, obligations incurred 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, whichever is later.

SECTION 4. *The Authority.*

(a) Creation of Authority. There is hereby created under the Act an agency and public entity to be known as the "Fairfax Financing Authority." As provided in the Act, the Authority is a public entity separate from the Town and CMFA. The debts, liabilities and obligations of the Authority do not and shall not constitute debts, liabilities or obligations of the Town or CMFA. 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 members of the Town Council of the Town. The term of office as a member of the Board will terminate when such member of the Board ceases to be a

member of the Town Council of the Town; and the successor to such member of the Town Council of the Town will become a member of the Board upon assuming such office. Members of the Board will not receive any compensation for serving as such, but are entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board determines that such expenses will be reimbursed and unencumbered funds are available for that purpose.

(c) Meetings of Board.

(i) Time and Place. The Board will hold regular meetings as provided in the By-Laws. The Board may hold special meetings at any time and from time to time in accordance with law.

(ii) Legal Notice. All meetings of the Board will 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), or any successor legislation hereinafter enacted.

(iii) Minutes. The Board will 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 Town and CMFA.

(iv) Quorum. A majority of the members of the Board 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

(i) The Officers of the Authority shall be the Chair, Vice-Chair, Executive Director, Secretary, Treasurer and Controller, consisting of the persons specified in the By-Laws and shall have the powers vested in them under the By-Laws and such other powers as may be granted by the Board from time to time by resolution.

(ii) The Treasurer and Controller of the Authority is hereby 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 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 (excluding amounts held by a trustee or other fiduciary in connection with any Bonds).

(iii) So long as required by Section 6505 and Section 6505.5 of the Act, the Treasurer and Controller of the Authority shall prepare or cause to be prepared: (a) a special audit as required under 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 to the Board, the Town and CMFA 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 or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provides regular reports covering such amounts).

(iv) The Town shall determine the charges, if any, to be made against the Authority for the services of the Treasurer and Controller.

(v) 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.

(vi) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activities of officers, agents or employees of the Members when performing their respective functions within the territorial limits of their respective Member, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Agreement.

(vii) None of the officers, agents or employees, if any, directly employed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by any Member or, by reason of their employment by the Authority, to be subject to any of the requirements of any Member.

(viii) The Members hereby confirm their intent and agree that, as provided in Section 4(a) hereof and in the Act, the debts, liabilities and obligations of the Authority do not and shall not constitute debts, liabilities or obligations of the Town or CMFA, and they do not intend by the following sentence to impair this provision. To the extent that liability is imposed or a claim is made on CMFA, for any reason whatsoever notwithstanding Section 4(a) hereof and the Act, directly or indirectly arising out of a transaction or series of transactions undertaken by or for the benefit of the Town in connection with the activities of the Authority, the Town shall indemnify, defend and hold harmless CMFA and each of its officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities arising out of or in connection with the activities of the Authority. CMFA may elect to defend itself in any such action with counsel of its choice, the reasonable fees of such counsel to be paid by the Town. The Authority and the Town are jointly and severally liable for any indemnity obligation owed to CMFA. Notwithstanding the provisions of Section 895.6 of the Government Code of the State, the Town has no right to contribution from CMFA.

SECTION 5. *Powers.* The Authority has the power, in its own name, to construct, buy, sell or lease property and to issue, sell and deliver Bonds for such purposes and 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. Notwithstanding the foregoing, the Authority has 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.

SECTION 6. *Termination of Powers.* The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement in accordance with Section 3.

SECTION 7. *Fiscal Year.* Unless and until changed by resolution of the Board, the fiscal year of the Authority is 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, 2009.

SECTION 8. *Disposition of Assets.* Upon termination of this Agreement under Section 3, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority will be returned in proportion to any contributions made as required by Section 6512 of

the Act. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. After rescission or termination of this Agreement under Section 3, all property of the Authority, both real and personal, shall be distributed to the Town, subject to Section 9.

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 Town and CMFA 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 made in respect of a revenue-producing facility shall be made subject to repayment, and will be repaid, in the manner agreed upon by the Town or CMFA, as the case may be, and the Authority at the time of making such advance as provided by 6512.1 of the Act. It is mutually understood and agreed that neither the Town nor CMFA 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 Town or CMFA 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 is not exclusive and does not amend or alter the terms of other agreements between the Town and CMFA, except as the terms of this Agreement conflict therewith, in which case the terms of this Agreement will prevail.

SECTION 11. *Accounts and Reports.* The Authority will establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority will be open to inspection at all reasonable times by the Town and CMFA and their representatives.

SECTION 12. *Conflict of Interest Code.* The Authority shall, by resolution, adopt a Conflict of Interest Code to the extent required by law.

SECTION 13. *Breach.* If the Town or CMFA defaults in any covenant contained in this Agreement, such default will not excuse either the Town or CMFA from fulfilling its obligations under this Agreement and the Town and CMFA will continue to be liable for the payment of contributions and the performance of all conditions herein contained. The Town and CMFA hereby declare that this Agreement is entered into for the benefit of the Authority and the Town and CMFA 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.* If any part, term, or provision of this Agreement is 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 will not be affected thereby.

SECTION 15. *Successors; Assignment.* This Agreement is binding on and inures 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.* This Agreement may be amended by supplemental agreement executed by the Members at any time. However, this Agreement may be terminated only in accordance with Section 3 and any such supplemental agreement is 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 CMFA, by resolution duly adopted by the board of directors of CMFA, and, in the case of the Town, by resolution duly adopted by the Town Council of the Town, 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. *Waiver of Personal Liability.* No member, officer or employee of the Authority, the Town or CMFA is individually or personally liable for any claims, losses, damages, costs, injury and liability of every kind, nature and description arising from the actions of the Authority or the actions undertaken under this Agreement, and the Town shall defend such members, officers or employees against any such claims, losses, damages, costs, injury and liability. Without limiting the generality of the foregoing, no member, officer or employee of the Authority or of any Member is personally liable on any Bonds or be subject to any personal liability or accountability by reason of the issuance of Bonds under the Act and this Agreement. To the full extent permitted by law, the Board shall provide for indemnification by the Authority of any person who is or was a member of the Board, 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 of the Board, 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 the course and scope of his or her office, employment or agency. In the case of a criminal proceeding, the Board may provide for indemnification and defense of a member of the Board, or an officer, employee or other agent of the Authority to the extent permitted by law.

SECTION 19. *Notices.* Notices to the Town hereunder shall be sufficient if delivered to the Town Manager of the Town, and notices to CMFA hereunder shall be sufficient if delivered to the financial advisor of CMFA.

SECTION 20. *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.

**TOWN OF FAIRFAX**

By Michael Red  
Town Manager

Attest:

Anderson  
Clerk of the Town Council

**CALIFORNIA MUNICIPAL FINANCE  
AUTHORITY**

By \_\_\_\_\_  
Member of the Board of Directors

Attest:

\_\_\_\_\_  
Member of the Board of Directors

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.

**TOWN OF FAIRFAX**

By \_\_\_\_\_  
Superintendent

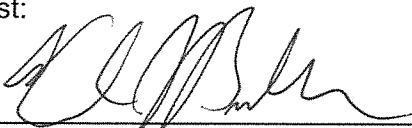
Attest:

\_\_\_\_\_  
Clerk of the Town Council

**CALIFORNIA MUNICIPAL FINANCE  
AUTHORITY**

By \_\_\_\_\_  
Member of the Board of Directors

Attest:

  
\_\_\_\_\_  
Member of the Board of Directors