



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Finance

Prepared by: Mark Moses, *mm*
Interim Finance Director

City Manager Approval: *J. Maehle*

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING, AUTHORIZING AND DIRECTING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT TO JOIN THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY, AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT WITH THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY RELATING TO THE SAN RAFAEL JOINT POWERS FINANCING AUTHORITY

RECOMMENDATION: ADOPT RESOLUTION

BACKGROUND: The San Rafael Joint Powers Financing Authority (the "SRJPFA") was formed in April 1992 pursuant to a Joint Exercise of Powers Agreement (the "JPA Agreement") between the City of San Rafael and the San Rafael Redevelopment Agency ("the Agency"). The purpose of the SRJPFA was to facilitate lease revenue bond financing that supported Redevelopment Agency projects. The SRJPFA issued the 2003 Parking Bonds, and the subsequent refunding earlier this year. Upon the dissolution of the Agency on February 1, 2012, the City of San Rafael, in its role as successor agency, succeeded the Agency as a member of the SRJPFA.

Certain provisions contained in AB 1484, the redevelopment trailer bill (the "Trailer Bill"), have an impact on the parking refunding bonds issued in July 2012 to reduce debt service on the 2003 Parking Bonds, as well as on future debt transactions conducted through the SRJPFA. The Trailer Bill contains a provision that calls for the disposal of all remaining assets and termination of the Successor Agency within one year of the final debt payment. The debts of the Agency are currently scheduled to mature on December 1, 2022; thus, the Agency's successor agency, under Section 34187(b), would cease to exist on or before December 1, 2023. California law requires at least two parties to form a joint exercise of powers agency (joint powers authority), and it is imperative that the SRFPFA continues to exist.

FOR CITY CLERK ONLY

File No.: JEPFA - City

Council Meeting: 10/15/2012

Disposition: Resolution #13424

If the SRJPFA ceases to exist upon the dissolution of the Agency's successor agency on December 1, 2023, this would create both State law and federal tax law issues. From a State law perspective, the leases that provide the security for the 2012 Parking Refunding Bonds might terminate, and there might therefore be no obligation on the part of the City to make the lease payments needed to pay debt service on the 2012 Bonds. From a federal tax law perspective, there would no longer be a political subdivision serving as the issuer of the 2012 Bonds, thereby calling into question the tax-exempt status of the 2012 Bonds. As a result, the City provided assurance that the dissolution of the successor agency, in and of itself, would not cause the dissolution of the SRJPFA by refunding all but \$5,000 of the 2003 Bonds maturing on April 1, 2033. By structuring the refunding in this manner, the SRJPFA ensured that its existence through the final maturity of the 2012 Bonds.

ANALYSIS: The City is interested in redeeming the final \$5,000 of the 2003 Bonds prior to April 1, 2033, in order to avoid the cost and administrative burden of keeping them outstanding for such a long period. Absent a statutory change that makes clear that the SRJPFA does not dissolve upon dissolution of the Agency's successor agency, it will be able to do so only if it finds another member for the SRJPA and amends the JPA Agreement. In addition, it is unlikely that the City will be able to successfully use the SRJPA for any new issuances, until a replacement member for the Successor Agency is established.

The City has held a number of discussions with the California Municipal Finance Authority (CMFA), an organization whose mission is "to support economic development, job creation and social programs throughout the State." One of the roles CMFA performs for its members is to assist with the formation of joint powers financing authorities. Recently, it helped the Town of Fairfax form such a JPA to issue general obligation bonds approved by the town's voters in 2009.

Staff recommends that the City join CMFA in order that CMFA can then replace the Successor Agency as part of the Authority, thus ensuring that Authority is viable through the term of all outstanding debt, and available for future issuances of debt. The Amended and Restated Joint Powers Agreement with the CMFA relating to the SRJPFA (attached) will support this transition.

FISCAL IMPACT: The cost of joining the California Municipal Finance Authority is \$10,000. Additional legal costs associated with amending the JPA agreement for the San Rafael Joint Powers Financing Authority are estimated to be \$5,000. This action will save the Parking Fund at least \$900 per year for the next 21 years in administrative costs by enabling the retirement of the last outstanding piece of the original 2003 Parking Bonds. The cost of amending and restating the JPA agreement relating to the Authority will be split between the City's General Fund and the Parking Fund.

ACTION REQUIRED: Adopt Resolution. A related resolution is on the agenda of the San Rafael Successor Agency.

ATTACHMENTS

Resolution

Joint Exercise of Powers Agreement Relating to the California Municipal Financing Authority
Amended and Restated Joint Exercise of Powers Agreement

RESOLUTION NO. 13424

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
APPROVING, AUTHORIZING AND DIRECTING THE EXECUTION OF A JOINT
EXERCISE OF POWERS AGREEMENT TO JOIN THE CALIFORNIA
MUNICIPAL FINANCE AUTHORITY, AND AUTHORIZING THE EXECUTION OF
AN AMENDED AND RESTATED JOINT EXERCISE OF POWERS
AGREEMENT WITH THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY
RELATING TO THE SAN RAFAEL JOINT POWERS FINANCING AUTHORITY**

WHEREAS, pursuant to the provisions of the Joint Exercise of Powers Act, comprising Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 (commencing with section 6500) of the California Government Code (the "JPA Act"), a number of California cities, counties and special districts have entered into a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority dated as of January 1, 2004 pursuant to which the California Municipal Finance Authority ("CMFA"), a joint exercise of powers authority, was organized (the "CMFA Agreement"); and

WHEREAS, CMFA, upon authorization by its Board of Directors, acting pursuant to the JPA Act, may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them; and

WHEREAS, CMFA and the City of San Rafael (the "City") desire to enter into an Amended and Restated Joint Exercise of Powers Agreement (the "Amended Agreement") relating to San Rafael Joint Powers Financing Authority (the "San Rafael Authority") pursuant to the JPA Act in order to have the CMFA replace the San Rafael Successor Agency (the "Successor Agency"), as successor to the San Rafael Redevelopment Agency (the "RDA"), as a member of the San Rafael Authority; and

WHEREAS, on June 27, 2012, the State Legislature passed, and the Governor signed, Assembly Bill 1484 ("AB 1484"), which clarifies that the Successor Agency is a separate legal entity from the City; and

WHEREAS, there has been presented to this meeting a proposed form of the Amended Agreement, by and among CMFA, the City and the Successor Agency; and

WHEREAS, under California law and the Amended Agreement, the San Rafael Authority is and will be a public entity separate and apart from the parties to the Amended Agreement and the debts, liabilities and obligations of the San Rafael Authority will not be the debts, liabilities or obligations of the parties to the Amended Agreement or any representative of the San Rafael Authority serving on the governing body of the San Rafael Authority or any member of the San Rafael Authority; and

WHEREAS, as a condition to being willing to execute the Amended Agreement, the CMFA requires the City to join the CMFA, which requires the City's execution of the CMFA Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San Rafael, as follows:

Section 1. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. The Amended Agreement, in substantially the form placed on file with the City Clerk, is hereby approved. The Mayor, the City Manager or the Assistant City Manager of the City (each, a "Designated Officer"), each acting alone, are hereby authorized and directed, for and on behalf of the City, to execute and deliver the Amended Agreement, in substantially said form, with such changes and insertions therein and the Designated Officers, with the advice of bond counsel to the City, may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The CMFA Agreement is on file with the City Clerk. The Designated Officers, each acting alone, are hereby authorized and directed, for and on behalf of the City, to execute and deliver the CMFA Agreement.

Section 4. The Designated Officers are hereby authorized and directed, for and on behalf of the City, to take any and all other actions consistent with the purposes of this Resolution.

Section 5. The firm of Jones Hall, A Professional Law Corporation, as bond counsel to City, is hereby authorized and directed to cause to be prepared, executed and filed any and all reports, statements and other documents as may be required in connection with the execution of the Amended and Restated Agreement.

Section 6. This Resolution shall take effect immediately upon its passage and adoption.

I, ESTHER C. BEIRNE, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of the City of San Rafael held on the 15th day of October, 2012, by the following vote, to wit:

AYES: COUNCILMEMBERS: Connolly, Heller, Levine, McCullough & Mayor Phillips

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

Esther C. Beirne.

ESTHER C. BEIRNE, City Clerk

CITY OF SAN RAFAEL

ROUTING SLIP / APPROVAL FORM

INSTRUCTIONS: USE THIS FORM WITH EACH SUBMITTAL OF A CONTRACT, AGREEMENT, ORDINANCE OR RESOLUTION BEFORE APPROVAL BY COUNCIL / AGENCY.

SRRA / SRCC AGENDA ITEM NO. 3.e

DATE OF MEETING: October 15, 2012

FROM: Mark Moses

DEPARTMENT: Finance

DATE: 10/4/2012

TITLE OF DOCUMENT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING, AUTHORIZING AND DIRECTING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT TO JOIN THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY, AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT WITH THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY RELATING TO THE SAN RAFAEL JOINT POWERS FINANCING AUTHORITY



Department Head (signature)

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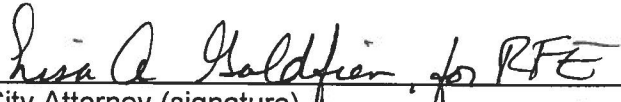
(LOWER HALF OF FORM FOR APPROVALS ONLY)

APPROVED AS COUNCIL / AGENCY
AGENDA ITEM:



City Manager (signature)

APPROVED AS TO FORM:



City Attorney (signature)

NOT APPROVED

REMARKS:

**JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY**

THIS AGREEMENT, dated as of January 1, 2004, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the "Members" and those parties initially executing this Agreement are referred to as the "Initial Members"):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the "Joint Exercise of Powers Act"), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a "public agency" as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each of the Members is empowered by law to promote economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, the increase of the tax base, and the promotion of opportunities for education, cultural improvement and public health, safety and general welfare; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means, including through making grants, loans or providing other financial assistance to governmental and nonprofit organizations; and

WHEREAS, each Member is also empowered by law to acquire and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, as specified in this Agreement and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute bonds, notes, commercial paper or any other evidences of indebtedness, including leases or installment sale agreements or certificates of participation therein (herein "Bonds"), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue Bonds pursuant to the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects of any nature, including, but not limited to, capital or working capital projects, insurance, liability or retirement programs or facilitating Members use of existing or new financial instruments and mechanisms; and

WHEREAS, it is further the intention of the Members that the projects undertaken will result in significant public benefits to the inhabitants of the jurisdictions of the Members; and

WHEREAS, by this Agreement, each Member desires to create and establish the "California Municipal Finance Authority" for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, 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 Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of Bonds for any purpose or activity permitted under the Joint Exercise of Powers Act or any other applicable law. Such purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Bonds issued or caused to be issued by the Authority (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement or other instrument pursuant to which such Bonds are issued, or unless a successor to the Authority assumes all of the Authority's debts, liabilities and obligations.

Section 3. Authority.

A. CREATION AND POWERS OF AUTHORITY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Municipal Finance Authority" (the "Authority"), and said Authority shall be a public entity separate and apart from the Members. Its

debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.

B. BOARD.

The Authority shall be administered by the Board of Directors (the "Board," or the "Directors" and each a "Director") of the California Foundation for Stronger Communities, a nonprofit public benefit corporation organized under the laws of the State of California (the "Foundation"), with each such Director serving in his or her individual capacity as a Director of the Board. The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein. The number of Directors, the appointment of Directors, alternates and successors, their respective terms of office, and all other provisions relating to the qualification and office of the Directors shall be as provided in the Articles and Bylaws of the Foundation, or by resolution of the Board adopted in accordance with the Bylaws of the Foundation.

All references in this Agreement to any Director shall be deemed to refer to and include the applicable alternate Director, if any, when so acting in place of a regularly appointed Director.

Directors may receive reasonable compensation for serving as such, and shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

The Foundation may be removed as administering agent hereunder and replaced at any time by amendment of this Agreement approved as provided in Section 16; provided that a successor administering agent of this Agreement has been appointed and accepted its duties and responsibilities under this Agreement.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The officers of the Authority shall be the Chair, Vice-Chair, Secretary and Treasurer (defined below). The Board, in its capacity as administering agent of this Agreement, shall elect a Chair, a Vice-Chair, and a Secretary of the Authority from among Directors to serve until such officer is re-elected or a successor to such office is elected by the Board. The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor, and controller of the Authority (the "Treasurer") pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve until such officer is re-elected or a successor to such office is elected by the Board.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, and except as may otherwise be

specified by resolution of the Board, the Treasurer is designated as the depository of the Authority to have custody of all money of the Authority, from whatever source derived and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

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 specified by resolution of the Board but in no event less than \$1,000.

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.

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

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings 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), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; 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 Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors constituting a quorum, 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 Board 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, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for any purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Authority is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of 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 person, firms, corporations and any governmental entity; to sue and be sued in its own name; to make grants, loans or provide other financial assistance to governmental and nonprofit organizations (e.g., the Members or the Foundation) to accomplish any of its purposes; and generally to do any and all things necessary or convenient to accomplish its purposes.

Without limiting the generality of the foregoing, the Authority may issue or cause to be issued Bonds, and pledge any property or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law; provided, however, the Authority shall not issue Bonds with respect to any project located in the jurisdiction of one or more Members unless the governing body of any such Member, or its duly authorized representative, shall approve, conditionally or unconditionally, the project, including the issuance of Bonds therefor. Such approval may be evidenced by resolution, certificate, order, report or such other means of written approval of such project as may be selected by the Member (or its authorized representative) whose approval is required. No such approval shall be required in

connection with Bonds that refund Bonds previously issued by the Authority and approved by the governing board of a Member.

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 in which a California general law city could exercise such powers and perform such duties. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

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 resolution of the Board, being, at the date of this Agreement, the period from July 1 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, 2004.

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, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

Section 7. Bonds.

From time to time the Authority shall issue Bonds, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement.

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 expenses of the Board 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 any Member or pledge of the faith and credit of the Members 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 except from revenues and other funds pledged therefor. Neither the Members 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 Members nor the faith and credit of the Authority shall be pledged to the payment of the

principal of, premium, if any, or interest on the Bonds nor shall the Members or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of the Authority in his or her individual capacity and neither the Board of the Authority nor any Director or 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 each Member.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers 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 a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Authority may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Authority. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Members which report shall describe the amount of money held by the Treasurer for the Authority, 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 provided regular reports covering such amounts.)

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 Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

Section 10. Funds.

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary 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 Sections 3.C and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

Section 11. Notices.

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided, however, that to the extent permitted by law, the Authority may, provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 12. Additional Members/Withdrawal of Members.

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such public agency with the Authority of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 13. Indemnification.

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Director or an officer, employee of 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 Director or an officer, employee or other agent of the Authority, against expenses, including attorneys fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith 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 14. 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 Members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. 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 Member making such advance at the time of such advance. It is mutually understood and agreed to that no Member 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 any Member may do so. The Members understand and agree that a portion of the funds of the Authority that otherwise may be allocated or distributed to the Members may instead be used to make grants, loans or provide other financial assistance to governmental units and nonprofit organizations (e.g., the Foundation) to accomplish any of the governmental unit's or nonprofit organization's purposes.

Section 15. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Authority while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

Section 16. Amendments.

Except as provided in Section 12 above, this Agreement shall not be amended, modified, or altered, unless the negative consent of each of the Members is obtained. To obtain the negative consent of each of the Members, the following negative consent procedure shall be followed: (a) the Authority shall provide each Member with a notice at least sixty (60) days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (b) the Authority shall provide each Member who did not respond a reminder notice with a notice at least thirty (30) days prior to the date such proposed amendment is to become effective; and (c) if no Member objects to the proposed amendment in writing within sixty (60) days after the initial notice, the proposed amendment shall become effective with respect to all Members.

Section 17. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from two of the Initial Members an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Initial Member approving this Agreement and the execution and delivery hereof.

Section 18. 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 19. 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 Member may assign any right or obligation hereunder without the consent of the other Members.

Section 20. 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 shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the City of San Rafael has caused this Agreement to be executed and attested by its duly authorized representatives as of the ___ day of Oct. 15, 2012.

Member:

CITY OF SAN RAFAEL

By Nancy Machle
Name:
Title:

ATTEST:

Esther C. Berme
Clerk

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (the "Agreement"), dated as of March 15, 2013, is among the CITY OF SAN RAFAEL, a charter city organized and existing under the laws of the State of California (the "City"), the CALIFORNIA MUNICIPAL FINANCE AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California ("CMFA"), and the CITY OF SAN RAFAEL (the "Successor Agency"), as successor agency to the San Rafael Redevelopment Agency (the "Agency").

BACKGROUND:

1. The City and the Agency have heretofore entered into a Joint Exercise of Powers Agreement dated April 20, 1992 (the "Original Agreement") creating the City of San Rafael Joint Powers Financing Authority, subsequently renamed the San Rafael Joint Powers Financing Authority (the "Authority").
2. The Authority was formed for the purpose of assisting the financing and refinancing of certain redevelopment activities of the Agency and, to that end, has issued two series of lease revenue bonds (the "Bonds") to finance and refinance a parking garage with the redevelopment project area of the Agency.
3. Pursuant to ABx1 26, passed by the Legislature of the State of California and signed by the Governor of the State of California in June 2011 ("AB 26"), and the California Supreme Court's decision in *California Redevelopment Assn. v. Matosantos*, the Agency was dissolved on February 1, 2012, and the Successor Agency, pursuant to Section 34178 of the California Health and Safety Code, succeeded the Agency as a party to the Original Agreement.
4. Recent legislation of the State of California, known as AB 1484, added Section 34187(b) to the California Health and Safety Code, which section provides that within one year after all of the debts of a redevelopment agency are retired or paid off, its successor agency shall terminate its existence.
5. The last bonded indebtedness of the Agency is scheduled to be paid on December 1, 2022, thereby resulting of the termination of the Successor Agency by December 1, 2023.
6. Under California law, it is uncertain whether the dissolution of the Successor Agency will impact the existence or status of the Authority.
7. The City desires to revise the Original Agreement in order to (i) ensure that it survives the demise of the Successor Agency and (ii) expand the powers of the Authority.
8. 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 City and CMFA to create a joint exercise of powers entity which has the power to exercise any powers common to the City and CMFA and to exercise additional powers granted to it under the Act.
9. The City and CMFA are each empowered by law to undertake certain projects and programs.

10. 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 under the Act.

11. 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 and additional members as set forth therein.

12. 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 City 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 City or CMFA.

13. The City and CMFA wish to enter into this Agreement to ensure the continuation of the Authority, and to provide the Authority with the additional powers set forth herein.

A G R E E M E N T :

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.

"AB 26" means ABx1 26, passed by the Legislature of the State of California and signed by the Governor of the State of California in June 2011.

"AB 1484" means AB 1484, passed by the Legislature of the State of California and signed by the Governor of the State of California in June 2012.

"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.

"Agency" means the former San Rafael Redevelopment Agency, which was dissolved on February 1, 2012 pursuant to the provisions of AB 26 and the California Supreme Court's decision in *California Redevelopment Assn. v. Matosantos*.

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

"Authority" means the San Rafael Joint Powers Financing Authority created by the Original Agreement, and whose existence is continued under 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.

"City" means City of San Rafael, a charter city organized and existing under the laws of the State of California.

"CMFA" means the 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.

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

"Original Agreement" means the Joint Exercise of Powers Agreement dated April 20, 1992 between the City and the Agency creating the Authority.

"Successor Agency" means the City of San Rafael, in its role as successor agency under the provisions of AB 26 and AB 1484.

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 City 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 City by exercising the powers referred to in the recitals hereof and described in Section 5.

Section 3. *Term.* This Agreement supersedes the Original Agreement and takes effect as of the date hereof and continues in full force and effect until terminated by a supplemental agreement of CMFA and the City; 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) Status of Authority. There is hereby continued under the Act an agency and public entity to be known as the "San Rafael Joint Powers Financing Authority." As provided in the Act, the Authority is and will be a public entity separate from the City, CMFA and the Successor Agency (which is withdrawing as a member of the Authority pursuant to Section 25 hereof). The debts, liabilities and obligations of the Authority do not and shall not constitute debts, liabilities or obligations of the City or CMFA. Within 30 days after the effective date of this Agreement or any further 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 City Council of the City. 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 City Council of the City; and the successor to such member of the City Council of the City 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 City 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 January, April, July and October of each year to the Board, the City 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 City 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 City 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 City in connection with the activities of the Authority, the City 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 City. The Authority and the City 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 City has no right to contribution from CMFA.

Section 5. Powers. The Authority shall have any and all powers which are common powers of the City and CMFA, and the powers separately conferred by law upon the Authority. All such powers, whether common to the Parties or separately conferred by law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law. The Authority's exercise of its powers is subject to the restrictions upon the manner of exercising the powers of the City.

The Authority has the power, in its own name, to construct, buy, sell or lease property and to issue, sell and deliver Bonds and incur debt 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, 2013.

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 City, 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 City 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 City 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 City 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 City or CMFA may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

Section 10. Bonds.

(a) *Authority To Issue Bonds.* When authorized by the Act or other applicable provisions of law and by resolution of the Board, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Bonds shall have such terms and conditions as are authorized by the Board.

Notwithstanding the foregoing, the Authority shall not incur any form of indebtedness including (but not limited to) bonds, debentures, notes, or other securities, for the repayment of money borrowed, without the prior written approval of the CMFA, which approval shall not be unreasonably withheld or delayed.

(b) *Bonds Are Limited Obligations.* The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable Indenture(s) and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public agency thereof, including CMFA and the City, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State or any public agency thereof, including CMFA and the City, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds nor shall the State or any public agency or instrumentality thereof, including CMFA and the City, in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any director, officer, agent or employee of the Authority, in his or her

individual capacity and no director or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

Section 11. *Agreement Not Exclusive.* This Agreement is not exclusive and does not amend or alter the terms of other agreements between the City and CMFA, except as the terms of this Agreement conflict therewith, in which case the terms of this Agreement will prevail.

Section 12. *Accounts and Reports.* All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Bonds (to the extent such duties are not assigned to a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by the City and CMFA and their representatives.

The Authority shall require that each Indenture provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of such Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out the requirements of this Section 12.

(a) *Audits.* The Treasurer and Controller of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Act. 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 12, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

(b) *Audit Reports.* The Treasurer and Controller of the Authority, as soon as practicable after the close of each Fiscal Year but in any event within the time necessary to comply with the requirements of the Act shall file a report of the audit performed pursuant to subsection (a) of this Section 12 as required by the Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Act.

Section 13. *Funds.* Subject to the provisions of each Indenture for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer and Controller of the Authority shall receive, have the custody of and disburse Authority funds pursuant to accounting procedures approved by the Board and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

Section 14. *Conflict of Interest Code.* The Authority shall, by resolution, adopt a Conflict of Interest Code to the extent required by law. Such Conflict of Interest Code may be the conflict of interest code of the City.

Section 15. *Breach.* If the City or CMFA defaults in any covenant contained in this Agreement, such default will not excuse either the City or CMFA from fulfilling its obligations under this Agreement and the City and CMFA will continue to be liable for the payment of contributions and the performance of all conditions herein contained. The City and CMFA

hereby declare that this Agreement is entered into for the benefit of the Authority and the City 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 16. Notices. Notices and other communications hereunder to the parties shall be sufficient if delivered to the clerk or secretary of the governing body of each party.

Section 17. Withdrawal. Neither CMFA nor the City may withdraw from this Agreement prior to the end of the term of this Agreement determined in accordance with Section 3, provided, however, that CMFA may withdraw from this Agreement if such withdrawal will not terminate the existence of the Authority.

Section 18. Effectiveness. This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of CMFA and the City when each party has executed a counterpart of this Agreement.

Section 19. 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 20. 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 21. 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 22. 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 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 23. Waiver of Personal Liability. No member, officer or employee of the Authority, the City 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 City 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 24. *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.

Section 25. *Withdrawal of Successor Agency.* Upon the effective date of this Agreement, the Successor Agency is withdrawing from the Authority and will no longer be a member of the Authority. On and after the effective date of this Agreement, any reference to a member of the Authority shall not include either the Agency or the Successor Agency.

The City and CMFA acknowledge that the execution of this Agreement by the Successor Agency is solely for the purpose of implementing the Successor Agency's withdrawal as a member of the Authority.

Section 26. *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.

Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by the City or CMFA, such action may be exercised through the officers, staff or employees of the City or CMFA, as the case may be, in the manner provided by law.

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

This Agreement is made in the State, under the Constitution and laws of the state and is to be construed as a contract made and to be performed in the State.

This Agreement is the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between 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.

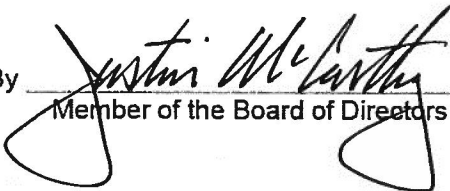
CITY OF SAN RAFAEL

By _____
City Manager

Attest:

City Clerk

**CALIFORNIA MUNICIPAL FINANCE
AUTHORITY**

By  _____
Member of the Board of Directors

Attest:



Member of the Board of Directors

**CITY OF SAN RAFAEL, as Successor
Agency**

By _____
City Manager

Attest:

City Clerk

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 RAFAEL

By Nancy Marshall
City Manager

Attest:

Ester Beirue
City Clerk

**CALIFORNIA MUNICIPAL FINANCE
AUTHORITY**

By _____
Member of the Board of Directors

Attest:

Member of the Board of Directors

**CITY OF SAN RAFAEL, as Successor
Agency**

By Nancy Marshall
City Manager

Attest:

Ester Beirue
City Clerk