

RESOLUTION NO. 96 - 46

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CENTRO,
CALIFORNIA APPROVING A PROPOSED FORM OF JOINT EXERCISE OF
POWERS AGREEMENT BETWEEN THE CITY OF EL CENTRO AND THE
REDEVELOPMENT AGENCY OF THE CITY OF EL CENTRO

WHEREAS, the City of El Centro (the "City") and the Redevelopment Agency of the City of El Centro (the "Agency") desire to create and establish, pursuant to the laws of the State of California, the El Centro Financing Authority (the "Authority"); and

WHEREAS, there has been presented to this meeting a proposed form of Joint Exercise of Powers Agreement, dated as of July 1, 1996 (the "Agreement"), between the City and the Agency;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CENTRO,
CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Approval of Agreement. The proposed form of Agreement, on file with the City Clerk and incorporated into this Resolution by reference, is hereby approved. The Mayor is hereby authorized to execute, and the City Clerk is hereby authorized to attest and deliver, the Agreement, in substantially said form with such additions thereto or changes that hereafter become necessary in the interests of the City and which are reviewed and approved by the City Attorney, any such additions or changes to be conclusively evidenced by the execution and delivery of the Agreement.

Section 2. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of El Centro, California, held on the 17 day of July, 1996.

CITY OF EL CENTRO

By 
Sedalia Sanders, Mayor

ATTEST:

By 
Rita M Noden, City Clerk

APPROVED AS TO FORM:

By _____
James L. Darrow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF EL CENTRO)

I, Rita M. Noden, City Clerk of the City of El Centro, California, do hereby certify that the foregoing Resolution No 96- 46 was duly and regularly adopted at a regular meeting of the City Council of the City of El Centro, California, held on the 17 day of July, 1996, by the following vote:

AYES: Kuiper, Dunnam, Dhillon, Sanders, Terrazas;
NOES: None
ABSENT: None
ABSTAINED: None

By Rita M. Noden
Rita M. Noden, City Clerk

JOINT EXERCISE OF POWERS AGREEMENT

by and between the

CITY OF EL CENTRO

and the

REDEVELOPMENT AGENCY OF THE CITY OF EL CENTRO

creating the

EL CENTRO FINANCING AUTHORITY

Dated as of July 1, 1996

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated as of July 1, 1996 (this "Agreement"), by and between the CITY OF EL CENTRO, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), and the REDEVELOPMENT AGENCY OF THE CITY OF EL CENTRO, 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, 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 the Agency to create a joint exercise of powers entity (the "El Centro 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 Law 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 or the City, as the case may be;

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 El Centro 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, 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

The term "Agency" shall mean the Redevelopment Agency of the City of El Centro, 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 El Centro 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 or any other evidence of indebtedness of the Agency or the City solely from funds received from the Authority's simultaneous sale of such bonds or any other evidence of indebtedness 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 municipal corporation known as the City of El Centro, a general law city duly organized and existing under and by virtue of the laws 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 in the financing and refinancing of certain redevelopment activities of the Agency and certain programs and projects of the City, and for the purpose of aiding in the financing and refinancing of capital improvements, 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 agreement of the Agency and the City.

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 "El Centro 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 any such 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. The term of office of any 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; and the successor to the Mayor or such member of the City Council shall thereupon 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 at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The date upon which, and 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 serving in those offices of the City 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 Treasurer 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 Treasurer of 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 such 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 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 such powers as may be exercised under the Act in order to assist the City and the Agency in financing capital improvements, working capital, liability and other insurance needs or projects wherever the City or the Agency, as the case may be, shall determine that there are significant public benefits to be derived from such assistance.

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 or other evidences of indebtedness 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 or other evidences of indebtedness 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 or other evidences of indebtedness 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 by, 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, 1997.

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 respective grantors and assignors thereof.

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. The Authority shall give an audited written report of all financial activities for each fiscal year to the City and the Agency within 210 days after the close of each fiscal year.

The Controller of the Authority shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority. 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 any accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with the City and the Agency. Such report shall be filed within 12 months of the end of the fiscal year or years under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this section shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

In any year the Board may, by unanimous vote and with the unanimous approval of the City and the Agency, replace the annual special audit with an audit covering a two-year period.

SECTION 12. CONFLICT OF INTEREST CODE

The Authority by resolution shall adopt a Conflict of Interest Code as required by law.

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 a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining 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 obligations and 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 EL CENTRO

By



Mayor

Attest:



City Clerk

REDEVELOPMENT AGENCY OF
THE CITY OF EL CENTRO

By



Chair



Secretary