

SANTA CRUZ LIBRARIES FACILITIES FINANCING AUTHORITY**JOINT EXERCISE OF POWERS AGREEMENT**

This JOINT EXERCISE OF POWERS AGREEMENT (this "Agreement"), dated December __, 2014, is entered into by and among the CITY OF SANTA CRUZ, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, the CITY OF SCOTTS VALLEY, a general law city and municipal corporation duly organized and existing under the laws of the State of California, the CITY OF CAPITOLA, a general law city and municipal corporation duly organized and existing under the laws of the State of California, and the COUNTY OF SANTA CRUZ, a California county duly organized and existing under the laws of the State of California.

BACKGROUND:

1. The Cities and the County wish to enter into this Agreement establishing a new and separate joint powers authority for the purpose of financing the acquisition, construction and improvement of public library facilities (the "Public Library Improvements") through the formation of a community facilities district under the Mello-Roos Community Facilities Act of 1982, constituting Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53311 of said Code (the "Mello Roos Act") and the authorization and issuance of bonds under the Mello Roos Act.

2. Following the execution and delivery of this Agreement, the Cities and the County intend to amend this Agreement (the "Amendment") to specify details regarding the terms and provisions upon which the Public Library Improvements will be funded, including provisions relating to the allocation of bond proceeds, the scope of the Public Library Improvements including minimum deliverables and standards for furniture, shelving and signage, the roles and responsibilities with respect to the construction of the Public Library Improvements, the allocation and disposition of excess funds, a definition of general design standards for the Public Library Improvements, and other matters relating to the design, construction and implementation of the financing plan for the Public Library Improvements.

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 2 have the meanings herein specified.

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

"Amendment" means an amendment to this Agreement referenced in Background recital 2 above.

"Board" means the governing board of the Facilities Authority.

"Bond" or "Bonds" means any notes, bonds or other obligations issued by the Facilities Authority for the purpose of financing Public Library Improvements.

"Cities" means, collectively, the Cities of Santa Cruz, Scotts Valley and Capitola.

"County" means the County of Santa Cruz.

"Directors" means the members of the Board, as set forth in Section 4(b).

"Facilities Authority" means the joint powers authority created by this Agreement.

"Joint Powers Act" means the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500 of said Code.

"Library Operator" means the Library Joint Powers Authority, the Parties or any other entity established to carry out library operations.

"Mello Roos Act" means the Mello-Roos Community Facilities Act of 1982, constituting Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53311 of said Code.

"Parties" means, collectively, all the parties to the Agreement, being the Cities and the County.

"Public Library Improvements" means physical improvements to the public library facilities, as set forth in Section 2, which are operated by the Library Operator and for which bonds may be issued pursuant to Section 6546(p) of the Joint Powers Act.

SECTION 2. *Purpose.* This Agreement is entered into under the Joint Powers Act for the purpose of establishing a joint powers authority which is authorized to exercise the powers granted to it under the Joint Powers Act and the Mello Roos Act for the purpose of:

- (a) Forming a community facilities district under the Mello Roos Act;
- (b) Calling an election under the Mello Roos Act on the issuance of Bonds for the purpose of raising not to exceed \$11 of proceeds for the financing of Public Library Improvements;
- (c) Issuing Bonds to finance Public Library Improvements; and
- (d) Carrying out all activities required for the proper management of the Bonds to be issued hereunder.

It is understood and agreed by the Parties that the purpose of the Facilities Authority is to form a single community facilities district and to conduct a single bond

election for the issuance of a single issue of Bonds for the purpose of raising not to exceed \$11 and that following the initial formation of the community facilities district and bond election, the purposes of the Facilities Authority shall be to issue the Bonds that have been authorized at such election, to service the debt associated with the issuance and otherwise administer the Bonds during the term thereof.

Within ten days of issuance, exclusive of any costs of issuance, which shall be retained by the Facilities Authority, and exclusive of any reserve which is funded from the proceeds of the Bonds, the Facilities Authority shall distribute the Bond proceeds to each of the Parties in the amounts specified below in order to undertake and complete the construction of the Public Library Improvements:

- Aptos – \$1
- Boulder Creek – \$1
- Branciforte – \$1
- Capitola – \$1
- Downtown – \$1
- Felton – \$1
- Garfield Park – \$1
- Headquarters – \$1
- La Selva Beach – \$1
- Live Oak – \$1
- Scotts Valley – \$1

Changes to the total amount of the Bonds to be issued or to the distribution of Bond proceeds among the Parties shall require an amendment to this Agreement, as set forth in Section 14, and shall be subject to the requirements of the Joint Powers Act.

It is understood that the above \$1 allocation per branch is intended to be a placeholder for actual allocations which are intended to be set forth in the Amendment to this Agreement. The amounts specified are an example only and are not intended to reflect any particular ratio apportionment or amount of bond proceeds to be issued for any of the particular branch libraries for which bond proceeds may be issued.

The Amendment will also address how excess funds by project will be re-allocated to fulfill the purposes stated in the financial measure which funds the Community Facilities District.

Each of the Parties shall deposit Bond proceeds into a separate account to track revenues, expenses and fund balance, which will be subject to an independent audit every year during the term of this Agreement. Each of the Parties will be required to execute and deliver certifications and make representations and covenants regarding the administration and investment of Bond proceeds, as may be required by bond counsel in order to ensure compliance with applicable provisions of federal tax law.

The Parties shall work with their designated Library Operator to ensure that the Public Library Improvements meet the appropriate minimum deliverables for each project as well as furniture, shelving and signage standards as defined in the Amendment.

SECTION 3. *Term.* This Agreement takes effect as of the date hereof and continues in full force and effect while any Bonds or other obligations of the Facilities 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 Facilities 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 Facilities Authority or final payment of any Bonds, whichever is later.

SECTION 4. *The Facilities Authority.*

(a) Creation of Facilities Authority. There is hereby created under the Joint Powers Act an agency and public entity to be known as the "Santa Cruz Libraries Facilities Financing Authority." As provided in the Joint Powers Act, the Facilities Authority is a public entity separate from the Parties. The debts, liabilities and obligations of the Facilities Authority do not and shall not constitute debts, liabilities or obligations of the Parties. Within 30 days after the effective date of this Agreement or any amendment hereto, the Facilities 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 Joint Powers Act.

(b) Governing Board. The Facilities Authority shall be administered by the Board consisting of four Directors, who shall consist of the chief executive officer of each of the Parties, or a designee of any such chief executive officer. In the case of the Cities, the chief executive officer shall be the City Manager of each of the Cities; and in the case of the County, the chief executive officer shall be the County Administrative Officer of the County. The Board may adopt, from time to time, such bylaws, rules and regulations necessary for the productive management of its meetings.

All voting power of the Authority shall reside in the Board. Each Director shall have one vote.

(c) Meetings of Board.

(i) Time and Place. The Board shall establish the times and dates for regular meetings by resolution adopted by the Board. Regular meetings of the Board shall be held at such location as shall be designated by the Board, except as may otherwise be permitted by the laws of the State of California in the case of a meeting held by teleconference. The initial location for regular meetings of the Board shall be 224 Church Street in the City of Santa Cruz. The Board may hold special meetings at any time and from time to time in accordance with 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 (the "Brown Act").

(ii) Brown Act. All meetings of the Board will be called, noticed, held and conducted in accordance with the applicable provisions of the Brown Act.

(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 Parties.

(iv) 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. The affirmative votes of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board. Notwithstanding the foregoing provisions of this subsection (iv), any action taken by the Board to form a community facilities district, call a bond election or issue Bonds pursuant to such election and distribute bond proceeds shall only be taken with the affirmative vote of all of the Directors.

(d) Officers; Duties; Bonds

(i) Treasurer-Controller. Pursuant to Section 6505.5 and 6505.6 of the Joint Powers Act, the Santa Cruz County Auditor-Controller-Treasurer-Tax Collector is hereby designated as the Treasurer-Controller and, as such, shall perform the functions of the treasurer and the functions of the auditor of the Facilities Authority, as such functions are set forth in Section 6505.5 of the Joint Powers Law. Pursuant to Section 6505.1 of the Joint Powers Act, the Treasurer-Controller shall have custody of, handle and have access to all accounts, funds and money of the Facilities Authority from whatever source and all records of the Facilities Authority relating thereto. The County will not charge the Facilities Authority for the services of the Santa Cruz County Auditor-Controller-Treasurer-Tax Collector's Office to issue debt, make debt service payments or make drawdowns.

The Treasurer-Controller of the Facilities Authority is hereby designated as the public officer or person who has charge of, handles, or has access to any property of the Facilities Authority. The Treasurer-Controller shall file an official bond in the amount of \$25,000 as required by Section 6505.1 of the Joint Powers Act; provided, that such bond shall not be required if the Facilities 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). So long as required by Section 6505 and Section 6505.5 of the Joint Powers Act, every year during the term of this Agreement the Treasurer-Controller of the Facilities Authority shall prepare or cause to be prepared an independent audit to be made by a certified public accountant, or a public accountant, as required under Sections 6505, 6505.5, and 6505.6 of the Joint Powers Act. Any costs associated with the independent audit shall be paid for by the Parties to this Agreement or their designated Library Operator, as determined by the Parties, proportionate to the Bond proceeds received, as set forth in Section 2.

(ii) Chair and Vice Chair. The Board of Directors shall elect a Chair and a Vice-Chair of the Facilities Authority at its first meeting in January of each year. The Chair shall be the presiding officer of the Facilities Authority, and shall sign all contracts on behalf of the Facilities Authority unless otherwise provided by resolution of the Board. The Vice Chair shall perform the duties of the Chair in the absence or unavailability of the Chair.

(iii) Executive Director, Secretary and Other Officers The Board may appoint staff to conduct the business of the Facilities Authority. Said officers shall perform such functions as shall be customary in the exercise of such positions, and as may be more specifically provided by the Facilities Authority from time to time. The Executive Director shall have charge of the day-to-day administration of the Facilities Authority and shall execute the directives of the Board. The Secretary shall have charge of and access to

all the records of the Facilities Authority other than those that are the responsibility of the Treasurer-Controller. The Secretary shall be responsible for recording and distributing the minutes of all meetings of the Board. The Board may appoint an attorney or firm of attorneys to serve as the general legal counsel to the Facilities Authority, who shall perform such duties as may be prescribed by the Board. Any costs associated with such appointments shall be paid for by the Parties to this Agreement or their designated Library Operator, as determined by the Parties, proportionate to the Bond proceeds received, as set forth in Section 2.

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. Any costs associated with such appointments shall be paid for by the Parties to this Agreement or their designated Library Operator, as determined by the Parties, proportionate to the Bond proceeds received, as set forth in Section 2.

(iv) Privileges and Immunities. 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 Parties when performing their respective functions within the territorial limits of their respective Party, 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.

(v) Employees Independent of Parties. None of the officers, agents or employees, if any, directly employed by the Facilities Authority shall be deemed, by reason of their employment by the Facilities Authority, to be employed by any Party or, by reason of their employment by the Facilities Authority, to be subject to any of the requirements of any Party.

SECTION 5. *Powers.*

The Facilities Authority shall have the power, in its own name, to conduct proceedings under the Mello Roos Act to form a single community facilities district within all or a portion of the boundaries of the Parties, to conduct a single bond election for the issuance of a single issue Bonds for the purpose of raising not to exceed \$11 for the purpose of authorizing the imposition of a special tax within the community facilities district and for the purpose of authorizing the issuance of Bonds to finance Public Library Improvements within the community facilities district, and to issue Bonds under the Mello Roos Act for said purposes. The Facilities Authority is not authorized to take any actions inconsistent with or additional to the specific proceedings set forth above.

The Facilities Authority shall have all powers which a joint powers authority may exercise under the Joint Powers Act (including powers which are common to the Parties in accordance with Section 6502 of the Joint Powers Act), and all powers granted to it as a public agency under the laws of the State of California (including but not limited to the powers set forth in Chapter 12, Division 6, Title 1 of the California Government Code, commencing with Section 5920 of said Code), for the purpose of carrying out the purposes for which the Facilities Authority has been established. The Facilities Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of common powers, including but not limited to making and entering into contracts, suing and being sued in its own name, incurring obligations, and carrying out and enforcing all the provisions of this Agreement.

Notwithstanding anything herein to the contrary, the Facilities Authority shall not complete proceedings under the Mello Roos Act to form a community facilities district or to conduct an election for the purpose of authorizing the imposition of a special tax within the community facilities and for the purpose of authorizing the issuance of Bonds to finance Public Library Improvements, prior to the execution and delivery of the Amendment to this Agreement by all of the Parties. Such proceedings to form a community facilities district and call an election on the issuance of bonds shall comply in all respects with the applicable provisions of the Amendment.

SECTION 6. *Termination of Powers.* The Facilities 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 Facilities Authority is the period from July 1 of each year to and including the following June 30.

SECTION 8. *Disposition of Assets.* Upon termination of this Agreement under Section 3, any surplus money in possession of the Facilities Authority or on deposit in any fund or account of the Facilities Authority, and all property of the Facilities Authority both real and personal, will be returned in proportion to any contributions made as required by Section 6512 of the Joint Powers Act, and otherwise will be divided proportionate to the amount of the Bonds set forth in Section 2. The Board is vested with all powers of the Facilities Authority for the purpose of concluding and dissolving the business affairs of the Facilities Authority.

SECTION 9. *Contributions and Advances.* Contributions or advances of public funds and of personnel, equipment or property may be made to the Facilities Authority by the Parties for any of the purposes of this Agreement. It is mutually understood and agreed that no Party of the Facilities Authority shall have any obligation to make advances or contributions to the Facilities Authority to provide for the costs and expenses of administration of the Facilities Authority, even though any Party may do so. Any Party may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Facilities Authority.

SECTION 10. *Accounts and Reports.* The Facilities Authority will establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Facilities Authority will be open to inspection at all reasonable times by the Parties and their representatives.

SECTION 11. *Conflict of Interest Code.* The Facilities Authority shall, by resolution of the Board, adopt a Conflict of Interest Code to the extent required by law.

SECTION 12. *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 13. *Successors.* This Agreement is binding on and inures to the benefit of the successors of the Parties. No Party may assign any right or obligation under this Agreement without the written consent of the other Parties.

SECTION 14. *Amendment.* This Agreement may be amended by supplemental agreement executed by the Parties 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 Facilities Authority is a party.

SECTION 15. *Form of Approvals.* Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given by resolution duly adopted by the governing board of the affected Party, and, in the case of the Facilities 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 16. *Mutual Defense and Indemnification of Parties and Employees.* Each Party and the Facilities Authority shall defend, indemnify, and hold harmless one another against any and all claims, actions, losses, liability or expense (including attorney's fees) arising out of, or based upon, the acts or omissions of the Facilities Authority or its Parties in executing the powers of the Facilities Authority. To the full extent permitted by law, the Board shall provide for indemnification by the Facilities Authority of any person who is or was a member of the Board, or an officer, employee or other agent of the Facilities Authority or a Party, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any legal proceeding related to the work of the Facilities Authority, 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, but is not required to, provide for indemnification and defense of a member of the Board, or an officer, employee or other agent of the Facilities Authority to the extent permitted by law. A member, officer, or employee of the Facilities Authority or any Party may not be held personally liable on any Bonds and may not be subject to any personal liability or accountability by reason of the issuance of Bonds under the Joint Powers Act and this Agreement.

(a) Liability Insurance. The Facilities Authority shall purchase a General Liability Insurance policy with coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability. Any costs associated with the insurance policy shall be paid for by the Facilities Authority out of the Bond proceeds. The named insured shall be the Facilities Authority and, accordingly, the Facilities Authority shall have responsibility for exercising all rights conferred by the insurance policy upon the insured.

(b) Uninsured Claims. Any uninsured costs of providing liability defense, including payments for legal fees and costs and including payment of adjusted and settled claims and judgments must be approved by the Parties. Where it is necessary to employ special legal counsel given the nature of the claim, the Facilities Authority shall select said special legal counsel. Legal counsel shall report to the Facilities Authority with respect to said claims in recognition of the Facilities Authority's status as defendant and client. Legal counsel shall therefore enjoy an attorney-client privilege with the Facilities Authority and the Facilities Authority shall have the authority to make all

decisions for which a client is customarily responsible in an attorney-client relationship, including final decisions with respect to the adjustment and settlement of uninsured claims and the rejection of settlement offers. Any costs associated with uninsured claims shall be paid for by the the Parties to this Agreement or their designated Library Operator, as determined by the Parties, proportionate to the Bond proceeds received, as set forth in Section 2.

SECTION 17. *Notices.* Notices to any Party hereunder shall be sufficient if delivered to the representatives of the Parties serving as Directors on the Board.

SECTION 18. *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 19. *Law Governing.* This Agreement is made in the State of California under the Constitution and laws of the State of California and is to be so construed.

SECTION 20. *Enforcement by Facilities Authority.* The Facilities Authority is hereby authorized to take any or all legal or equitable actions necessary or permitted by law to enforce this Agreement.

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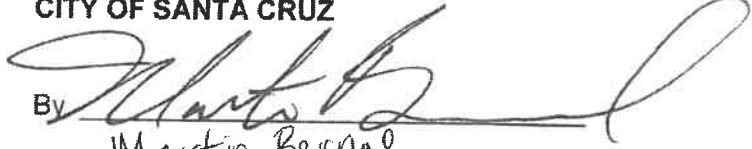
Approved As To Form:

CF Adams for Jones Hall A.P.L.C.
Attorney-at-law


Date: 12/18/2014

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 SANTA CRUZ

By 
Martin Bernal
City Manager

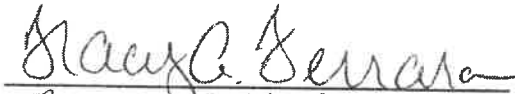
Attest:


Bren Lehr
City Clerk Administrator

CITY OF SCOTTS VALLEY

By 
STEPHEN H. ANDO
CITY MANAGER

Attest:


TRACY A. FERRARA
CITY CLERK


CITY OF CAPITOLA

By 
Benjamin Goldstein, City Manager

Attest:


Susan Sneddon, City Clerk

COUNTY OF SANTA CRUZ

By 
Susan Mauriello, County Administrative Officer

Attest:


Alicia Murillo
Senior Board Clerk