

JOINT EXERCISE OF POWERS AGREEMENT

by and between

SAN BRUNO PARK SCHOOL DISTRICT

and

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

creating the

**SAN BRUNO PARK
SCHOOL FACILITIES FINANCING AUTHORITY**

Dated June 23, 2011

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JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated June 23, 2011, by and between the SAN BRUNO PARK SCHOOL DISTRICT, a school district duly organized and existing under the Constitution and the general laws of the State of California (the "District"), and the CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY, a public body, corporate and politic, duly organized and existing under the laws of the State of California ("CSCDA"),

WITNESSETH:

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 District and CSCDA to create a joint exercise of powers entity (the "San Bruno Park School Facilities Financing Authority" or the "Authority") which has the power to exercise any powers common to the District and CSCDA and to exercise additional powers granted to it under the Act;

WHEREAS, the District and CSCDA are each empowered by law to undertake certain projects and programs;

WHEREAS, the District 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 Education Code of the State of California;

WHEREAS, CSCDA 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 Act and a Joint Exercise of Powers Agreement, dated as of November 18, 1987, as amended and restated by that certain Joint Exercise of Powers Agreement, dated June 1, 1988, by the Program Participants (as defined therein);

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 by, or to make loans to, the District or CSCDA for financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the District or CSCDA;

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 District and CSCDA desire to create and establish the San Bruno Park School Facilities Financing Authority for the purposes set forth herein and to exercise the powers described herein;

NOW, 'THEREFORE, the District and CSCDA, 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.

Agreement

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

Authority

The term "Authority" shall mean the San Bruno Park School Facilities Financing Authority created by this Agreement.

Board; Board of Governors

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

Bonds

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

District

The term "District" shall mean San Bruno Park School District, a school district duly organized and existing under the Constitution and the general laws of the State of California.

Member

The term "Member" or "Members" shall mean the District and/or CSCDA, as appropriate.

CSCDA

The term "CSCDA" shall mean the California Statewide Communities Development Authority, a joint exercise of powers authority, duly organized and existing under and by virtue of the laws of the State of California.

SECTION 2. PURPOSE

This agreement is made pursuant to the Act and for the purpose of assisting the financing and refinancing of certain public programs and projects of the District 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 District by exercising the powers referred to in the recitals hereof and described in Section 5 herein.

SECTION 3. TERM

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by a supplemental agreement of CSCDA and the District; 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 pursuant to which such Bonds are issued or other obligations are incurred. In any event, 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 (6) years following termination of the Authority or final payment of any Bonds issued by the Authority, whichever is later.

SECTION 4. AUTHORITY

A. Creation of Authority

There is hereby created pursuant to the Act an agency and public entity to be known as the "San Bruno Park School Facilities Financing Authority." As provided in the Act, the Authority shall be a public entity separate from the District and CSCDA. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the District or CSCDA.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Act.

B. Governing Board

The Authority shall be administered by the Governing Board whose members shall be, at all times, the members of the Board of Trustees of the District. The term of office as a member of the Governing Board shall terminate when such member of the Governing Board shall cease to be a member of the Board of Trustees of the District; and the successor to such member of the Board of Trustees of the District shall become a member of the Governing Board, upon assuming such office.

Members of the Governing 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 Governing Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

C. Meetings of Board

(1) Time and Place. The Governing Board shall hold regular meetings on June 29, 2011 and thereafter on the regularly scheduled meeting dates of the Board of Trustees of the District, except as otherwise provided in the By-Laws of the Authority. The Governing Board may hold special meetings at any time and from time to time in accordance with law.

(2) Legal Notice. All meetings of the Governing 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), or any successor legislation hereinafter enacted.

(3) Minutes. The Governing Board shall cause minutes of all meetings of the Governing 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 Governing Board and to the District and CSCDA.

(4) Quorum. A majority of the members of the Governing 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. The officers of the Authority shall be the persons specified in the By-Laws of the Authority adopted by the Governing Board (the "By-Laws") and shall have the powers vested in them pursuant to such By-Laws and such other powers as may be granted by the Governing Board from time to time by resolution.

(2) The Treasurer and Controller 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 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).

(3) 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 pursuant to Section 6505 of the Act every year during the term of this Agreement; and (b) a report in writing on the first day of July, October, January and April of each year to the Governing Board, the District and CSCDA which report shall describe the amount of money held by the Treasurer and Controller of the Authority for the Governing Board, the amount of receipts since the last such report, and the amount paid out since the last such

report (which may exclude amounts held by a trustee of other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provides regular reports covering such amounts).

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

(5) The Governing 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.

(6) 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.

(7) 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.

(8) 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 shall not constitute debts, liabilities or obligations of the District or CSCDA, 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 CSCDA, 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 District in connection with the activities of the Authority, the District shall indemnify, defend and hold harmless CSCDA and each of CSCDA's 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. CSCDA 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 District. The Authority and the District shall be jointly and severally liable for any indemnity obligation owed to CSCDA. Notwithstanding the provisions of Section 895.6 of the Government Code of the State, the District shall not have any right to contribution from CSCDA.

SECTION 5. POWERS

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

The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts; to employ agents and employees; and to sue and be sued in its own name.

Notwithstanding the foregoing, the Authority 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

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement in accordance with Section 3 hereof.

SECTION 7. FISCAL YEAR

Unless and until changed by resolution of the Governing 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, 2012.

SECTION 8. DISPOSITION OF ASSETS

Upon termination of this Agreement pursuant to Section 3 hereof, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority shall be returned in proportion to any contributions made as required by Section 6512 of the Act. The Governing 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 pursuant to Section 3 hereof, all property of the Authority, both real and personal, shall be distributed to the District, subject to Section 9 hereof.

SECTION 9. CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the District and CSCDA 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 shall be repaid, in the manner agreed upon by the District or CSCDA, 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 District nor CSCDA 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 District or

CSCDA 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 District and CSCDA, 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 District and CSCDA and their representatives.

SECTION 12. CONFLICT OF INTEREST CODE

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

SECTION 13. BREACH

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

SECTION 14. SEVERABILITY

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

SECTION 15. SUCCESSORS; ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by supplemental agreement executed by the Members at any time; provided, however, that this Agreement may be terminated only in accordance with Section 3 hereof and, provided further, that such supplemental agreement shall be subject to any restrictions contained in any Bonds or documents related to any Bonds to which the Authority is a party.

SECTION 17. FORM OF APPROVALS

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of CSCDA, by resolution duly adopted by the Board of Commissioners of CSCDA, and, in the case of the District, by resolution duly adopted by the Board of Trustees of the District, and, in the case of the Authority, by resolution duly adopted by the Governing Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 18. WAIVER OF PERSONAL LIABILITY

No member, officer or employee of the Authority, the District or CSCDA shall be 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 pursuant to this Agreement, and the District 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 shall be personally liable on any Bonds or be subject to any personal liability or accountability by reason of the issuance of Bonds pursuant to the Act and this Agreement. To the full extent permitted by law, the Governing Board shall provide for indemnification by the Authority of any person who is or was a member of the Governing 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 Governing 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 Governing Board may provide for indemnification and defense of a member of the Governing Board, or an officer, employee or other agent of the Authority to the extent permitted by law.

SECTION 19. NOTICES

Notices to the District hereunder shall be sufficient if delivered to the Superintendent of the District, and notices to CSCDA hereunder shall be sufficient if delivered to the financial advisor of CSCDA.


SECTION 20. SECTION HEADINGS

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized as of the day and year first above written.

SAN BRUNO PARK SCHOOL DISTRICT

By


Superintendent

CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY

By

Member of the Commission