

Chair Martin Bernal
Vice Chair Jenny Haruyama
Board Member Susan Mauriello
Board Member Jamie Goldstein



**SANTA CRUZ LIBRARIES FACILITIES FINANCING AUTHORITY
(LFFA)**

REGULAR BOARD MEETING

THURSDAY, JANUARY 12, 2017; 9:00 A.M.

**DOWNTOWN BRANCH MEETING ROOM
224 CHURCH STREET, SANTA CRUZ, CA 95060**

1. CALL TO ORDER / ROLL CALL

Board Members Jamie Goldstein, Jenny Haruyama, Susan Mauriello, and Chair Martin Bernal

2. ADDITIONAL MATERIALS

Additional information submitted after distribution of the agenda packet.

3. ADDITIONS AND DELETIONS TO AGENDA

4. ORAL COMMUNICATION

Any member of the audience may address the Board on any matter either on or off the agenda that is within the Board's jurisdiction. Note, however, that the Board is not able to undertake extended discussion or act on non-agendized items. Such items can be referred to staff for appropriate action which may include placement on a future agenda. If you intend to address a subject that is on the Agenda, please hold your comments regarding that item until it is before the Board, so that we may properly respond to all comments on that subject at the same time. In general 3 minutes will be permitted per speaker during Oral Communication; A MAXIMUM of 30 MINUTES is set aside for Oral Communications at this time.

5. EXECUTIVE DIRECTOR REPORT

A. Report of Executive Director

6. PROJECT UPDATES AND COMMENTS BY BOARD MEMBERS

7. CONSENT CALENDAR

A. Approve Minutes of the December 1, 2016 Board Meeting

RECOMMENDED ACTION: Approve Minutes (PG.3-4)

All items listed in the "Consent Calendar" will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Board votes on the action unless members of the public or the Board request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following General Business.

8. GENERAL BUSINESS

Other Business items are intended to provide an opportunity for public discussion of each item listed. The following procedure is followed for each Business item: 1) Staff explanation; 2) Board questions; 3) Public comment; 4) Board deliberation; 5) Decision.

- A. Annual election of Board Chair and Vice Chair
RECOMMENDED ACTION: Elect Board Chair and Vice Chair (PG.5-6)

- B. Amended and Restated Joint Exercise of Powers Agreement and the Joint Community Facilities Agreement for the LFFA
RECOMMENDED ACTION: Review and Approve Draft Agreements and Changes (PG.7-57)

9. ADJOURNMENT

Adjourned to a Regular Meeting of the Libraries Facilities Financing Authority (LFFA) to be held on Thursday, February 2, 2017 at 9:00 a.m. at the Downtown Branch Meeting Room located at 224 Church St. Santa Cruz, CA 95060.

The Santa Cruz City-County Library System does not discriminate against persons with disabilities. Out of consideration for people with chemical sensitivities, we ask that you attend fragrance free. Upon request, the agenda can be provided in a format to accommodate special needs. Additionally, if you wish to attend this public meeting and will require assistance such as an interpreter for American Sign Language, Spanish, or other special equipment please call the Library Administration Office at (831)427-7706 at least five days in advance so that we can arrange for such special assistance, or email library_admin@santacruzpl.org.

**SANTA CRUZ PUBLIC LIBRARIES
A CITY-COUNTY SYSTEM**

**SANTA CRUZ LIBRARIES FACILITIES FINANCING AUTHORITY
(LFFA)**

**REGULAR MEETING MINUTES
THURSDAY, DECEMBER 1, 2016
9:00 A.M.**

1. ROLL CALL

PRESENT: Chair Jamie Goldstein, Vice Chair Martin Bernal, Susan Mauriello (Board Member)

ABSENT: Jenny Haruyama (Board Member)

STAFF: Library Director Susan Nemitz

2. ADDITIONAL MATERIALS

None

3. ADDITIONS AND DELETIONS TO AGENDA

The Agenda of December 1, 2016 was approved by consensus.

4. ORAL COMMUNICATIONS

None

5. EXECUTIVE DIRECTOR REPORT

None

6. CONSENT CALENDAR

- A. Approve Minutes of the November 3, 2016 Board Meeting
- B. Reconsider revised Minutes of September 1, 2016

RESULT: **A. APPROVED MINUTES OF NOVEMBER 3, 2016**
 B. RECONSIDERED REVISED MINUTES OF SEPTEMBER 1, 2016
 [UNANIMOUS]

MOVER: Susan Mauriello (Board Member)

SECONDER: Martin Bernal (Vice Chair)

AYES: Bernal, Goldstein, Mauriello

ABSENT: Jenny Haruyama (Board Member)

7. GENERAL BUSINESS

A. LFFA Joint Agreement – Presentation by Scott Ferguson

The Santa Cruz LFFA amended and restated the Joint Exercise of Powers Agreement and the Joint Community Facilities Agreement for the Santa Cruz Libraries Facilities Financing Authority Community Facilities District No. 2016-01.

Meeting was interrupted for approx. 45 minutes since Mr. Ferguson was delayed.

The LFFA Board resumed the review of the draft agreement and changes.

8. ADJOURNMENT

The Libraries Facilities Financing Authority (LFFA) adjourned at 9:22 a.m. to be resumed after the Library Joint Powers Authority (LJPA) meeting at 10:03 a.m.

The Libraries Facilities Financing Authority (LFFA) adjourned at 10:20 a.m. to the Regular Meeting on Thursday, January 12, 2017 at 9:00 a.m. at the Downtown Branch Meeting Room located at 224 Church St., Santa Cruz, CA 96060.

ATTEST: _____
Ivan Sumano-Vargas, Substitute Clerk of the Board

All documents referred to in these minutes are available in the Santa Cruz Public Libraries – Library Headquarters Office, 117 Union Street, Santa Cruz.

Chair Martin Bernal
Vice Chair Jenny Haruyama
Board Member Susan Mauriello
Board Member Jamie Goldstein



STAFF REPORT

DATE: January 12, 2017
TO: LFFA Board of Directors
FROM: Susan Nemitz, Library Director
RE: Annual Election of Board Chair and Board Vice-Chair

RECOMMENDATION

That by motion the Board elects the Calendar year 2017 Board Chair and Vice-Chair as the City of Santa Cruz and City of Scotts Valley respectively.

DISCUSSION

Staff Report presented in 2016 by the former LFFA Interim Executive Director Marcus Pimentel is attached for reference.

Attachment:

Staff Report from January 14, 2016



STAFF REPORT

AGENDA: January 14, 2016
DATE: January 5, 2016
TO: Library Facilities Financing Authority (LFFA) Board of Directors
FROM: Marcus Pimentel, Interim Executive Director
SUBJECT: Item 6.a. –Annual election of Board Chair and Board Vice-Chair

RECOMMENDATION

That by motion the Board elects the Calendar year 2016 Board Chair and Vice-Chair as the City of Capitola and City of Santa Cruz respectively.

BACKGROUND

The LFFA agreement requires that at the first meeting of January the Board shall elect a Chair and a Vice-Chair. The Chair is the presiding officer and shall sign all contracts of the LFFA unless otherwise provided by a Board resolution.

DISCUSSION

At the LFFA’s first meeting in January 2015, the Board established a rotation schedule that would set for 2016 the City of Capitola as the Chair and the City of Santa Cruz as the Vice-Chair. The rotation for 2016 and the next 4 years are as follows:

<i>Year</i>	<i>Chair</i>	<i>Vice-Chair</i>
2016	City of Capitola	City of Santa Cruz
2017	City of Santa Cruz	City of Scotts Valley
2018	City of Scotts Valley	County of Santa Cruz
2019	County of Santa Cruz	City of Capitola
2020	City of Capitola	City of Santa Cruz

Prepared and approved by:
Marcus Pimentel
Interim Executive Director

ATTACHMENTS:
None

Chair Martin Bernal
Vice Chair Jenny Haruyama
Board Member Susan Mauriello
Board Member Jamie Goldstein



STAFF REPORT

DATE: January 12, 2017
TO: Libraries Facilities Financing Authority
FROM: Susan Nemitz, Library Director
RE: Amended and Restated Joint Exercise of Powers Agreement and the
 Joint Community Facilities Agreement for the LFFA.

RECOMMENDATION

Recommend that the Governing Boards of the City of Capitola, the City of Scotts Valley, the City of Santa Cruz and Santa Cruz County approve the Amended and Restated Joint Exercise of Powers Agreement.

Approve the Joint Community Facilities Agreement for the LFFA.

DISCUSSION

The LFFA was formed under a Joint Exercise of Powers Agreement (JPA), with an effective date of December 9, 2014. The JPA was amended for the first time on December 16, 2015 to specify details regarding the terms and provisions upon which the public library improvements will be funded. Approval of an Amended and Restated JPA is necessary to align the agreement with the process by which special taxes and bond proceeds will be distributed to members. In addition, approval of a Joint Community Facilities Agreement (JCFA) is necessary to comply with the Mello-Roos Community Facilities Act of 1982.

The Amended and Restated JPA incorporates the following changes:

A. Bond Expenditure Plan. Added the concept of a Bond Expenditure Plan, which will be the detailed plan laying out the anticipated facilities needs of the members, the plan for financing facilities through special taxes and net bond proceeds, the anticipated amounts of special taxes and net bond proceeds to be distributed to each member, and the phasing plan for each series of

the bonds. The Bond Expenditure Plan can only be approved and revised by the unanimous vote of the JPA Board. All details regarding the timing and amounts of bond proceeds and special taxes distributed to the members is deferred to the Bond Expenditure Plan.

B. Joint Community Facilities Agreement. Added references to the Joint Community Facilities Agreement, which is a separate agreement the Authority needs to sign with all the members in order to comply with the Mello-Roos Act, and which will be presented to the Board along with the amendments to the JPA agreement. The Joint Community Facilities Agreement includes covenants by the members regarding expenditure of bond proceeds, record-keeping and reporting, and federal tax law requirements.

C. Separate Provisions for Special Tax Revenues and Bond Proceeds. In order to clarify the agreement, separate provisions for the receipt and accounting of special tax revenues and bond proceeds are included, since they will be subject to different rules.

Attachments:

1. Amended and Restated Joint Exercise of Powers Agreement (JPA) (Final version signed by bond counsel)
2. (JPA) Final version that shows revisions since the cumulative redline
3. (JPA) Cumulative color coded version
4. Joint Community Facilities Agreement (JCFA) (Final version signed by bond counsel)
5. (JCFA) Final version that shows revisions since the draft

SANTA CRUZ LIBRARIES FACILITIES FINANCING AUTHORITY

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT**

This AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (this "Agreement"), dated _____, 2017, 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. The Facilities Authority has completed proceedings for the formation of a community facilities district under the Mello-Roos Act, known as "Santa Cruz Libraries Facilities Financing Authority Community Facilities District No. 2016-1."

3. This Agreement amends and restates in its entirety the Joint Exercise of Powers Agreement among the Parties dated December 9, 2014, as subsequently amended to date.

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.

"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 payable from the Special Tax.

"Bond Expenditure Plan" means the Bond Expenditure Plan approved by the Board, by the unanimous affirmative vote of all of the Directors, in accordance with Section 2 below, as it may be amended from time to time.

"Bond Trustee" means the trustee or fiscal agent to be appointed by the Board in connection with the issuance of each series of the Bonds.

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

"CFD" means a community facilities district formed under the Mello-Roos Act.

"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.

"JCFA" means the Joint Community Facilities Agreement to be entered into by the Parties and the Facilities Authority under the Act and in accordance with Section 2 below.

"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.

"Net Bond Proceeds" means the proceeds of each series of the Bonds available for Public Library Improvement costs, net of transaction costs that may include costs of issuing the Bonds, debt service reserve funds for the Bonds, capitalized interest with respect to the Bonds, and initial expenses of administering the CFD and the Bonds.

"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, which are operated by the Library Operator, as defined by "Facilities" in the formation proceedings for the CFD and eligible for financing by the CFD in accordance with the formation proceedings for the CFD, the JCFA, and the Mello-Roos Act.

"Special Tax" or "Special Taxes" means the special tax levied by the CFD.

SECTION 2. *Purposes.*

(a) General. 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 following purposes:

- (i) Forming a CFD.
- (ii) Calling an election under the Mello-Roos Act on, among other things, the issuance of Bonds for the purpose of raising at least \$62,000,000 of Net Bond Proceeds and net Special Taxes for the financing of Public Library Improvements.
- (iii) Issuing Bonds to finance Public Library Improvements.
- (iv) Carrying out all activities required for the proper management of the Bonds to be issued hereunder.

(b) CFD Formation and Administration.

(i) General. It is understood and agreed by the Parties that the purpose of the Facilities Authority is to form a single CFD and to conduct a single bond election for the issuance of one or more series of Bonds for the purpose of raising at least \$62,000,000 of Net Bond Proceeds and net Special Taxes and that following the initial formation of the CFD and bond election, the purposes of the Facilities Authority shall be to issue the Bonds that have been authorized at such election, to levy a tax to service the debt associated with the issuance and pay for Public Library Improvements on a pay-as-you-go basis and otherwise administer the Bonds and the Special Tax during the term thereof.

It is anticipated that the Special Tax will be levied each year at the maximum amount permitted.

Prior to the issuance of the first series of the Bonds, the Board shall take the following actions:

(I) The Board shall approve, by the unanimous affirmative vote of all of the Directors, a Bond Expenditure Plan setting forth the anticipated Public Library Improvements needs of each Party, the plan for financing those Public Library Improvements through Special Taxes and Net Bond Proceeds, the anticipated amounts of Special Taxes and Net Bond Proceeds to be distributed to each Party, and the phasing plan for each series of the Bonds. The Bond Expenditure Plan may be amended from time to time, by the unanimous affirmative vote of all of the Directors, to further refine the financing plan for the Public Library Improvements.

(II) The Board and the Parties shall enter into the JCFA in accordance with the Act governing the expenditure of Net Bond Proceeds by the Parties and such other matters as set forth in the JCFA.

(ii) Maximum Distributions to Parties. The Facilities Authority shall distribute the Special Taxes and Net Bond Proceeds to each of the Parties in the maximum amounts specified below using the percentages specified below (adjusted for rounding) in order to undertake and complete the construction of the Public Library Improvements:

Member	Maximum Amount	Percentage
City of Capitola	\$8,000,000	12.90%
City of Santa Cruz	\$25,000,000	40.32%
City of Scotts Valley	\$3,000,000	4.84%
County of Santa Cruz	\$26,000,000	41.94%
Total	\$62,000,000	100.00%

Changes to the total amount of the Bonds to be issued, or to the distribution of Special Taxes and Net Bond Proceeds among the Parties, shall require an amendment to this Agreement by the unanimous affirmative vote of all of the Directors, in accordance with the further requirements set forth in Section 14, and shall be subject to the requirements of the Mello-Roos Act and the Joint Powers Act.

(iii) Distribution of Special Tax Proceeds. Prior to issuance of Bonds, any net Special Tax collected in excess of amounts needed to administer the CFD shall be distributed twice annually in January and June, or as soon as practical upon receipt (but in no event less than twice annually), to each of the Parties in the percentages shown above.

After the issuance of Bonds, any net Special Tax collected in excess of amounts needed to pay each Party's allocable share of debt service on Bonds and to administer the Bonds and the CFD shall be distributed annually on September 2 to each of the Parties in accordance with the Bond Expenditure Plan.

When the total of net Special Taxes and Net Bond Proceeds distributed to the Parties equals the maximum amounts specified in Section 2 (ii) and a total of \$62,000,000, further distribution of net Special Taxes to each of the Parties shall be made in accordance with the Bond Expenditure Plan subject to the unanimous affirmative vote of all of the Directors.

Each of the Parties shall deposit or cause to be deposited all Special Tax proceeds it receives into a separate account to track revenues, expenses and fund balance, which will also be subject to an independent audit every year during the term of this Agreement. Each of the Parties shall spend all Special Tax proceeds in accordance with the JCFA, and will be required to execute and deliver certifications and make representations and covenants regarding the administration and expenditure of net Special Taxes, as may be required by bond counsel in order to ensure compliance with applicable provisions of Mello-Roos Act.

(iv) Distribution of Net Bond Proceeds. All Net Bond Proceeds shall be held by the Bond Trustee in a separate fund or account to be maintained for that purpose.

The Bond Trustee shall disburse Net Bond Proceeds to the Parties solely in accordance with the Bond Expenditure Plan and subject to the maximum amounts set forth in subsection (ii) above.

The Bond Trustee shall disburse Net Bond Proceeds to a Party (or to a third party at the direction of that Party) only upon a written requisition from that Party:

(l) specifying the Facilities costs for which the disbursement is requested, and date on which the cost was incurred,

(II) certifying that the Net Bond Proceeds shall be used by the Party solely in accordance with the JCFA, and

(III) certifying that the Facilities cost has been paid by the Party or will be paid by the Party no later than 30 days after the date of the written requisition.

Each of the Parties shall deposit or cause to be deposited all Net 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 shall spend Net Bond Proceeds in accordance with the JCFA, and will be required to execute and deliver certifications and make representations and covenants regarding the administration, expenditure and investment of Net Bond Proceeds as may be required by bond counsel in order to ensure compliance with applicable provisions of the Mello-Roos Act and federal tax law.

(v) Construction of Public Library Improvements. Each of the Parties shall be responsible for overseeing the construction of the Public Library Improvements within its jurisdiction. 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 Attachment A, which may be amended by the unanimous affirmative vote of all of the Directors to reflect updated standards.

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 Net Bond Proceeds shall only be taken with the unanimous 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 Special Tax and 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 Special Tax and 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 Special Tax and 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 CFD within all or a portion of the boundaries of the Parties, to conduct a single bond election for the issuance of one or more series of Bonds for the purpose of raising at least \$62,000,000 of Net Bond Proceeds and net Special Taxes to be paid by a special tax within the CFD and to finance Public Library Improvements within the CFD, 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.

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 Special Tax or 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 Parties to this Agreement or their designated Library Operator, as determined by the Parties, proportionate to the Special Tax and 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.

Approved As To Form:



Attorney-at-law

Date: January 6, 2017

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: _____

Attest:

CITY OF SCOTTS VALLEY

By: _____

Attest:

CITY OF CAPITOLA

By: _____

Attest:

COUNTY OF SANTA CRUZ

By: _____

Attest:

ATTACHMENT A
FURNITURE, SHELVING & SIGNAGE STANDARDS

SANTA CRUZ LIBRARIES FACILITIES FINANCING AUTHORITY

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT**

This AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (this "Agreement"), dated _____, 2017, 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. The Facilities Authority has completed proceedings for the formation of a community facilities district under the Mello-Roos Act, known as "Santa Cruz Libraries Facilities Financing Authority Community Facilities District No. 2016-1."

3. This Agreement amends and restates in its entirety the Joint Exercise of Powers Agreement among the Parties dated December 9, 2014, as subsequently amended to date.

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.

"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 payable from the ~~special tax to be levied~~Special Tax.

"Bond Expenditure Plan" means the Bond Expenditure Plan ~~to be~~ approved by the Board, by the unanimous affirmative vote of all of the Directors, in accordance with Section 2 below, as it may be amended from time to time.

"Bond Trustee" means the trustee or fiscal agent to be appointed by the Board in connection with the issuance of each series of the Bonds.

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

"CFD" means a community facilities district formed under the Mello-Roos Act.

"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.

"JCFA" means the Joint Community Facilities Agreement to be entered into by the Parties and the Facilities Authority under the Act and in accordance with Section 2 below.

"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~~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.

"Net Bond Proceeds" means the proceeds of each series of the Bonds available for Public Library Improvement costs, net of transaction costs that may include costs of issuing the Bonds, debt service reserve funds for the Bonds, capitalized interest with respect to the Bonds, and initial expenses of administering the CFD and the Bonds.

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

"Public Library Improvements" ~~mean the "Facilities" as defined~~means physical improvements to the public library facilities, which are operated by the Library Operator, as defined by "Facilities" in the formation proceedings for the CFD and eligible for financing by the CFD in accordance with the formation proceedings for the CFD, the JCFA, and the Mello-Roos Act.

"Special Tax" or "Special Taxes" means the special tax levied by the CFD.

SECTION 2. *Purposes.*

(a) *General.* 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 following purposes:

(i) Forming a CFD.

(ii) Calling an election under the Mello-Roos Act on, among other things, the issuance of Bonds for the purpose of raising at least \$62,000,000 of ~~net proceeds~~Net Bond Proceeds and net ~~special taxes~~Special Taxes for the financing of Public Library Improvements.

(iii) Issuing Bonds to finance Public Library Improvements.

(iv) Carrying out all activities required for the proper management of the Bonds to be issued hereunder.

(b) CFD Formation and Administration.

(i) *General.* It is understood and agreed by the Parties that the purpose of the Facilities Authority is to form a single CFD and to conduct a single bond election for the issuance of one or more series of Bonds for the purpose of raising at least \$62,000,000 of ~~net proceeds~~Net Bond Proceeds and net ~~special taxes~~Special Taxes and that following the initial formation of the CFD and bond election, the purposes of the Facilities Authority shall be to issue the Bonds that have been authorized at such election, to levy a tax to service the debt associated with the issuance and pay for Public Library Improvements on a pay-as-you-go basis and otherwise administer the Bonds and the ~~special tax~~Special Tax during the term thereof.

It is anticipated that the Special Tax will be levied each year at the maximum amount permitted.

Prior to the issuance of the first series of the Bonds, the Board shall take the following actions:

(I) The Board shall approve, by the unanimous affirmative vote of all of the Directors, a Bond Expenditure Plan setting forth the anticipated Public Library Improvements needs of each Party, the plan for financing those Public Library Improvements through Special Taxes and Net Bond Proceeds, the anticipated amounts of Special Taxes and Net Bond Proceeds to be distributed to each Party, and the phasing plan for each series of the Bonds. The Bond Expenditure Plan may be amended from time to time, by the unanimous affirmative vote of all of the Directors, to further refine the financing plan for the Public Library Improvements.

(II) The Board and the Parties shall enter into the JCFA in accordance with the Act governing the expenditure of Net Bond Proceeds by the Parties and such other matters as set forth in the JCFA.

(ii) Maximum Distributions to Parties. The Facilities Authority shall distribute the Special Taxes and Net Bond Proceeds to each of the Parties in the maximum amounts specified below using the percentages specified below (adjusted for rounding) in order to undertake and complete

the construction of the Public Library Improvements:

Member	Maximum Amount	Percentage
City of Capitola	\$8,000,000	12.90%
City of Santa Cruz	\$25,000,000	40.32%
City of Scotts Valley	\$3,000,000	4.84%
County of Santa Cruz	\$26,000,000	41.94%
Total	\$62,000,000	100.00%

Changes to the total amount of the Bonds to be issued, or to the distribution of Special Taxes and Net Bond Proceeds among the Parties, shall require an amendment to this Agreement, as by the unanimous affirmative vote of all of the Directors, in accordance with the further requirements set forth in Section 14, and shall be subject to the requirements of the Mello-Roos Act and the Joint Powers Act.

(iii) Distribution of Special Tax Proceeds. Prior to issuance of Bonds, any net Special Tax collected in excess of amounts needed to administer the CFD shall be distributed twice annually in January and June, or as soon as practical upon receipt (but in no event less than twice annually), to each of the Parties in the percentages shown above.

After the issuance of Bonds, any net Special Tax collected in excess of amounts needed to pay each Party's allocable share of debt service on Bonds and to administer the Bonds and the CFD shall be distributed annually on September 2 to each of the Parties in accordance with the Bond Expenditure Plan.

When the total of net special taxes ~~Special Taxes~~ and Net Bond proceeds ~~Proceeds~~ distributed to the Parties equals the maximum amounts specified in Section 2 (ii) and a total of \$62,000,000, further distribution of net special taxes ~~Special Taxes~~ to each of the Parties shall be made in accordance with the Bond Expenditure Plan subject to the unanimous affirmative vote of all of the Directors.

Each of the Parties shall deposit or cause to be deposited all Special Tax proceeds it receives into a separate account to track revenues, expenses and fund balance, which will also be subject to an independent audit every year during the term of this Agreement. Each of the Parties shall spend all Special Tax proceeds in accordance with the JCFA, and will be required to execute and deliver certifications and make representations and covenants regarding the administration and expenditure of net Special Taxes, as may be required by bond counsel in order to ensure compliance with applicable provisions of Mello-Roos Act.

(iv) Distribution of Net Bond Proceeds. All Net Bond Proceeds shall be held by the Bond Trustee in a separate fund or account to be maintained for that purpose.

The Bond Trustee shall disburse Net Bond Proceeds to the Parties solely in accordance with the Bond Expenditure Plan and subject to the maximum amounts set forth in subsection (ii) above.

The Bond Trustee shall disburse Net Bond Proceeds to a Party (or to a third party at the direction of that Party) only upon a written requisition from that Party:

(I) specifying the Facilities costs for which the disbursement is requested, and date on which the cost was incurred,

(II) certifying that the Net Bond Proceeds shall be used by the Party solely in accordance with the JCFA, and

(III) certifying that the Facilities cost has been paid by the Party or will be paid by the Party no later than 30 days after the date of the written requisition.

Each of the Parties shall deposit or cause to be deposited all ~~net~~Net Bond ~~proceeds~~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 shall spend Net Bond Proceeds in accordance with the JCFA, and will be required to execute and deliver certifications and make representations and covenants regarding the administration, expenditure and investment of Net Bond ~~proceeds~~Proceeds as may be required by bond counsel in order to ensure compliance with applicable provisions of the Mello-Roos Act and federal tax law.

(v) Construction of Public Library Improvements. Each of the Parties shall be responsible for overseeing the construction of the Public Library Improvements within its jurisdiction. 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 Attachment A, which may be amended by the unanimous affirmative vote of all of the Directors to reflect updated standards.

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~~ Net Bond Proceeds shall only be taken with the unanimous 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 Special Tax and 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 Special Tax and 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 Special Tax and 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 CFD within all or a portion of the boundaries of the Parties, to conduct a single bond election for the issuance of one or more series of Bonds for the purpose of raising at least \$62,000,000 of ~~net proceeds~~ Net Bond Proceeds and net ~~special taxes~~ Special Taxes to be paid by a special tax within the CFD and to finance Public Library Improvements within the CFD, 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.

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 ~~Special Tax or~~ 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 Parties to this Agreement or their designated Library Operator, as determined by the Parties, proportionate to the Special Tax and 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.

Approved As To Form:

Attorney-at-law

Date:

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: _____

Attest:

CITY OF SCOTTS VALLEY

By: _____

Attest:

CITY OF CAPITOLA

By: _____

Attest:

~~CITY~~ COUNTY OF SANTA CRUZ

By: _____

Attest:

ATTACHMENT A
FURNITURE, SHELVING & SIGNAGE STANDARDS

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 payable from the special tax to be levied.

"Bond Expenditure Plan" means the Bond Expenditure Plan to be approved by the Board, by the unanimous affirmative vote of all of the Directors, in accordance with Section 2 below, as it may be amended from time to time.

"Bond Trustee" means the trustee or fiscal agent to be appointed by the Board in connection with the issuance of each series of the Bonds.

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

"CFD" means a community facilities district formed under the Mello-Roos Act.

"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.

"JCFA" means the Joint Community Facilities Agreement to be entered into by the Parties and the Facilities Authority under the Act and in accordance with Section 2 below.

"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.

"Net Bond Proceeds" means the proceeds of each series of the Bonds available for Public Library Improvement costs, net of transaction costs that may include costs of issuing the Bonds, debt service reserve funds for the Bonds, capitalized interest with respect to the Bonds, and initial expenses of administering the CFD and the Bonds.

"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.~~ mean the "Facilities" as defined in the formation proceedings for the CFD and eligible for financing by the CFD in accordance with the formation proceedings for the CFD, the JCFA, and the Mello-Roos Act

SECTION 2. ~~Purposes.~~ Purpose.

(a) General. 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 following purposes:

- (i) Forming a CFD. ~~community facilities district under the Mello-Roos Act.~~
- (ii) 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;~~ on, among other things, the issuance of Bonds for the purpose of raising at least \$62,000,000 of net proceeds and net special taxes for the financing of Public Library Improvements.
- (iii) Issuing Bonds to finance Public Library Improvements.
- (iv) Carrying out all activities required for the proper management of the Bonds to be issued hereunder.

(b) CFD Formation and Administration.

(i) General. It is understood and agreed by the Parties that the purpose of the Facilities Authority is to form a single CFD ~~community facilities district~~ and to conduct a single bond election for the issuance of one or more series of Bonds ~~a single issue of Bonds~~ for the purpose of raising at least \$62,000,000 of net proceeds and net special taxes and that following the initial formation of the CFD and bond election, the purposes of the Facilities Authority shall be to issue the Bonds that have been authorized at such election, to levy a tax to service the debt associated with the issuance and pay for Public Library Improvements on a pay-as-you-go basis and otherwise administer the Bonds and the special tax during the term thereof. ~~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.~~

It is anticipated that the Special Tax will be levied each year at the maximum amount permitted.

Prior to the issuance of the first series of the Bonds, the Board shall take the following actions:

(I) The Board shall approve, by the unanimous affirmative vote of all of the Directors, a Bond Expenditure Plan setting forth the anticipated Public Library Improvements needs of each Party, the plan for financing those Public Library Improvements through Special Taxes and Net Bond Proceeds, the anticipated amounts of Special Taxes and Net Bond Proceeds to be distributed to each Party, and the phasing plan for each series of the Bonds. The Bond Expenditure Plan may be amended from time to time, by the unanimous affirmative vote of all of the Directors, to further refine the financing plan for the Public Library Improvements.

(II) The Board and the Parties shall enter into the JCFA in accordance with the Act governing the expenditure of Net Bond Proceeds by the Parties and such other matters as set forth in the JCFA.

~~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~~

(ii) Maximum Distributions to Parties. ~~Within ten days of issuance, exclusive of any costs of issuance, which shall be retained by the Facilities Authority to pay costs, and exclusive of any reserve which is funded from the proceeds of the Bonds, the~~ The Facilities Authority shall distribute the Special Taxes and Net Bond Proceeds ~~the Bond proceeds~~ to each of the Parties in the maximum amounts using the or percentages specified below (adjusted for rounding) in order to undertake and complete the construction of the Public Library Improvements:

Member	Amount	Percentage
City of Capitola	\$8,000,000	12.90%
City of Santa Cruz	\$25,000,000	40.32%
City of Scotts Valley	\$3,000,000	4.84%
County of Santa Cruz	\$26,000,000	41.94%
Total	\$62,000,000	100.00%

Changes to the total amount of the Bonds to be issued, or to the distribution of ~~Bond Proceeds~~ Special Taxes and Net 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 Mello-Roos Act and the Joint Powers Act.

~~It is anticipated that the special tax will be levied each year at the maximum amount permitted.~~

~~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.~~

(iii) Distribution of Special Tax Proceeds. Prior to issuance of Bonds, any net Special Tax collected in excess of amounts needed to administer the CFD shall be distributed twice annually in January and June, or as soon as practical upon receipt (but in no event less than twice annually), to each of the Parties in the percentages shown above.

After the issuance of Bonds, any net Special Tax collected in excess of amounts needed to pay each Party's allocable share of debt service on Bonds and to administer the Bonds and the CFD shall be distributed annually on September 2 to each of the Parties ~~in the percentages shown above.~~ in accordance with the Bond Expenditure Plan.

When net special taxes and Bond proceeds distributed to the Parties equals a total of \$62,000,000, further distribution of net special taxes to each of the Parties shall be made in accordance with the Bond Expenditure Plan subject to the unanimous affirmative vote of all of the Directors.

Each of the Parties shall deposit or cause to be deposited all Special Tax proceeds it receives ~~net special taxes~~ into a separate account to track revenues, expenses and fund balance, which will also be subject to an independent audit every year during the term of this Agreement. Each of the Parties shall spend all Special Tax proceeds in accordance with the JCFA, and will be required to execute and deliver certifications and make representations and covenants regarding the administration and expenditure of net Special Taxes, special taxes, as may be required by bond counsel in order to ensure compliance with applicable provisions of Mello-Roos Act.

(iv) Distribution of Net Bond Proceeds. All Net Bond Proceeds shall be held by the Bond Trustee in a separate fund or account to be maintained for that purpose.

The Bond Trustee shall disburse Net Bond Proceeds to the Parties solely in accordance with the Bond Expenditure Plan and subject to the maximum amounts set forth in subsection (ii) above.

The Bond Trustee shall disburse Net Bond Proceeds to a Party (or to a third party at the direction of that Party) only upon a written requisition from that Party:

(I) specifying the Facilities costs for which the disbursement is requested, and date on which the cost was incurred,

(II) certifying that the Net Bond Proceeds shall be used by the Party solely in accordance with the JCFA, and

(III) certifying that the Facilities cost has been paid by the Party or will be paid by the Party no later than 30 days after the date of the written requisition.

Each of the Parties shall deposit or cause to be deposited all net 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 shall spend Net Bond Proceeds in accordance with the JCFA, and will be required to execute and deliver certifications and make representations and covenants regarding the administration, expenditure and investment of Net Bond proceeds, as may be required by bond counsel in order to ensure compliance with applicable provisions of the Mello-Roos Act and federal tax law.

(v) Construction of Public Library Improvements. Each of the Parties shall be responsible for overseeing the construction of the Public Library Improvements within its jurisdiction. 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~~ Attachment A, which may be amended by the affirmative vote of all of the Directors to reflect updated standards.

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 CFD ~~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 one or more series of Bonds~~ for the purpose of raising at least \$62,000,000 of net proceeds and net special taxes to be paid by a special tax within the CFD and ~~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 CFD ~~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 CFD community facilities district or to conduct an election for the purpose of authorizing the imposition of a special tax within the CFD 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 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.

Approved As To Form:

Attorney-at-law

Date:

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: _____

Attest:

CITY OF SCOTTS VALLEY

By: _____

Attest:

CITY OF CAPITOLA

By: _____

Attest:

CITY OF SANTA CRUZ

By: _____

Attest:

ATTACHMENT A
FURNITURE, SHELVING & SIGNAGE STANDARDS

JOINT COMMUNITY FACILITIES AGREEMENT

For

SANTA CRUZ LIBRARIES FACILITIES FINANCING AUTHORITY Community Facilities District No. 2016-1

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this "**Agreement**"), dated as of _____, 2017, is by and among the Santa Cruz Libraries Facilities Financing Authority (the "**Authority**") and the following members of the Authority (collectively, the "**Members**"): the County of Santa Cruz (the "**County**"), the City of Santa Cruz (the "**City of Santa Cruz**"), the City of Scotts Valley (the "**City of Scotts Valley**"), and the City of Capitola (the "**City of Capitola**").

BACKGROUND

A. The Authority was formed by the Members under a Joint Exercise of Powers Agreement, with an effective date of December 9, 2014, as amended and restated by an Amended and Restated Joint Exercise of Powers Agreement, with an effective date of _____, 2017 (as amended, the "**Joint Powers Agreement**").

B. In accordance with the Joint Powers Agreement, the Authority has conducted proceedings to establish the Santa Cruz Libraries Facilities Financing Authority Community Facilities District No. 2016-1 (the "**CFD**"), under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "**Act**").

C. The CFD has been established for the purpose of financing the acquisition of public library facilities set forth in Exhibit A to Resolution No. 2016-001, entitled "Resolution of Formation of Community Facilities District," adopted by the Board of Directors of the Authority on February 11, 2016 (the "**Resolution of Formation**"). The description of authorized facilities is attached as Exhibit A hereto.

D. Certain authorized facilities will be owned or operated by one or more of the Members, or owned by another local agency but controlled, in whole or in part, by a Member (collectively, the "**Facilities**").

E. It is anticipated that the Authority will issue, for and on behalf of the CFD, one or more series of bonds or incur other forms of indebtedness (collectively, the "**Bonds**") secured by special taxes to be levied on non-exempt property located within the boundaries of the CFD. Under Section 53316.2 of the Act, the Authority may finance through the CFD the Facilities to be owned or operated by the Members only pursuant to a joint community facilities agreement among the Authority and the Members.

F. The Authority and the Members have determined that it would be of benefit to the residents of each of their respective jurisdictions to enter into this Agreement to provide for the financing of the Facilities by the Authority through the CFD.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Authority and the Members agree as follows:

1. Agreement. This Agreement constitutes a "joint community facilities agreement," within the meaning of Section 53316.2 of the Act pursuant to which the CFD will be authorized to finance the acquisition and construction of the Facilities.

2. Bond Proceeds. The Board of Directors of the Authority, acting as the legislative body of the CFD, may, in its sole discretion, authorize the issuance of Bonds.

If and to the extent the Bonds are issued, the Authority will allocate the amount of the proceeds of each series of Bonds toward the cost of the Facilities for each Member in accordance with the Joint Powers Agreement.

3. Expenditure of Bond Proceeds. Each Member hereby makes the following covenants regarding its proposed use of the Bond Proceeds and the Facilities.

a. Eligible Projects. Each Member shall spend proceeds of the Bonds, and any Special Taxes received by that Member for directly paying for Facilities costs, solely on Facilities authorized to be financed by the CFD as set forth in Exhibit A hereto. In accordance with the Act, all Facilities shall be publicly owned facilities having a useful life of 5 years or more.

b. Federal Tax Matters. Each Member hereby makes the following covenants

i. Expenditure within Three Years; Capital Expenditures. Each Member will proceed with due diligence to complete its respective Facilities and to spend the proceeds it receives from any series of Bonds no later than three years after that series of Bonds is issued. Each Member will ensure that all expenditures of Bond proceeds will be capital expenditures.

ii. Documentation. To assist the Authority in complying with federal tax law matters in connection with the issuance of any Bonds, each Member agrees that, at or before the issuance of a Series of Bonds, each Member will execute and deliver such certifications and covenants as may be reasonably required for the Authority's bond counsel to conclude that interest on such Bonds will be excluded from gross income for federal income tax purposes.

Each Member will retain its records of all accounting and monitoring it carries out with respect to its investment (if any) and expenditure of Bond proceeds for at least 3 years after the Bonds mature or are redeemed (whichever is earlier); however, if the Bonds are redeemed and refunded, each Member will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or redemption of the obligations that refunded the Bonds.

iii. Private Business Tests; Private Loan Financing Test. Each Member shall assure that the Facilities are not used so as to cause the Bonds to satisfy the private business tests of section 141(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or the private loan financing test of section 141(c) of the Code.

iv. Maintenance of Tax-Exemption. Each Member will take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the bonds.

v. Investment of Bond Proceeds. To the extent that any Member holds any Bond proceeds, that Member shall trace and periodically report to the Authority all investment earnings, if any, received by that Member, and shall apply all such investment earnings toward the cost of Facilities. Each Member shall comply with all legal requirements for the investment of Bond proceeds under the Code.

vi. Reimbursement of Prior Capital Expenditures. Any Member intending to use proceeds of any series of Bonds to reimburse itself for capital expenditures made by it prior to the issuance of that series of Bonds shall:

(I) provide prior written notice to the Authority of the proposed date and amount of such expenditure and the Facility for which the expenditure is intended,

(II) adopt a resolution of its legislative body expressing official intent to reimburse itself with Bond proceeds (in form and substance acceptable to the Authority) no later than 60 days after the first such expenditure is made, and

(III) promptly provide a signed copy of the resolution to the Authority.

4. Annual Reporting. Each Member shall, no later than 90 days after the end of the Member's fiscal year, file with the Authority a written report (the "Annual CFD Report") containing the following information for the prior fiscal year:

i. The amount of Bond proceeds received and expended during such fiscal year, any cash balance of Bond proceeds remaining on hand at the end of such fiscal year, and a summary of the Facilities for which Bond proceeds were expended.

ii. The amount of Special Taxes received and expended during such fiscal year, any cash balance of Special Taxes remaining on hand at the end of such fiscal year, and a summary of the Facilities for which Special Taxes were expended.

The Authority shall use the information contained in the Annual CFD Reports in preparing and filing any annual reports required by law, including without limitation any reports required to

be filed with the California Debt and Investment Advisory Commission and the Municipal Securities Rulemaking Board.

5. Ongoing Operation and Maintenance. The Authority and each Member agree that the Members shall be solely responsible for the maintenance and operation of the Facilities.

6. Indemnification. Each Member shall assume the defense of, indemnify and save harmless, the Authority, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of that Member with respect to this Agreement, and the ownership, operation and maintenance of the Facilities by that Member; provided, however, that no Member shall be required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents or employees.

7. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may not be assigned by either of the parties thereto.

9. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

10. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Approved As To Form:



Attorney-at-law

Date: January 6, 2017

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first-above written.

**SANTA CRUZ LIBRARIES FACILITIES
FINANCING AUTHORITY**

By _____

Attest:

CITY OF SANTA CRUZ

By _____

Attest:

CITY OF SCOTTS VALLEY

By _____

Attest:

CITY OF CAPITOLA

By _____

Attest:

COUNTY OF SANTA CRUZ

By _____

Attest:

EXHIBIT A

DESCRIPTION OF FACILITIES TO BE FINANCED BY THE CFD

The types of Facilities proposed to be financed or funded in whole or in part by the Community Facilities District No. 2016-1 (the "CFD") of the Santa Cruz Libraries Facilities Financing Authority (the "Authority") of the under the Mello-Roos Community Facilities Act of 1982, as amended (the "Act") are as follows:

The Facilities means library facilities in the County of Santa Cruz, including but not limited to Aptos, Boulder Creek, Branciforte, Capitola, Downtown Santa Cruz, Felton, Garfield Park, La Selva Beach, Live Oak and Scotts Valley, but excluding library facilities in the City of Watsonville. The Facilities shall include any of the following: new construction, building renovations and service model upgrades needed to provide service desks, an area for displaying materials, separate areas for teens and children, flexible spaces and/or meeting rooms and study rooms, places to display art, new flooring, paint, shelving, furniture and technology, power/data to support library technology, and other upgrades.

The Facilities shall also include, without limitation, the attributable costs of engineering, design, planning, materials testing, coordination, construction staking, and construction, together with the expenses related to issuance and sale of any "debt", as defined in Section 53317(d) of the Act, including underwriters' discount, appraisals, market studies, reserve fund, capitalized interest, bond counsel, special tax consultant, financial advisor, bond and official statement printing, administrative expenses of the Authority, the CFD and bond trustee or fiscal agent related to the CFD, and any such debt and all other incidental expenses. The Facilities shall be constructed or modified, upgraded or otherwise renovated, whether or not acquired in their completed states, pursuant to plans and specifications approved by the Parties to the Authority's Joint Exercise of Powers Agreement.

The Facilities listed in this Exhibit A are representative of the types of improvements to be furnished by the CFD. Detailed scope and limits of specific projects will be determined as appropriate by the Parties. Addition, deletion or modification of descriptions of Facilities may be made consistent with the requirements of the Authority, the CFD and the Act.

JOINT COMMUNITY FACILITIES AGREEMENT

For

SANTA CRUZ LIBRARIES FACILITIES FINANCING AUTHORITY Community Facilities District No. 2016-1

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this "**Agreement**"), dated as of _____, ~~2016~~2017, is by and among the Santa Cruz Libraries Facilities Financing Authority (the "**Authority**") and the following members of the Authority (collectively, the "**Members**"): the County of Santa Cruz (the "**County**"), the City of Santa Cruz (the "**City of Santa Cruz**"), the City of Scotts Valley (the "**City of Scotts Valley**"), and the City of Capitola (the "**City of Capitola**").

BACKGROUND

A. The Authority was formed by the ~~members~~Members under a Joint Exercise of Powers Agreement, with an effective date of December 9, 2014, as amended and restated by an Amended and Restated Joint Exercise of Powers Agreement, with an effective date of _____, 2017 (as amended, the "**Joint Powers Agreement**").

B. In accordance with the Joint Powers Agreement, the Authority has conducted proceedings to establish the Santa Cruz Libraries Facilities Financing Authority Community Facilities District No. 2016-1 (the "**CFD**"), under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "**Act**").

C. The CFD has been established for the purpose of financing the acquisition of public library facilities set forth in Exhibit A to Resolution No. 2016-001, entitled "Resolution of Formation of Community Facilities District," adopted by the Board of Directors of the Authority on February 11, 2016 (the "**Resolution of Formation**"). The description of authorized facilities is attached as Exhibit A hereto.

D. Certain authorized facilities will be owned or operated by one or more of the Members, or owned by another local agency but ~~under the control of~~controlled, in whole or in part, by a Member (collectively, the "**Facilities**").

E. It is anticipated that the Authority will issue, for and on behalf of the CFD, one or more series of bonds or incur other forms of indebtedness (collectively, the "**Bonds**") secured by special taxes to be levied on non-exempt property located within the boundaries of the CFD. Under Section 53316.2 of the Act, the Authority may finance through the CFD the Facilities to be owned or operated by the Members only pursuant to a joint community facilities agreement among the Authority and the Members.

F. The Authority and the Members have determined that it would be of benefit to the residents of each of their respective jurisdictions to enter into this Agreement to provide for the financing of the Facilities by the Authority through the CFD.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the Authority and the Members agree as follows:

1. Agreement. This Agreement constitutes a "joint community facilities agreement," within the meaning of Section 53316.2 of the Act pursuant to which the CFD will be authorized to finance the acquisition and construction of the Facilities.

2. Bond Proceeds. The Board of Directors of the Authority, acting as the legislative body of the CFD, may, in its sole discretion, authorize the issuance of Bonds.

If and to the extent the Bonds are issued, the Authority will allocate the amount of the proceeds of each series of Bonds toward the cost of the Facilities for each Member in accordance with the Joint Powers Agreement.

3. Expenditure of Bond Proceeds. Each Member hereby makes the following covenants regarding its proposed use of the Bond Proceeds and the Facilities.

a. Eligible Projects. Each Member shall spend proceeds of the Bonds, and any Special Taxes received by that ~~member~~Member for directly paying for Facilities costs, solely on Facilities authorized to be financed by the CFD as set forth in Exhibit A hereto. In accordance with the Act, all Facilities shall be publicly owned facilities having a useful life of 5 years or more.

b. Federal Tax Matters. Each Member hereby makes the following covenants

i. Expenditure within Three Years; Capital Expenditures. Each Member will proceed with due diligence to complete its respective Facilities and to spend the proceeds it receives from any series of Bonds no later than three years after that series of Bonds is issued. Each Member will ensure that all expenditures of Bond proceeds will be capital expenditures.

ii. Documentation. To assist the Authority in complying with federal tax law matters in connection with the issuance of any Bonds, each Member agrees that, at or before the issuance of a Series of Bonds, each Member will execute and deliver such certifications and covenants as may be reasonably required for the Authority's bond counsel to conclude that interest on such Bonds will be excluded from gross income for federal income tax purposes.

Each Member will retain its records of all accounting and monitoring it carries out with respect to its investment (if any) and expenditure of Bond proceeds for at least 3 years after the Bonds mature or are redeemed (whichever is earlier); however, if the Bonds are redeemed and refunded, each Member will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or redemption of the obligations that refunded the Bonds.

iii. Private Business Tests; Private Loan Financing Test. Each Member shall assure that the Facilities are not used so as to cause the Bonds to satisfy the private business tests of section 141(b) of the Internal Revenue Code of 1986, as amended (the "Code"), or the private loan financing test of section 141(c) of the Code.

iv. Maintenance of Tax-Exemption. Each Member will take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the bonds.

v. Investment of Bond Proceeds. To the extent that any Member holds any Bond proceeds, that Member shall trace and periodically report to the Authority all investment earnings, if any, received by that Member, and shall apply all such investment earnings toward the cost of Facilities. Each Member shall comply with all legal requirements for the investment of Bond proceeds under the Code.

vi. Reimbursement of Prior Capital Expenditures. Any Member intending to use proceeds of any series of Bonds to reimburse itself for capital expenditures made by it prior to the issuance of that series of Bonds shall:

(I) provide prior written notice to the Authority of the proposed date and amount of such expenditure and the Facility for which the expenditure is intended,

(II) adopt a resolution of its legislative body expressing official intent to reimburse itself with Bond proceeds (in form and substance acceptable to the Authority) no later than 60 days after the first such expenditure is made, and

(III) promptly provide a signed copy of the resolution to the Authority.

4. Annual Reporting. Each Member shall, no later than 90 days after the end of the Member's fiscal year, file with the Authority a written report (the "Annual CFD Report") containing the ~~following~~following information for the prior fiscal year:

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Attorney-at-law

Date:

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FINANCING AUTHORITY**

By _____

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