

IN THE BOARD OF DIRECTORS
OF THE
LIVERMORE AREA RECREATION AND PARK DISTRICT

RESOLUTION NO. 1171

A RESOLUTION AUTHORIZING FORMATION OF THE
GOVERNMENTS OF LIVERMORE FINANCING AUTHORITY
WITH THE CITY OF LIVERMORE

WHEREAS, the Livermore Area Recreation and Park District (the "District") and the City of Livermore (the "City") are considering proceedings for the acquisition, construction and equipping of certain property to be used for a maintenance service center for use by the District and the City, and in connection with such proceedings the District and the City propose to form a joint powers authority pursuant to Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California in order that such authority may exercise the powers authorized under the Marks-Roos Local Bond Pooling Act of 1985 (Government Code 6584 et seq.).

NOW, THEREFORE, BE IT RESOLVED by the Livermore Area Recreation and Park District as follows:

Section 1. Formation of Joint Powers Authority. The District hereby authorizes the officers and staff members of the District to assist in the organization of a joint powers authority between the City and the District, to be known as the Governments of Livermore Financing Authority. The District hereby approves and authorizes the Chairman of the Board to execute and the General Manager to attest the Joint Powers Agreement forming said joint powers authority, in substantially the form on file with the General Manager, together with any changes therein deemed advisable by the District's General Counsel.

Section 2. Official Actions. The Chairman and General Manager of the District are hereby authorized and directed to take all actions and do all things necessary or desirable hereunder with respect to the formation of said joint powers authority, including but not limited to the execution and delivery of any and all agreements, certificates, instruments and other documents, which they may deem necessary or desirable and not inconsistent with the purpose of this resolution.

Section 3. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.


ON MOTION of Director Bernal, seconded by Director Bing, the foregoing resolution was passed and adopted on the 14th day of December, 1988, by the following roll call vote:

AYES: Directors Faltings, Bing, Bernal, Rodrigues, and Chairman Pound (5)

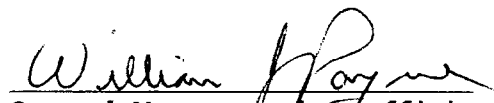
NOES: None (0)

ABSENT: None (0)

Approved this 14th day of December, 1988.


Chairman, Board of Directors

ATTEST:


General Manager and ex-officio
Clerk to the Board of Directors

RESOLUTION NO. 14-89

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVERMORE
AUTHORIZING FORMATION OF JOINT POWERS AUTHORITY WITH THE
LIVERMORE AREA RECREATION AND PARK DISTRICT

WHEREAS, the Livermore Area Recreation and Park District (the "District") and the City of Livermore (the "City") are considering proceedings for the acquisition, construction and equipping of certain property to be used for a maintenance service center to be used by the District and the City, and in connection with such proceedings the District and the City propose to form a joint powers authority pursuant to Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California in order that such authority may exercise the powers authorized under the Marks-Roos Local Bond Pooling Act of 1985 (Government Code 6584 et seq.); and

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

Section 1. Formation of Joint Powers Authority. The City Council hereby authorizes the officers and staff members of the City to assist in the organization of a joint powers authority between the City and the District, to be known as the Governments of Livermore Financing Authority. The City Council hereby approves and authorizes the Mayor to execute and the City Clerk to attest the Joint Powers Agreement forming said joint powers authority, in substantially the form on file with the City Clerk, together with any changes therein deemed advisable by the City Attorney.

Section 2. Official Actions. The Mayor, Finance Director and City Clerk of the City, and any other officers of the City, are hereby authorized and directed to take all actions and do all things necessary or desirable hereunder with respect to the formation of said joint powers authority, including but not limited to the execution and delivery of any and all agreements, certificates, instruments and other documents, which they, or any of them, may deem necessary or desirable and not inconsistent with the purposes of this resolution.

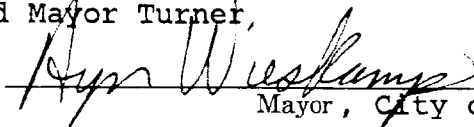
Section 3. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this 9th day of January, 1989, by the following vote:

AYES: COUNCILMEMBERS Vargas, Brown and Wieskamp

NOES: NONE

ABSENT: COUNCILMEMBER Bartoli and Mayor Turner,




Mayor, City of Livermore
PRO TEM

(S E A L)

APPROVED AS TO FORM:

Attest:

By: 

City Clerk ^{ASSI.} CITY ATTORNEY

M7420

JOINT EXERCISE OF POWERS AGREEMENT
GOVERNMENTS OF LIVERMORE FINANCING AUTHORITY

Dated as of January 1, 1989

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THIS AGREEMENT is by and among the CITY OF LIVERMORE (the "City") and the LIVERMORE AREA RECREATION & PARK DISTRICT (the "District"), each duly organized and existing under the laws of the State of California (the "State"), collectively called the "Members".

WITNESSETH:

WHEREAS, the City and the District have decided to jointly finance a maintenance service center for use by the City and the District; and

WHEREAS, the Marks-Roos Local Bond Pooling Act of 1985 (hereinafter defined as the "Bond Law") authorizes agencies formed under the Joint Exercise of Powers Law (hereinafter defined as the "Act") to issue bonds for the purpose of acquiring and constructing Public Capital Improvements (as that term is defined in the Act) and to lease those Public Capital Improvements to its Members;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Members do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified.

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State.

"Agreement" means this Agreement.

"Auditor and Treasurer" means the Director of Finance of the City, designated as Auditor and Treasurer of the Authority in Section 3.02.

"Authority" means the Governments of Livermore Financing Authority created pursuant to this Agreement.

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 of the Act (commencing with Section 6584), as now or hereafter amended, or any other law hereafter legally available for use by the Authority in the authorization and issuance of Bonds to finance the acquisition of Obligations and/or Public Capital Improvements.

"Bonds" means bonds of the Authority issued pursuant to Section 6590 or 6591 of the Bond Law.

"Chairman" means the chairman of the Authority.

"Commission" means the Commission referred to in Section 2.03, which shall be the governing body of the Authority.

"Commissioners" means the representatives of the Members appointed to the Commission pursuant to Section 2.03.

"Fiscal Year" means the period from July 1 to and including the following June 30.

"Members and Member" means each of the parties to this Agreement and "Member" means any such party.

"Public Agency" means any public agency authorized by the Act to enter into a joint exercise of powers agreement with the Members.

"Public Capital Improvement" has the meaning given to such term in Section 6585(g) of the Act, as in effect on the date hereof, and as hereinafter amended.

"Secretary" means the secretary of the Authority.

"State" means the State of California.

"Vice Chairman" means the vice chairman of the Authority.

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Purpose. This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the Members. The purpose of this Agreement is to provide for the financing of Public Capital Improvements for the Members through the issuance of Bonds by the Authority and the leasing of the Public Capital Improvements to the Members.

Section 2.02. Creation of Authority. Pursuant to the Act, there is hereby created a public entity to be known as the "Governments of Livermore Financing Authority". The Authority shall be a public entity separate and apart from the Members, and shall administer this Agreement.

Section 2.03. Commission. The Authority shall be administered by a Commission of six (6) Commissioners. The City Council of the City shall appoint three (3) Commissioners who shall be, *ex officio*, the Mayor of the City Council, the City Manager and the Director of Public Works, and the Board of Directors of the District shall appoint three (3) Commissioners who shall be, *ex officio*, the Chairman of the Board of the District, the Superintendent of Planning and Parks of the District, and the General Manager of the District. The number of Commissioners may be changed by amendment of this Agreement. The Commission shall be called the "Commission of the Governments of Livermore Financing Authority". All voting power of the Authority shall reside in the Commission.

Each Commissioner shall serve at the pleasure of the Member which appointed such Commissioner. Vacancies on the Commission shall be filled by the respective appointing Members.

Section 2.04. Meetings of the Commission.

(a) Regular Meetings. The Commission shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year. The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Commission and a copy of such resolution shall be filed with each of the Members.

(b) Special Meetings. Special meetings of the Commission may be called in accordance with the provisions of Section 54956 of the Government Code of the State.

(c) Call, Notice and Conduct of Meetings. All meetings of the Commission, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of Sections 54950 et seq. of the Government Code of the State.

Section 2.05. Minutes. The Secretary shall cause to be kept minutes of the meetings of the Commission and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Commissioner and to each of the Members.

Section 2.06. Voting. Each Commissioner shall have one vote.

Section 2.07. Quorum; Required Votes; Approvals. Commissioners holding a majority of the votes shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative votes of at least a majority of the Commissioners shall be required to take any action by the Commission.

Section 2.08. Bylaws. The Commission may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

ARTICLE III

OFFICERS AND EMPLOYEES

Section 3.01. Chairman, Vice-Chairman and Secretary. The Commission shall elect a Chairman and Vice Chairman from among the Commissioners, and shall appoint a Secretary who may, but need not, be a Commissioner. The officers shall perform the duties normal to said offices; and

(a) the Chairman shall sign all contracts on behalf of the Authority, and shall perform such other duties as may be imposed by the Commission;

(b) the Vice Chairman shall act, sign contracts and perform all of the Chairman's duties in the absence of the Chairman; and

(c) the Secretary shall countersign all contracts signed by the Chairman or Vice Chairman on behalf of the Authority, perform such other duties as may be imposed by the Commission and cause a copy of this Agreement to be filed with the Secretary of State of the State pursuant to the Act.

Section 3.02. Auditor and Treasurer. Pursuant to Section 6505.6 of the Act, the Director of Finance of the City is hereby designated as the Auditor and Treasurer of the Authority. The Auditor and Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in Sections 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority.

Section 3.03. Officers in Charge of Records, Funds and Accounts. Pursuant to Section 6505.1 of the Act, the Auditor and Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 3.04. Bonding Persons Having Access to Public Capital Improvements. From time to time, the Commission may designate persons, in addition to the Secretary and the Auditor and Treasurer, having charge of, handling or having access to any records, funds or accounts or other Public Capital Improvements of the Authority, and the respective amounts of the official bonds of the Secretary and the Auditor and Treasurer and such other persons pursuant to Section 6505.1 of the Act.

Section 3.05. Legal Advisor. The Commission shall have the power to appoint the legal advisor of the Authority who shall perform such duties as may be prescribed by the Commission.

Section 3.06. Other Employees. The Commission shall have the power to appoint and employ such other consultants and independent contractors as may be necessary for the purposes of this Agreement.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of an Agency when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

None of the officers, agents, or employees directly employed by the Commission shall be deemed, by reason of their employment by the Commission to be employed by any Member or, by reason of their employment by the Commission, to be subject to any of the requirements of the Members.

Section 3.07. Assistant Officers. The Commission may appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Commissioner) as the Commission shall from time to time deem appropriate.

ARTICLE IV

POWERS

Section 4.01. General Powers. The Authority shall exercise in the manner herein provided the powers common to each of the Members and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.04, including but not limited to the common power of eminent domain with respect to Public Capital Improvements.

As provided in the Act, the Authority shall be a public entity separate from the Members. The Authority shall have the power to finance the acquisition of Public Capital Improvements necessary or convenient for the operation of the Members, and to acquire Obligations of the Members.

Section 4.02. Power to Issue Bonds. The Authority shall have all of the powers provided in Article 4 of the Act (commencing with Section 6584), including the power to issue Bonds under the Bond Law.

Section 4.03. Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents or employees;
- (c) to acquire, construct, manage, maintain or operate any buildings, works or improvements;
- (d) to acquire, construct, hold and dispose of Public Capital Improvements, including the leasing of such Public Capital Improvements to the members;
- (e) to sue and be sued in its own name;
- (f) to incur debts, liabilities or obligations, provided that no debt, liability or obligation shall constitute a debt, liability or obligation of any of the Members;
- (g) to apply for, accept, receive and disburse grants, loans and other aids from any agency of the United States of America or of the State;
- (h) to invest any money in the treasury pursuant to Section 6505.5 of the Act that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code of the State;

(i) to apply for letters of credit or other form of credit enhancement in order to secure the repayment of its Bonds and enter into agreements in connection therewith;

(j) to carry out and enforce all the provisions of this Agreement;

(k) to make and enter into Bond Purchase Agreements;

(l) to purchase Obligations issued by any Member; and

(m) to exercise any and all other powers as may be provided in the Bond Law.

Section 4.04. Restrictions on Exercise of Certain Powers. The powers of the Authority shall be exercised in the manner provided in the Act and in the Bond Law, and, except for those powers set forth in the Bond Law, shall be subject (in accordance with Section 6509 of the Act) to the restrictions upon the manner of exercising such powers that are imposed upon the City in the exercise of similar powers.

Section 4.05. Obligations of Authority. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of any of the Members.

ARTICLE V

METHODS OF PROCEDURE; CREDIT TO MEMBERS

Section 5.01. Assumption of Responsibilities By the Authority. As soon as practicable after the date of execution of this Agreement, the Commissioners shall give notice (in the manner required by Section 2.04) of the organizational meeting of the Commission. At said meeting the Commission shall provide for its regular meetings as required by Section 2.04 and elect a Chairman, Vice Chairman and the Secretary.

Section 5.02. Delegation of Powers. Each of the Members hereby delegates to the Authority the power and duty to acquire, by lease, lease-purchase, installment sale agreements, or otherwise, such Public Capital Improvement necessary or convenient for the operation of the Members.

Section 5.03. Credit to Members. All accounts or funds created and established pursuant to any trust agreement or indenture to which the Authority is a party, and any interest earned or accrued thereon, shall inure to the benefit of the respective Members for which such funds or accounts were created.

ARTICLE VI

CONTRIBUTION: ACCOUNTS AND REPORTS: FUNDS

Section 6.01. Contributions. The Members may in the appropriate circumstance when required hereunder: (a) make contributions from their treasuries for the purposes set forth herein, (b) make payments of public funds to defray the cost of such purposes, (c) make advances of public funds for such purposes, such advances to be repaid as provided herein, or (d) use its personnel, equipment or property in lieu of other contributions or advances. The provisions of Government Code 6513 are hereby incorporated into this Agreement.

Section 6.02. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Auditor and Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any trust agreement or indenture entered into with respect to the proceeds of any Bonds issued by the Authority. The books and records of the Authority in the hands of a trustee or the Auditor and Treasurer shall be open to inspection at all reasonable times by representatives of the Members. The Auditor and Treasurer of the Authority, within 180 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members to the extent such activities are not covered by the report of such trustee. The trustee appointed under any trust agreement or indenture shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement or indenture. Said trustee may be given such duties in said trust agreement or indenture as may be desirable to carry out this Agreement.

Section 6.03. Funds. Subject to the applicable provisions of any trust agreement or indenture which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Auditor and Treasurer of the Authority shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 6.04. Administrative Expenses. The Members shall pay their proportionate share (determined on the basis of a Member's percentage share of any financings completed by the Authority) of administrative expenses.

ARTICLE VII

TERM; DISPOSITION OF ASSETS

Section 7.01. Term. This Agreement shall become effective as of the date of execution hereof by the parties hereto, and shall continue in full force and effect so long as bonds of the Authority are outstanding or any lease agreements are outstanding between the Authority and a Member or Members (or between Members).

Section 7.02. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in such manner as shall be agreed upon by the parties.

**ARTICLE VIII
MISCELLANEOUS PROVISIONS**

Section 8.01. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to:

City of Livermore
1052 South Livermore Avenue
Livermore, California 94550
Attn: City Manager

Livermore Area Recreation & Park District
71 Trevarno Road
Livermore, California 94550
Attn: General Manager

Section 8.02. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 8.03. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 8.04. Law Governing. This Agreement is made in the State under the constitution and laws of the State and is to be so construed.

Section 8.05. Amendments. This Agreement may be amended at any time, or from time to time, except as limited by contract with the holders of Bonds issued by the Authority or certificates of participation in payments to be made by the Authority or the Members or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including without limitation addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 8.06. Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

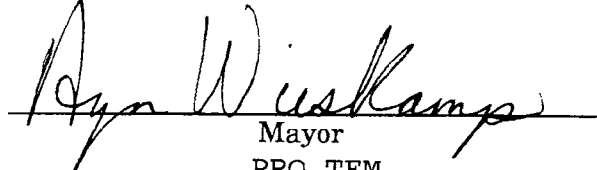
Section 8.07. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 8.08. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Members. None of the Members may assign any right or obligation hereunder without the written consent of the other Members.

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, on the day and year set opposite the name of each of the parties.


CITY OF LIVERMORE

Dated: 1-9-89



Mayor
PRO TEM

ATTEST:



City Clerk
(SEAL)

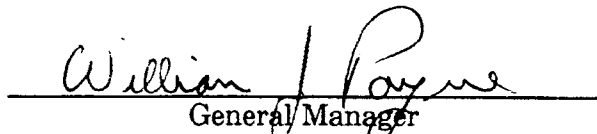
LIVERMORE AREA RECREATION &
PARK DISTRICT

Dated: 1-6-89



Chairman

ATTEST:



General Manager

(SEAL)