

## Attachment B

### AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE CITY OF SANTA ANA AND THE COUNTY OF ORANGE REGARDING THE ORANGE COUNTY CIVIC CENTER AUTHORITY

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE CITY OF SANTA ANA AND THE COUNTY OF ORANGE REGARDING THE ORANGE COUNTY CIVIC CENTER AUTHORITY (“**Restated Agreement**”) is dated as of \_\_\_\_\_, 2014 (“**Effective Date**”), and is by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“**County**”) and the CITY OF SANTA ANA, a municipal corporation (“**City**”). County and City may sometimes hereinafter individually be referred to as a “**Party**” or jointly as the “**Parties.**”

WHEREAS, the City and the County previously created the Orange County Civic Center Authority (“**Authority**”) pursuant to California Government Code Section 6500 *et. seq.*, by agreement dated January 17, 1966 (“**Prior Agreement**”); and

WHEREAS, the City and the County are each empowered by law to acquire, construct, maintain, operate, lease and sell public facilities and accessory structures; and

WHEREAS, the City and County are each empowered to provide electric utility service, steam and chilled water to themselves and others to the extent permitted by law; and

WHEREAS, the City and County desire to restate and amend the Prior Agreement and amend the nature and scope of the Authority’s powers and governance, as more fully set forth herein; and

WHEREAS, the Second Amendment to the Prior Agreement, dated December 22, 1970 and the Sixth Amendment to the Prior Agreement, dated June 1, 1999 are the only amendments relevant to the continuing operations of the Authority; and

WHEREAS, the City and County wish to restate and amend the Prior Agreement and the relevant previous and new amendments for ease and clarity and to supersede and supplant the Prior Agreement and all amendments thereto.

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NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

### SECTION 1. *Purpose.*

This Restated Agreement is made pursuant to provisions of Article 7 Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500, hereinafter called "**Act**") relating to the joint exercise of powers common to the City and the County. The City and County each possess the powers referred to in the recitals hereof. The purpose of this Restated Agreement is to exercise such powers by acquiring, constructing, maintaining, operating and leasing public improvements with facilities and appurtenances necessary or convenient therefor, with the further purpose to provide electric utility service, steam and chilled water as permitted by law within the Campus, as defined in Section 16. Such purpose will be accomplished, and said common powers exercised, in the manner hereinafter set forth.

### SECTION 2. *Term.*

This Restated Agreement shall become effective as of the date hereof and shall continue in full force and effect for a period of ten (10) years from the date hereof and shall automatically renew for ten (10) year increments thereafter until terminated by either Party as set forth herein. This Restated Agreement shall not be terminated until such time as all revenue bonds herein provided for, and issued pursuant hereto or pursuant to the Prior Agreement, and the interest thereon shall have been paid in full or adequate provision for such payment shall have been made as set forth in the proceedings for the issuance thereof. After such time, this Restated Agreement may be terminated by either Party upon 180 day written notice.

### SECTION 3. *Authority.*

#### A. *Creation of the Authority.*

Pursuant to Section 6506 of the Act, there is hereby created a public entity separate from the Parties hereto, to be known as the "Orange County Civic Center Authority" ("**Authority**") and said Authority shall be a public entity separate and apart from the City and the County. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Party to this Restated Agreement.

#### B. *Governing Board.*

The Authority shall be administered by a governing board of five members, each serving in their individual capacities as members of the governing board. Two members, who shall be County employees, are to be appointed by the County Executive Officer. Two members, who shall be City

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employees, are to be appointed by the City Manager. The fifth member shall be selected by the County and City members, and will preferably be an employee of a government agency located within the Civic Center Campus. Each member shall serve a four year term at the pleasure of the appointing entity. Such governing board shall be called the "Governing Board". The Governing Board, which was known as the Civic Center Commission in the Prior Agreement shall have the same rights, powers, authority or obligations as granted to the Civic Center Commission in other documents in which the Civic Center Commission was a party thereto.

### *C. Meeting of the Governing Board.*

#### *(1) Regular Meetings.*

The Governing Board shall provide for its regular, adjourned regular and special meetings; provided, however, it shall hold at least one meeting each year. The Governing Board shall hold other such meetings during the year as shall be determined by the Governing Board Chairperson or any other member of the Governing Board. The dates upon which, and the hour and place at which, any such meeting shall be held shall be fixed by resolution, minute order or any other method permitted by the Ralph M. Brown Act.

#### *(2) Ralph M. Brown Act.*

All meetings of the Governing Board, including, without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code).

#### *(3) Minutes.*

The Secretary of the Governing Board shall cause to be kept minutes of the meetings, both regular, adjourned regular and special, and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Governing Board and to the City and to the County.

#### *(4) Quorum.*

A majority of the Governing Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.

#### *(5) Tie Vote.*

In the event of a tie vote by the Governing Board, no action will be taken on the subject matter of the vote.

### *D. Officers.*

The Chairperson of the Governing Board shall be a County appointee in fiscal years that begin with

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an odd numbered year (*e.g.* 2015) and shall be a City appointee in fiscal years that begin with an even numbered year. Vice Chair of the Governing Board shall be a City appointee in fiscal years that begin with an odd numbered year and shall be a County appointee in fiscal years that begin with an even numbered year. The Chairperson shall appoint a Secretary who may, but need not be, a member of the Governing Board. The Treasurer of the Authority shall be the duly-elected, qualified and acting County Treasurer serving ex-officio as Treasurer of the Authority. The Auditor of the Authority shall be the duly elected, qualified and acting County Auditor serving ex-officio as Auditor of the Authority. The Attorney for the Authority shall be the duly-appointed and acting County Counsel of the County or his duly-authorized deputy serving ex-officio as Attorney for the Authority; provided, however, that; (i) when requested by the Attorney for the Authority or on majority action of the Authority the duly-authorized deputy shall assist the attorney for the Authority, and (ii) in the event of any conflict between the County and the Authority, the Authority may, with the prior consent of County, appoint other counsel to represent the Authority in such matter.

#### SECTION 4. *Powers.*

The Authority shall have the powers common to City and County set forth in Section 1 of this Restated Agreement, to wit; acquiring, constructing and leasing public improvements with facilities and appurtenances necessary or convenient therefor, with the further power of providing electric utility service, steam and chilled water as permitted by law within the Campus (as defined in Section 16, below). The Authority shall further have the power to maintain and operate any buildings which have been acquired or constructed by the Authority and the facilities and appurtenances necessary thereto. The Authority is hereby authorized to do all acts necessary for the exercise of said common powers for said purposes, including, but not limited to, any or all of the following: to make and enter into contracts and cooperative agreements with other local agencies, to acquire, construct, manage, maintain or operate any buildings, works or improvements and to acquire, hold or dispose of property within the County, pursuant to this Restated Agreement and the contracts or agreements between the Authority and the Parties hereto and any other public agencies; to incur debts, liabilities or obligations required by the exercise of these powers which do not constitute a debt, liability or obligation of the City of the County, and to sue and be sued in its own name. Said powers shall be exercised in the manner provided in the Act and, except as expressly set forth herein, subject only to such restrictions upon the manner of exercising such powers as are imposed on the City in the exercise of similar powers. The Authority may also issue revenue bonds, pursuant to Article 2, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6540, hereinafter called the “**Bond Act**”) and any other applicable laws of the State of California.

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### SECTION 5. *Fiscal Year.*

For the purposes of this Restated Agreement, the term “fiscal year” shall mean the fiscal year as established from time to time by the County, being at the date of this Restated Agreement the period from July 1 to and including the following June 30.

### SECTION 6. *Disposition of Assets.*

At the end of the term hereof, or upon earlier termination of this Restated Agreement as set forth in Section 2 hereof, all real property of the Authority shall automatically vest in the Party thereto, which has heretofore conveyed said property to the Authority and shall thereafter remain the sole property of said Party. All other property of Authority shall be returned to the Parties in proportion to the contributions made.

### SECTION 7. *Personnel.*

The Authority shall request from the County and/or the City the services of such personnel to serve the Authority ex-officio as may be necessary to carry out this Restated Agreement and shall have power to employ temporary professional and technical assistance for the performance of this Restated Agreement; provided that adequate sources of funds are assured for the payment of such temporary professional and technical services, which are not provided by a Party hereto.

### SECTION 8. *Accounts and Reports.*

To the extent not covered by the duties assigned to any trustee, the Auditor of the Authority shall establish and maintain such funds and accounts as may be required by good accounting practice by any provision of any resolution of the Authority securing its revenue bonds. The books and records of the Authority in the hands of the trustee or the Auditor shall be open to inspection at all reasonable times by representatives of the City and the County. The Auditor of the Authority, within 120 days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the City and to the County to the extent such activities are not covered by the report of the trustee. The trustee appointed under any resolution of issuance of the bonds of the Authority shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions to said resolution. Said trustee may be given such duties in said resolution as may be desirable to carry out this Restated Agreement.

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### SECTION 9. *Funds.*

Subject to the applicable provisions of any indenture or financing agreement, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds (i) pursuant to the accounting procedures developed under Section 8 hereof, and (ii) as nearly as possible in accordance with normal County procedures, shall make the disbursements required by this Restated Agreement or to carry out any of the provisions or purposes of this Restated Agreement.

No gifts, grants, aid or similar payments from any source other than the Parties to this Restated Agreement shall be received and used by the Authority on any land conveyed to the Authority without the consent of the Party which conveyed said property.

### SECTION 10. *Prior Agreement.*

It is mutually agreed that this Restated Agreement shall terminate, supplant and supersede the Prior Agreement, including any amendments thereto. Notwithstanding the foregoing, the restatement and termination of the Prior Agreement shall not relieve the Parties from any uncured obligations under the Prior Agreement.

### SECTION 11. *Notices.*

All notices, documents, correspondence and communications concerning this Restated Agreement shall be addressed as set forth in this Section 10, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail, return receipt requested or with other proof of delivery, with postage prepaid, by personal delivery, Federal Express or similar courier service, or by facsimile. Notices so given shall be deemed to have been given upon receipt with the exception of transmittals via facsimile which shall be deemed delivered on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day. Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

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To County:  
County of Orange  
c/o \_\_\_\_\_  
ATTN: \_\_\_\_\_  
333 W. Santa Ana Blvd, 3rd Floor  
Santa Ana, CA 92703  
Phone:  
Facsimile: \_\_\_\_\_

To City:  
XX  
XX  
XX  
XX

Authority-Secretary: At such address as Governing Board shall designate for such purpose.

### SECTION 12. *Headings.*

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

### SECTION 13. *Cooperation.*

Whenever in this Restated Agreement any consent or approval is required the same shall not be unreasonably withheld.

### SECTION 14. *Venue.*

The Parties hereto agree that this Restated Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Restated Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

### SECTION 15. *Interpretation.*

To preserve a reasonable degree of flexibility, many parts of this Restated Agreement are stated in general terms. It is understood that there will be operating memoranda executed and amended from time to time which will further define the rights and obligations of the Parties.

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### SECTION 16. *Civic Center Campus.*

The Civic Center Campus (“**Campus**”) is generally defined as those governmental buildings within the area shown on Exhibit A, and any future governmental buildings located adjacent to this area.

### SECTION 17. *Severability.*

If any term, covenant, condition, or provision of this Restated Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

### SECTION 18. *Successors.*

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.

### SECTION 19. *Authority*

The Parties to this Restated Agreement represent and warrant that it has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms

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IN WITNESS WHEREOF, the Parties have executed this Restated Agreement as of the day and year first hereinabove written.

THE CITY OF SANTA ANA

By: \_\_\_\_\_  
*Mayor*

Attest: \_\_\_\_\_  
*Clerk of the Council*

(Seal)

Approved as to Form

\_\_\_\_\_  
Sonia R. Carvalho  
*City Attorney*

COUNTY OF ORANGE

By: \_\_\_\_\_  
*Chair of the Board of Supervisors*

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso. 79-1535

ATTEST:

\_\_\_\_\_  
Susan Novak  
Clerk of the Board of Supervisors  
Orange County, California

Approved as to Form  
Office of the County Counsel  
Orange County, California

By:  \_\_\_\_\_ *Deputy County Counsel*

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