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

**by and between**

**COUNTY OF MONTEREY,**

**and**

**EAST GARRISON COMMUNITY SERVICES DISTRICT**

**Dated as of September 20, 2016**

**EAST GARRISON PUBLIC FINANCING AUTHORITY**

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## **AMENDED AND RESTATED**

### **JOINT EXERCISE OF POWERS AGREEMENT**

**THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT** (this “Agreement”) dated as of September 20, 2016, is by and between the COUNTY OF MONTEREY (the “County”), a California county and political subdivision of the State of California organized and existing under the laws of the State of California, and the EAST GARRISON COMMUNITY SERVICES DISTRICT (the “Community Services District”), a community services district organized and existing under the laws of the State of California.

#### **W I T N E S E T H:**

**WHEREAS**, the County and the Community Services District entered into the Joint Exercise of Powers Agreement, dated as of March 28, 2006 (the “Original Agreement”), providing for, among other things, the joint exercise of certain common powers of the County and the Community Services District and the creation of the East Garrison Public Financing Authority (the “Authority”);

**WHEREAS**, pursuant to the Original Agreement and the Mello-Roos Community Facilities Act of 1982, the Governing Board of the Authority (the “Governing Board”) established Community Facilities District No. 2006-1 (East Garrison Project), East Garrison Public Financing Authority, County of Monterey, State of California;

**WHEREAS**, the Original Agreement provides that the Original Agreement may be amended at any time by written consent of the County and the Community Services District;

**WHEREAS**, the County and the Community Services District desire to amend the Original Agreement so as to modify the constitution of the Governing Board, to eliminate certain unnecessary provisions of the Original Agreement and to clarify and simplify certain of the remaining provisions of the Original Agreement;

**WHEREAS**, in order to implement such amendments, the County and the Community Services District are entering into this Agreement amending and restating the Original Agreement;

**NOW, THEREFORE**, the Original Agreement is hereby amended and restated to read in full as follows:

## ARTICLE I

### DEFINITIONS

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

**“Agreement”** means the Joint Exercise of Powers Agreement, dated as of March 28, 2006, by and between the County and the Community Services District, as amended and restated by the Amended and Restated Joint Exercise of Powers Agreement, dated as of September 20, 2016, by and between the County and the Community Services District, and as it may be further amended from time to time in accordance with the terms thereof.

**“Authority”** means the East Garrison Public Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California, and its successors.

**“Board of Supervisors”** means the Board of Supervisors of the County.

**“Community Facilities District”** means a legally constituted governmental entity established pursuant to the Mello-Roos Act.

**“Community Services District”** means the East Garrison Community Services District, a community services district organized and existing under the laws of the State of California, and its successors.

**“County”** means the County of Monterey, a California county and political subdivision of the State of California organized and existing under the laws of the State of California, and its successors.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period hereafter selected and designated as the official fiscal year period of the Authority.

**“Governing Board”** means the governing body of the Authority.

**“Joint Powers Act”** means the Joint Exercise of Powers Act, Section 6500 *et seq.* of the California Government Code.

**“Mello-Roos Act”** means the Mello-Roos Community Facilities Act of 1982, Sections 53311 *et seq.* of the California Government Code.

## ARTICLE II

### GENERAL PROVISIONS

**Section 2.01. Purpose.** This Agreement is made pursuant to the Joint Powers Act providing for the joint exercise of powers common to the County and the Community Services District, and for other purposes as permitted under the Joint Powers Act. The purpose of this Agreement is to provide for the establishment of a Community Facilities District by the Authority pursuant to the Mello-Roos Act and the exercise of such other powers by the Authority as may be, are appropriate to be or are required to be exercised by a local agency establishing a Community Facilities District pursuant to the Mello-Roos Act.

**Section 2.02. Creation of Authority.** Pursuant to the Joint Powers Act, there is hereby created a public entity to be known as the “East Garrison Public Financing Authority.” The Authority shall be a public entity separate and apart from the County and the Community Services District, and shall administer this Agreement.

## ARTICLE III

### GOVERNING BOARD

**Section 3.01. Governing Board.** (a) The Authority shall be administered by the Governing Board, which shall be comprised of five members, unless and until changed by amendment of this Agreement.

(b) Each member of the Board of Supervisors shall be a member of the Governing Board. The Governing Board shall always consist of the persons then serving as members of the Board of Supervisors, and each person who, currently or in the future, serves as a member of the Board of Supervisors shall serve, during the period in which he or she serves in such capacity, as a member of the Governing Board.

(c) Each member shall assume membership on the Governing Board upon his or her becoming a member of the Board of Supervisors, without any further act by any person, body or entity. Each member shall hold membership on the Governing Board until the expiration of his or her term as a member of the Board of Supervisors, or until he or she resigns, is removed or for any other reason no longer serves as a member of the Board of Supervisors, without any further act by any person, body or entity.

(d) The Chair of the Board of Supervisors shall be Chair of the Governing Board and such Chair shall preside at all meetings of the Governing Board. The Vice Chair of the Board of Supervisors shall be the Vice Chair of the Governing Board and such Vice Chair shall preside at meetings of the Governing Board during the absence or disability of the Chair.

**Section 3.02. Powers.** Subject to the limitations of this Agreement and the laws of the State of California, the powers of the Authority shall be vested in and exercised by and its property controlled and its affairs conducted by the Governing Board of the Authority.

**Section 3.03. Compensation.** Members of the Governing Board shall serve without compensation.

**Section 3.04. Meetings of the Governing Board.** (a) *Call, Notice and Conduct of Meetings.* 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, Section 54950 *et seq.* of the California Government Code.

(b) *Regular Meetings.* Regular meetings of the Governing Board shall be held at such time as the Governing Board may fix by resolution from time to time, and if any day so fixed shall fall upon a legal holiday then, upon the next succeeding business day at the same hour. No notice of any regular meeting of the Governing Board need be given to the members of the Governing Board.

(c) *Special Meetings.* Special meetings of the Governing Board shall be held whenever called by the Chair of the Governing Board, the Executive Director of the Authority, the Secretary of the Authority or by a majority of the members of the Governing Board.

(d) *Quorum.* A majority of the members of the Governing Board shall constitute a quorum at any meeting of the Governing Board. Every act or decision done or made by a majority of the members of the Governing Board present at any meeting at which a quorum is present shall be the act of the Governing Board.

## **ARTICLE IV**

### **OFFICERS, EMPLOYEES AND AGENTS**

**Section 4.01. Officers.** The officers of the Authority shall be an Executive Director, a Treasurer, a Controller, a Secretary and such other officers as the Governing Board may appoint.

**Section 4.02. Designation of Officers.** (a) The County Administrative Officer of the County shall be the Executive Director of the Authority. The Executive Director of the Authority shall always be the person then serving as the County Administrative Officer of the County, and each person who, currently or in the future, serves as the County Administrative Officer of the County shall be, during the period in which he or she serves in such capacity District, Executive Director of the Authority. A person shall become Executive Director of the Authority upon his or her becoming the County

Administrative Officer of the County, without any further act by any person, body or entity. A person shall serve as Executive Director of the Authority until he or she resigns, is removed or for any other reason no longer serves as the County Administrative Officer of the County, without any further act by any person, body or entity.

(b) The Treasurer of the County shall be the Treasurer of the Authority. The Treasurer of the Authority shall always be the person then serving as Treasurer of the County, and each person who, currently or in the future, serves as Treasurer of the County shall be, during the period in which he or she serves in such capacity, Treasurer of the Authority. A person shall become Treasurer of the Authority upon his or her becoming Treasurer of the County, without any further act by any person, body or entity. A person shall serve as Treasurer of the Authority until he or she resigns, is removed or for any other reason no longer serves as Treasurer of the County, without any further act by any person, body or entity.

(c) The Auditor-Controller of the County shall be the Controller of the Authority. The Controller of the Authority shall always be the person then serving as Auditor-Controller of the County, and each person who, currently or in the future, serves as Auditor-Controller of the County shall be, during the period in which he or she serves in such capacity, Controller of the Authority. A person shall become Controller of the Authority upon his or her becoming Auditor-Controller of the County, without any further act by any person, body or entity. A person shall serve as Controller of the Authority until he or she resigns, is removed or for any other reason no longer serves as Auditor-Controller of the County, without any further act by any person, body or entity.

(d) The Clerk of the Board of Supervisors shall be the Secretary of the Authority. The Secretary of the Authority shall always be the person then serving as Clerk of the Board of Supervisors, and each person who, currently or in the future, serves as Clerk of the Board of Supervisors shall be, during the period in which he or she serves in such capacity, Secretary of the Authority. A person shall become Secretary of the Authority upon his or her becoming Clerk of the Board of Supervisors, without any further act by any person, body or entity. A person shall serve as Secretary of the Authority until he or she resigns, is removed or for any other reason no longer serves as Clerk of the Board of Supervisors, without any further act by any person, body or entity.

**Section 4.03. Subordinate Officers.** The Governing Board may appoint such officers other than those hereinabove mentioned as the business of the Authority may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement, or as the Governing Board from time to time may authorize or determine.

**Section 4.04. Executive Director.** The Executive Director shall be the chief executive officer of the Authority and shall, subject to the control of the Governing Board, have general supervision, direction and control of the business and officers of the Authority. He or she shall be an *ex officio* member of all standing committees, and shall



have the general powers and duties of management of the Authority and shall have such other powers and duties as may be prescribed by the Governing Board or this Agreement.

**Section 4.05. Treasurer.** (a) Subject to the applicable provisions of any indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Act. ~~The County shall determine the charges to be made against the Authority for the services of the Treasurer.~~

(b) The Treasurer is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond in the amount of \$25,000, as required by Section 6505.1 of the Joint Powers Act. Such bond may be maintained as a part of or in conjunction with any other bond maintained on such person by the County, it being the intent of this Section not to require duplicate or overlapping bonding requirements from those bonding requirements which are otherwise applicable to the County.

**Section 4.06. Controller.** The Controller shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Act. The Controller shall draw checks to pay demands against the Authority when the demands have been approved by the Authority. The County shall determine the charges to be made against the Authority for the services of the Controller.

**Section 4.07. Secretary.** The Secretary shall keep or cause to be kept a book of minutes at the principal office of the Authority or at such other place as the Governing Board may order, of all meetings of the Governing Board, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Governing Board meetings and the proceedings thereof. The Secretary shall give or cause to be given notice of all meetings of the Governing Board, shall keep the Authority records in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Governing Board or this Agreement.

**Section 4.08. Assistant Officers.** The Governing Board may appoint such assistants to act in the place of the Treasurer, Secretary or other officers of the Authority as the Governing Board shall from time to time deem appropriate.

**Section 4.09. Employees, Agents and Independent Contractors.** The Governing Board shall have the power to engage such employees as may be necessary or appropriate for the purposes of this Agreement. The Governing Board shall also have the power to engage such agents and independent contractors as may be necessary or appropriate for purposes of this Agreement.

**Section 4.10. Privileges and Immunities; No Employment by County or Community Services District.** (a) 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 a public 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.

(b) None of the officers, employees, agents or independent contractors employed or engaged by the Authority shall be deemed, by reason of his or her employment or engagement by the Authority to be employed or engaged by the County or the Community Services District or, by reason of his or her employment or engagement by the Authority, to be subject to any of the requirements of the County or the Community Services District.

## **ARTICLE V**

### **POWERS**

**Section 5.01. General Powers.** (a) The Authority shall exercise in the manner herein provided the powers common to the County and the Community Services District, or as otherwise permitted under the Joint Powers Act, and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 5.03 hereof.

(b) As provided in the Joint Powers Act, the Authority shall be a public entity separate from the County and the Community Services District. The Authority shall have the power to establish a Community Facilities District pursuant to the Mello-Roos Act and to exercise such other powers as may be, are appropriate to be or are required to be exercised by a local agency establishing a Community Facilities District pursuant to the Mello-Roos Act.

**Section 5.02. 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 sue and be sued in its own name;
- (d) to incur debts, liabilities or obligations, provided that no such debt, liability or obligation shall constitute a debt, liability or obligation of the County or the Community Services District;

(e) to invest any money in the treasury pursuant to Section 6505.5 of the Joint Powers 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 California Government Code;

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

(g) to engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this Agreement;

(h) to take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands which are located within the State of California which the Authority determines are necessary or convenient; and

(i) to exercise any and all other powers as may be provided in the Joint Powers Act.

**Section 5.03. Manner of Exercising Powers.** The powers of the Authority shall be exercised in the manner provided in the Joint Powers Act and shall be subject (in accordance with Section 6509 of the Joint Powers Act) to the restrictions upon the manner of exercising such powers of the County.

**Section 5.04. Non-Liability For Obligations of Authority.** The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the County or the Community Services District. No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or premium or interest on any obligations of the Authority or be subject to any personal liability or accountability by reason of any obligations of the Authority; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligations of the Authority.

**Section 5.05. Indemnity by Authority for Litigation Expenses of Officer, Director or Employee.** Should any director, officer or employee of the Authority be sued, either alone or with others, because he or she is or was a director, officer or employee of the Authority, in any proceeding arising out of his or her alleged misfeasance or nonfeasance in the performance of his or her duties or out of any alleged wrongful act against the Authority or by the Authority, indemnity for such persons reasonable expenses, including attorneys' fees incurred in the defense of the proceedings, may be assessed against the Authority or its receiver by the court in the same or a separate proceeding if the person sued acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a

criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful.

**Section 5.06. Execution of Contracts.** The Governing Board may authorize any officer, employee or agent of the Authority to enter into any contract or execute any contract or execute any instrument in the name of and on behalf of the Authority and such authority may be in general or confined to specific instances and, unless so authorized by the Governing Board, no such officer, employee or agent shall have any power or authority to bind the Authority by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

**Section 5.07. Fiscal Year.** The Fiscal Year of the Authority shall, unless and until changed by the Governing Board, commence on the 1st day of July of each year and shall end on the 30th day of June of the next succeeding year.

## **ARTICLE VI**

### **CONTRIBUTION; ACCOUNTS AND REPORTS; FUNDS**

**Section 6.01. Contributions.** The County and the Community Services District 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 their personnel, equipment or property in lieu of other contributions or advances. The provisions of Section 6513 of the California Government Code are hereby incorporated into this Agreement.

**Section 6.02. Accounts and Reports.** (a) The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by the County and the Community Services District and their representatives. The Authority shall give an audited written report of all financial activities for each Fiscal Year to the County and the Community Services District within 210 days after the close of each Fiscal Year.

(b) The Controller shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code and shall conform to generally accepted auditing standards. When such an audit of an account and record is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the County and the Community Services District and with the county auditor of the County, and shall be sent to any public agency or person in the State of California that submits a written request to the Authority. Such report shall be filed within 12 months of the end of the

Fiscal Year under examination. By unanimous request of the Governing Board, the annual special audit may be replaced with an audit covering a two-year period.

(c) Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

**Section 6.03. Funds.** Subject to the applicable provisions of any instrument or agreement into which the Authority may enter, which may provide for a trustee or other fiscal agent to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have custody of and disburse Authority funds.

## ARTICLE VII

### TERM; DISSOLUTION

**Section 7.01. Term.** This Agreement became effective, and the Authority came into existence, on March 28, 2006. This Agreement shall continue in full force and effect until terminated pursuant to Section 7.03 hereof.

**Section 7.02. Amendments.** This Agreement may be amended at any time, or from time to time, except as limited by contract with the owners of any bonds, notes or other evidences of indebtedness issued by a Community Facilities District established by the Governing Board or by applicable regulations or laws of any jurisdiction having authority, by one or more amendments executed by the County and the Community Services District.

**Section 7.03. Termination.** (a) This Agreement may be terminated by agreement of the County and the Community Services District; provided, however, that this Agreement shall not be terminated so long as (i) any debts, liabilities or obligations of the Authority are unpaid, (ii) the Authority is a party to any material contract remaining in effect, (iii) any debts, liabilities or obligations of any Community Facilities District established by the Governing Board are unpaid, (iv) any bonds, notes or other evidences of indebtedness issued by a Community Facilities District established by the Governing Board are outstanding, or (v) any Community Facilities District established by the Governing Board is a party to any material contract remaining in effect. Upon termination of this Agreement, the Authority shall be dissolved and, after payment or provision for payment of all debts and liabilities, the assets of the Authority shall be distributed to the County and the Community Services District in such manner as shall be agreed upon by the County and the Community Services District.

(b) Each of the County and the Community Services District agrees that it will not dissolve or otherwise terminate its existence so long as (i) any debts, liabilities or obligations of the Authority are unpaid, (ii) the Authority is a party to any material

contract remaining in effect, (iii) any debts, liabilities or obligations of any Community Facilities District established by the Governing Board are unpaid, (iv) any bonds, notes or other evidences of indebtedness issued by a Community Facilities District established by the Governing Board are outstanding, or (v) any Community Facilities District established by the Governing Board is a party to any material contract remaining in effect

**Section 7.04. Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the County and the Community Services District. No party hereto may assign any right or obligation hereunder without the written consent of the other party hereto.

**Section 7.05. Notices.** Notices hereunder shall be in writing and shall be sufficient if delivered to the address of each party hereto set forth below or at such other address as is provided by a party hereto in writing to the other party hereto.

County of Monterey  
168 West Alisal, First Floor  
Salinas, California 93901  
Attention: Clerk of the Board of Supervisors

East Garrison Community Services District  
168 West Alisal, First Floor  
Salinas, California 93901  
Attention: Clerk

**Section 7.06. 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 7.07. Law Governing.** This Agreement shall be construed and governed in accordance with the laws of the State of California.

**Section 7.08. Effect of Amendment and Restatement.** The Original Agreement is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as amended hereby and restated herein. If there shall be any conflict between the terms of this Agreement (being an amendment and restatement of the Original Agreement) and the terms of the Original Agreement (as in effect on the day prior to the effective date hereof), the terms of this Agreement shall prevail.

**Section 7.09. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 7.10. Effective Date of Amendment and Restatement.** The amendment and restatement of the Original Agreement set forth in this Agreement shall take effect on September 20, 2016.

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

**COUNTY OF MONTEREY**

By: \_\_\_\_\_  
Jane B. Parker  
Chair, Board of Supervisors of  
the COUNTY OF MONTEREY

ATTEST:  
Clerk of the Board

By: \_\_\_\_\_

**EAST GARRISON  
COMMUNITY SERVICES  
DISTRICT**

By: \_\_\_\_\_  
Jane B. Parker  
Chair, Board of Directors of the  
EAST GARRISON  
COMMUNITY SERVICES  
DISTRICT

ATTEST:  
Clerk

By: \_\_\_\_\_