

CO 94-009

JOINT EXERCISE OF POWERS AGREEMENT

(CORRIDOR DESIGN AUTHORITY)

THIS AGREEMENT is made this 19th day of January 1994, by and among the cities of CLAREMONT, FONTANA, LA VERNE, RANCHO CUCAMONGA, RIALTO, and UPLAND, municipal corporations duly organized and existing under the laws of the State of California (collectively, the "Agencies");

WITNESSETH:

WHEREAS, each of the Agencies is authorized to take action for the public purposes of the Agencies, and the Agencies wish to form a Joint Powers Authority under the Joint Exercise of Powers Law of the State of California (Government Code Section 6500 et seq.) for the purpose of establishing an entity responsible for the administration of a consolidated program of design and maintenance along the Route 30 Freeway Corridor within the cities of Claremont, Fontana, La Verne, Rancho Cucamonga, Rialto, and Upland.

NOW THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Agencies 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.

"Agreement" means this Joint Exercise of Powers Agreement, as originally entered into or as amended from time to time.

"Authority" means the Authority established pursuant to Section 2.02 of this Agreement.

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

"Directors" means the representatives of the Agencies appointed to the Board pursuant to Section 2.03.

"Fiscal Year" means the period from July 1 in any calendar year and including June 30 in the succeeding calendar year.

"Member" means each participant to the Corridor Design Authority.

"Public Improvements" means any land, improvements, facilities, and equipment to be used for the public purposes of the Agencies.

"Secretary" means the Secretary of the Authority appointed pursuant to Section 3.01.

"Treasurer" means the Treasurer of the Authority appointed pursuant to Section 3.02.

ARTICLE II

GENERAL PROVISIONS

Section 2.01. Purpose. The purpose of this Agreement is to provide for the joint exercise of powers common to the Agencies to establish a coordinated program to design, maintain, and establish the Route 30 Freeway Corridor, including, but not limited to, the acquisition of funds to the Agencies through grants, ISTEA, or any other monies to enable public improvements.

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

(a) Additional Member Agencies. Additional cities may become new members of the Authority upon the majority vote of the existing Board of Directors. This Agreement shall be amended to reflect each new agency.

(b) Ex-Officio Members. The following agencies shall be ex-officio members of the Authority:

- (1) Caltrans District 7;
- (2) Caltrans District 8;
- (3) San Bernardino Associated Governments;
- (4) East Valley Resource Conservation District;
- (5) Inland Empire West Resource Conservation District;
- (6) Metropolitan Transportation Authority;
- (7) San Bernardino County Flood Control District.

Said ex-officio members shall have no voting rights. Additional ex-officio members, with no voting rights, may be appointed by the majority vote of the Board.

Section 2.03. Board of Directors. The Authority shall be governed by a Board of Directors composed of 12 members, two for each member city, each serving in his/her individual capacity as members of the governing board and without compensation. Two Council members shall be appointed as Directors by each of the cities participating in this Agreement. Each member shall be entitled to one vote. Members shall serve at the pleasure of the City appointing body and until their respective successors are appointed and qualified. Each member City shall appoint an alternate member who may be a member of the staff of the governmental entity and such alternate member shall be entitled to vote at any Authority meeting in the absence of the Director or Directors for who the alternate member was appointed.

Section 2.04. Meetings of the Board.

(a) Regular Meetings. The Board 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 Board and a copy of such resolution shall be filed with the Agencies.

(b) Special Meetings. Special meetings of the Board shall be called in accordance with the provisions of Section 54956 of the Government Code.

(c) Call, Notice, and Conduct of Meetings. All meetings of the 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 (Government Code Section 54950 et seq.).

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

Section 2.06. Voting. Each Director shall have one vote which may be exercised by the Director's alternate as provided in Section 2.03 of this Agreement.

Section 2.07. Quorum; Required Votes; Approvals. Directors 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 a majority of the Directors shall be required to take any action by the Board. If any member Agency chooses not to participate, financially or otherwise, in any specific project or activity of the Authority, the voting rights of the Director from that Agency shall be suspended as to that project or activity.

Section 2.08. Bylaws. The Board 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, Executive Director, and Secretary. The Board shall elect a Chairman and Vice-Chairman from among the Directors, and shall appoint a Secretary and may appoint an Executive Director who need not be a Director. The officers shall perform the duties normal to said officers. The Chairman shall sign all contracts on behalf of the Authority and shall perform such other duties as may be imposed by the Board. In the absence of the Chairman, the Vice-Chairman shall sign contracts and perform all of the Chairman's duties. In the absence of an Executive Director, the Chairman shall administer the day to day affairs of the Authority and shall execute the policies and directives of the Board. 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 Board and cause a copy of this Agreement to be filed with the Secretary of State pursuant to the Act.

Section 3.02. Treasurer. Pursuant to Section 6505.6 of the Act, the Board shall designate a Treasurer of the Authority. The 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 reports of all receipts and disbursements of the Authority. As provided in Section 6506 and Section 6505.6 of the Act, the Treasurer shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

Section 3.03. Officers in Charge of Records, Funds, and Accounts. Pursuant to Section 6505.5 of the Act, the 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 Improvements. From time to time, the Board may designate persons, in addition to the Executive Director, the Secretary, and the Treasurer, having charge of, handling, or having access to any records, funds, or accounts or any public improvement or project of the Authority. The Board shall designate the respective amounts of the official bonds of the Executive Director, the Secretary, and the Treasurer and other persons pursuant to Section 6505.1 of the Act.

Section 3.05. Legal Advisor. To be determined by a majority vote of the Board and shall perform such duties as may be prescribed by the Board.

Section 3.06. Other Employees. The Board shall have the power by resolution to appoint and employ such other consultants and independent contractors as may be necessary to carry out 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 public agencies when performing their respective functions shall apply to the officers, agents, or employees of the Authority to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents, or employees under this Agreement.

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

Section 3.07. Assistant Officers. The Board may by resolution appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Director), and may by resolution provide for the appointment of additional officers of the Authority who may or may not be Directors, as the Board 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 power of each of the Agencies and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 4.04. As provided in the Act, the Authority shall be a public entity separate from the Agencies.

Section 4.02. Power to Issue Revenue Bonds. Unless and until this Agreement is amended by the unanimous consent of the Member Agencies with voting rights, the Agency shall have no power to issue bonds.

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 public improvement;
- (d) to sue and be sued in its own name;
- (e) to apply for, accept, receive, and disburse grants, loans, and other aids from any agency of the United States of America, State of California, or County of San Bernardino;

- (f) to invest any money in the treasury pursuant to Section 6505.5 of the Act which is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code;
- (g) to carry out and enforce all the provisions of this Agreement;
- (h) to make and enter into agreements, assignments, and other documents of any nature whatsoever as may be necessary or convenient in the exercise of its powers hereunder or under the Act;
- (i) to make loans to the Agencies or any of the Agencies for the purposes hereof, or to refinance indebtedness incurred by the Agencies in connection with any of the purposes hereof;
- (j) to exercise any and all other powers as may be provided in the Act.

Section 4.04. Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Act and 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 San Bernardino County and/or Los Angeles County in the exercise of similar powers.

Section 4.05. Authority/Member Projects. A Member of the Authority may propose projects within the Member's territory and the Authority itself may propose projects, subject to the limitations set forth herein.

With respect to Member proposed projects within the territory of such Member, each Member, by official action of its City Council or Board of Supervisors, must approve such projects. All approved projects may be undertaken by the Authority as funds are available to the Authority for such purpose. The initial authorization to proceed with the implementation of specific projects by the letting of contracts or the appropriation of funds shall require a majority vote of the Board. A Member, by official action of its governing body, may withdraw a project located within its territorial jurisdiction from consideration at any time until such initial authorization to proceed has been granted by the Authority.

A Member may carry out, within its boundaries, any activity which may legally be undertaken by the Member which does not involve the expenditure of Authority funds, and no approval of the Authority shall be required for such projects.

Section 4.06. Obligations of Authority. The debts, liabilities, and obligations of the Authority shall not be the debts, liabilities, and obligations of the Agencies.

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 Directors shall give notice (in the manner required by Section 2.04) of the organizational meeting of the Board. At said meeting, the Board shall provide for its regular meetings as required by Section 2.04 and elect a Chairman and Vice-Chairman, and appoint the Secretary and, if necessary, may appoint the Executive Director.

Section 5.02. Delegation of Powers. The Agencies hereby delegate to the Authority the power and duty to acquire, by lease, lease-purchase, installment sale agreements, or otherwise, such public improvements as may be necessary or convenient for the operation of the Authority or any of the Agencies.

Section 5.03. Credit to Members. In consideration of the agreement by the Agencies to administer the Authority, all accounts or funds created and established pursuant to any instrument or agreement to which the Authority is a party, and any interest earned or accrued thereon, shall inure to the benefit of the Agencies in direct proportion to the amounts contributed.

ARTICLE VI

CONTRIBUTION: ACCOUNTS AND REPORTS; FUNDS

Section 6.01. Contributions. The Agencies 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, 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 Section 6513 of the Act are hereby incorporated into this Agreement by reference.

Section 6.02. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the 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 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 Treasurer shall be open to inspection at all reasonable times by duly appointed representatives of the Agencies. The Treasurer, 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 Agencies to the extent that such activities are not covered by the report of such trustee. The trustee appointed under any indenture or trust agreement shall establish suitable funds, furnish financial reports, and provide suitable accounting procedures to carry out the provisions of said trust agreement. Said trustee may be given such duties in said indenture or trust agreement as may be desirable to carry out this Agreement.

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

ARTICLE VII.

TERM

Section 7.01. Term. This Agreement shall become effective, and the Authority shall come into existence, on the date hereof, and this Agreement and the Authority shall thereafter continue in full force and effect so long as the Authority shall own any interest in any public improvements.

Section 7.02. Withdrawal.

A. An Agency may withdraw from the Authority and terminate its obligations under this Agreement upon the giving of 60 days written notice to the Authority. Written notice shall be accompanied by a resolution or minute order which authorizes the withdrawal by governing body of the Agency.

B. Subsequent to withdrawal, the Agency shall have a continuing responsibility to perform the duties and obligations required by this Agreement which are based on facts, events, or occurrences that predate withdrawal or termination.

Section 7.03. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall remain under the ownership of the Authority. Parties rescinding their participating in the Authority through this Agreement shall receive the residual of their contributions to the Authority for acquisition of public improvements, less the proportionate share of accumulated depreciation as determined by the Treasurer of the Authority in accordance with generally accepted accounting practices. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in shares proportionate to the total contributions for the acquisition of said property made by the parties to this Agreement.

ARTICLE VIII.

MISCELLANEOUS PROVISIONS

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

CITY OF CLAREMONT
City Clerk
207 Harvard Avenue
Claremont, CA 91711

CITY OF RANCHO CUCAMONGA
City Clerk
P. O. Box 807
Rancho Cucamonga, CA 91729

CITY OF FONTANA
City Clerk
8353 Sierra Avenue
Fontana, CA 92335

CITY OF RIALTO
City Clerk
150 Palm Avenue
Rialto, CA 92376

CITY OF LA VERNE
City Clerk
3660 "D" Street
La Verne, CA 91750

CITY OF UPLAND
City Clerk
P. O. Box 460
Upland, CA 91785

SANBAG
Executive Director
472 North Arrowhead Avenue
San Bernardino, CA 92401

SAN BERNARDINO COUNTY
FLOOD CONTROL DISTRICT
825 E. Third Street
San Bernardino, CA 92415

EAST VALLEY RESOURCE CONSERVATION
DISTRICT
Administrative Manager
1200 Arizona Street, #A-7
Redlands, CA 92374

INLAND EMPIRE WEST RESOURCE
CONSERVATION DISTRICT
District Manager
2816 East 4th Street
Ontario, CA 91764

METROPOLITAN TRANSPORTATION

AUTHORITY

San Gabriel Area Director
818 West 7th Street, Suite 300
Los Angeles, CA 90017

CALTRANS

District 8

P.O. Box 231
San Bernardino, CA 92402

COUNTY OF SAN BERNARDINO

Clerk of the Board of Supervisors
385 Arrowhead Avenue, Second Floor
San Bernardino, CA 92415-0130

CALTRANS

District 7

120 S. Spring Street
Los Angeles, CA 90012

COUNTY OF LOS ANGELES

Clerk of the Board of Supervisors
Kenneth Hahn Hall of Administration
Room 383
500 W. Temple Street
Los Angeles, CA 90012

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 unreasonably be withheld.

Section 8.04. 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 8.05. Amendments. This Agreement may be amended at any time, or from time to time. An amendment shall require the consent of the Legislative bodies if fifty percent (50%) plus one of the Member Agencies with voting rights; provided however, that any amendment which authorizes the Authority to levy any taxes, assessments, or charges whatsoever, or to issue bonds shall require the unanimous consent of the Member Agencies with voting rights.

Section 8.06. Enforcement by Authority. The Authority is hereby authorized to take any 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 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 of California, 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 Agencies, respectively. None of the Agencies may assign any right or obligation hereunder without written consent of the other Agencies.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers 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 CLAREMONT, CALIFORNIA

By: _____

Title: _____

Paul J. Lupa
Mayor

(SEAL)

ATTEST:

Barbara A. Royalty
City Clerk

Approved as to Form:

Anita R. Carvalho, Deputy
City Attorney

CITY OF FONTANA, CALIFORNIA

By: _____

Title: _____

Gay E. B. [Signature]
Mayor

(SEAL)

ATTEST:

Linda S. Dunn, Deputy
Deputy City Clerk

Approved as to Form:

Stephen P. Deitsch
City Attorney

CITY OF LA VERNE, CALIFORNIA

By: Jon Blekenstiff

Title: Mayor

(SEAL)

ATTEST:

N. Kathleen Brown

City Clerk

Approved as to Form:

[Signature]

City Attorney

CITY OF UPLAND, CALIFORNIA

By: Robert R. Nolan

Title: Mayor

(SEAL)

ATTEST:

Sheryl Schroeder

City Clerk

Approved as to Form:

Ralph D. Hansen
Deputy City Attorney

CITY OF RANCHO CUCAMONGA,
CALIFORNIA

By: Dennis L. Stow
Title: Mayor

(SEAL)

ATTEST:

Debra J. Adams
City Clerk

Approved as to Form:

James T. Mahman
City Attorney

CITY OF RIALTO, CALIFORNIA

By: John Longmire
Title: Mayor

(SEAL)

ATTEST:

Joseph B. Brown
City Clerk

Approved as to Form:

Robert A. Allen
City Attorney