

JOINT EXERCISE OF POWERS AGREEMENT

for the

MODESTO SYLVAN SCHOOLS INFRASTRUCTURE FINANCING AGENCY

This Joint Exercise of Powers Agreement, dated as of _____, 20__, is made by and between Modesto High School District (“MHSD”) and Sylvan Union School District (“Sylvan”).

RECITALS:

A. The Joint Powers Act provides that public agencies by agreement may jointly exercise any power common to the contracting parties.

B. MHSD and Sylvan are “public agencies” within the meaning of that term under Section 6502 of the Joint Powers Act (defined below).

C. The common powers of MHSD and Sylvan include, among others, the power to finance the costs of new school facilities to serve new development. MHSD and Sylvan desire to jointly exercise certain powers common to the parties, as set forth herein, including the foregoing.

D. Development occurring and anticipated to occur within the territory of both MHSD and Sylvan will require the financing of the costs of new school facilities to serve the students generated by that development.

E. MHSD and Sylvan are authorized to use the provisions of the CFD Act (defined below) among other methods of school impact mitigation, to finance the costs of new school facilities to serve new development.

F. Section 53316.2 of the CFD Act authorizes MHSD and Sylvan to enter into this Agreement to exercise any power authorized by the CFD Act.

G. The needs of MHSD and Sylvan for financing these school facilities greatly exceed the amount of funds available from existing state, local and federal sources.

H. The Joint Powers Act authorizes MHSD and Sylvan to create a separate entity to exercise such powers under the Joint Powers Act and the CFD Act.

I. The governing boards of MHSD and Sylvan each have determined that this Agreement would be beneficial to their residents.

NOW, THEREFORE, MHSD and Sylvan agree as follows:

Section 1. Definitions. As used herein, the following terms shall have the meaning ascribed thereto, unless the context requires otherwise.

“Agreement” means this Joint Exercise of Powers Agreement.

“Article 1” means Article 1 of the Joint Powers Act, commencing with Section 6500.

“Article 2” means Article 2 of the Joint Powers Act, commencing with Section 6540.

“Article 4” means Article 4 of the Joint Powers Act, commencing with Section 6584.

“Agency” means the Modesto Sylvan Schools Infrastructure Financing Agency, a joint powers authority duly organized and validly existing pursuant to the Constitution and laws of the State.

“Agency Board” means the governing body of the Agency, which shall be constituted as provided in Section 5 hereof.

“Bonds” means bonds, notes, and any other evidences of indebtedness or forms thereof.

“CFD Act” means the Mello-Roos Community Facilities Act of 1982, being California Government Code Section 53311, et seq., as amended from time to time.

“Chief Administrative Officer” means the Senior Director, Business Services of MHSD.

“County” means the County of Stanislaus.

“Include”, “Includes” or “Including” means including without limitation.

“Joint Powers Act” means the Joint Exercise of Powers Act, being California Government Code Section 6500, et seq., as amended from time to time.

“Legislative Body” means the legislative or governing body of a Local Agency.

“Local Agency” means MHSD or Sylvan, or any school district, city, county, city and county, authority, district, or public corporation of the State.

“MHSD” means Modesto High School District.

“Member” means a Party to this Agreement, which, upon the original execution hereof, are MHSD and Sylvan.

“Party” means any party to this Agreement.

“Secretary” means the Chief Business Officer of Sylvan.

“State” means the State of California.

“Sylvan” means Sylvan Union School District.

“Treasurer” means the Accountant of Capital Funds of MHSD.

Section 2. Purpose of Agreement. The purpose of the Agreement is to establish the Agency and to carry out the intent of the State Legislature as set forth in Article 4 of the Joint

Powers Act. In addition, this Agreement is made pursuant to the CFD Act, in order to finance the cost of new school facilities, including elementary, middle and high school facilities, to serve new development and benefit the residents of the territory of MHSD and Sylvan.

Section 3. Authorization. MHSD and Sylvan are hereby authorized to jointly exercise any power common to them.

Section 4. Creation of Agency; Agency as Separate Public Entity. There is hereby created pursuant to the Joint Powers Act a joint powers authority separate and apart from the Parties hereto to be known as the “Modesto Sylvan Schools Infrastructure Financing Agency.” The Agency shall be a public entity separate from the Parties to this Agreement. The Agency is hereby authorized to exercise all powers common to the Members and the additional powers set forth in Article 4 of the Joint Powers Act.

Section 5. Agency Board. The governing body of the Agency shall be known as the Agency Board. The Agency Board shall be vested with all of the rights, powers, duties, privileges and immunities of the Agency. The Agency Board shall consist of five members. MHSD and Sylvan each shall appoint two members to the Board, who shall be persons then currently serving as members of their own governing board. If a member of the Agency Board ceases to be a member of the governing board of MHSD or Sylvan, as applicable, such governing board shall appoint a successor at the first opportunity. MHSD and Sylvan may each appoint alternate members who can act with full authority for a member in that member’s absence. References hereinafter to a member shall include an alternate when acting in such member’s stead. The fifth member of the Agency Board shall be a person appointed for a two-year term by the other four members of the Agency Board. Each member of the Agency Board who is appointed shall serve until a successor is appointed.

Section 6. Accountability; Reports; Audits.

A. There shall be strict accountability of all funds and report of all receipts and disbursements of the Agency.

B. The Treasurer 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 Agency, except that the Treasurer need not make or contract for the audit in any case where an annual audit of the accounts and records of the Agency by a certified public accountant or public accountant is otherwise made by any agency of the State or the United States only as to those accounts and records which are directly subject to such a federal or state audit. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Government Code Section 26909 and shall conform to generally accepted auditing standards.

C. When an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the Parties and also with the County auditor and shall be sent to any public agency or person in the State that submits a written request to the Agency. The report shall be filed within 12 months of the end of the fiscal year or years under examination.

D. Any of the costs of the audit, including contracts with, or employment of certified public accountants or public accountants, in making an audit pursuant to this Section 6 shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for the purpose.

E. By unanimous request of the Agency Board, the Agency may replace the annual special audit with an audit covering a two-year period.

Notwithstanding the foregoing provisions of this Section 6 to the contrary, the Agency shall be exempt from the requirement of an annual audit if the financial statements are audited by the State Controller to satisfy federal audit requirements.

Section 7. Power of Agency; Scope and Exercise. The Agency shall have all of the powers common to the Parties and all additional powers set forth in the Joint Powers Act and other statutes applicable to the Agency, and is hereby authorized to do all acts necessary or appropriate for the exercise of such powers.

Section 8. Contributions; Payments and Advances; Use of Personnel, Equipment or Property. The Parties may make contributions from their respective treasuries in furtherance of any or all of the purposes set forth in this Agreement. The Parties may make payments of public funds to defray the cost of any or all of such purposes. The Parties may make advances of public funds for any or all of such purpose. Such advances shall be repaid as may be provided by separate agreement regarding advances which may be entered into between the Agency and the Party or Parties making such advance. Personnel, equipment or property of any of the Parties to this Agreement may be used in lieu of other contributions or advances. The funds may be paid to and disbursed by the Agency, or by any or all of the Parties.

Section 9. Bonding Persons Having Access to Property. The Parties hereby designate the Chief Administrative Officer of the Agency and the Treasurer, as the persons who shall have charge of, handle, or have access to any property of the Agency. Such persons shall file an official fidelity bond in the amount of [\$25,000] as required by Government Code Section 6505.1 of the Joint Powers Act; provided, that such bond shall not be required if the Agency does not possess or own property or funds with an aggregate value of greater than \$500 (excluding amounts held by a trustee or other fiduciary in connection with any Bonds).

Section 10. President; Vice President. The Agency Board shall select a President and a Vice President from among the Agency Board members. The President (or in the President's absence, the Vice President) or the Chief Administrative Officer shall sign all contracts on behalf of the Agency; provided, that the Agency Board may by resolution, for general or confined purposes, authorized another officer (or officers) of the Agency to execute an contract or other instruments on behalf and in the name of the Agency.

Section 11. Chief Administrative Officer. The Chief Administrative Officer shall administer the business and activities of the Agency, subject to the general supervision of the Board.

Section 12. Secretary. The Secretary shall keep or cause to be kept a book of minutes at the principal office or at such other place as the Board may order, of all meetings of the 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 Board meetings and the proceedings thereof. The Secretary shall give or cause to be given notice of all meetings of the Board. The Secretary shall keep the Agency records in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or this Agreement.

Section 13. Treasurer or Certified Public Accountant; Designation as Depositary; Duties; Auditor. The Treasurer shall be the depositary and have custody of all the money of the Agency, from whatever source.

The Treasurer shall do all of the following:

A. Receive and receipt for all money of the Agency and place it in the treasury of MHSD to the credit of the Agency.

B. Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Agency money so held by him or her.

C. Pay, when due, out of money of the Agency held by him or her, all sums payable on outstanding bonds and coupons of the Agency.

D. Pay any other sums due from the Agency money, or any portion thereof, only upon warrants of the Treasurer.

E. Verify and report in writing on the first day of July, October, January, and April of each year to the Agency and the Parties the amount of money he or she holds for the Agency, the amount of receipts since his or her last report, and the amount paid out since his or her last report. Such reports shall be emailed quarterly to the Agency and the Parties and then placed on the agenda at a subsequent meeting of the Agency.

The Treasurer is hereby designated as controller of the Agency. The Treasurer shall draw warrants to pay demands against the Agency when the demands have been approved by the Treasurer.

Section 14. Services. MHSD shall provide all of the necessary services to carry out the provisions of this Agreement, including all necessary administrative services. MHSD shall also provide all necessary personnel, supplies, equipment, office and meeting space, furnishings, and, except as otherwise provided hereunder, shall advance all costs and expenses of the Agency. By separate agreement, the Parties may provide for reimbursement by Sylvan to MHSD for the cost of administrative, overhead and other expenses advanced pursuant to or in furtherance of this Agreement. MHSD may be reimbursed for the cost of administrative, overhead and other expenses advanced pursuant to this Agreement from the proceeds of bonds, loan agreements or other obligations of the Agency, or from any special tax as authorized by the CFD Act.

Section 15. Obligations of Agency; Contracts for Separate Responsibility. Except as specifically provided herein or by law, the debts, liabilities, and obligations of the Agency shall not be the debts, liabilities, and obligations of the Parties. A Party to this Agreement or a Local Agency may separately contract for, or assume responsibility for, specific debts, liabilities or

obligations of the Agency. The Agency shall not enter into any contract with a public retirement system (as defined in Government Code Section 6508.1) without the prior written consents of all of the Parties.

Section 16. Restrictions on Powers. Pursuant to and to the extent required by Section 6509 of the Joint Powers Act, the Agency shall be restricted in the exercise of its powers in the same manner as MHSD is restricted in its exercise of similar powers (unless otherwise permitted by the Joint Powers Act or other provisions of law).

Section 17. Issuance of Bonds. In addition to any other powers conferred upon the Agency pursuant to law or contract, the Agency may issue revenue bonds pursuant to Article 2 and Article 4 of the Joint Powers Act to pay the cost and expenses of acquiring or constructing a project for any or all of the purposes permitted thereby.

Section 18. Bond Purchase Agreements with Local Agencies; Exemptions from Public Sales Requirements. The Agency may enter into a bond purchase agreement with one or more Local Agencies. Local Agencies may sell their bonds to the Agency on a negotiated basis without compliance with any public sale requirement included in the statutes under which such bonds are issued.

Section 19. Issuance of Bonds. The Agency may, from time to time, issue its Bonds in the principal amount as the Agency determines necessary to provide sufficient funds for its purposes, which may include providing funds for bond purchase agreements, payments of interest on Bonds of the Agency, establishment of reserves to secure the Bonds, and other expenditures of the Agency incident to issuance of the Bonds.

Section 20. Purpose, Terms and Form of Bonds; General Obligations.

A. The Agency may, from time to time, issue bonds to provide funds to achieve its purposes.

B. Bonds may be authorized to finance any project authorized by law or for any lawful purpose.

C. Except as otherwise expressly provided by the Agency, every issue of its Bonds shall be general obligations of the Agency payable from any revenues or moneys of the Agency available therefor and not otherwise pledged. These revenues or moneys may include the proceeds of additional Bonds, subject only to any agreements with the holders of particular Bonds pledging any particular revenues or moneys. Notwithstanding that the Bonds may be payable from a special fund, they shall be deemed to be negotiable instruments for all purposes, subject only to the registration provisions.

D. The Bonds may be issued as serial bonds or as term bonds, or the Agency may issue Bonds of both types. The Bonds shall be authorized by resolution of the Agency and shall, as provided by the resolution or indenture pursuant to which the Bonds are issued, bear the date of issuance; the time of maturity, bear the rate of interest, either fixed or variable, be payable as to principal and interest at the time or times provided; be in the denominations provided; be in the form provided; carry the registration privileges provided; be executed in the manner provided;

be payable in lawful money of the United States at the place or places provided within or without the State; and be subject to the terms of redemption provided.

E. The Bonds may be sold at a public or private sale, and for price or prices, and on terms and conditions as the Agency determines proper. Pending preparation of the definitive Bonds, the Agency may issue interim receipts, certificates, or temporary bonds which shall be exchanged for definitive bonds.

Section 21. Other Financing Powers. The Agency shall have all other powers provided in the Joint Powers Act, the CFD Act, and in other laws.

Section 22. Compensation of Agency Board. The persons who serve on the Agency Board shall not be entitled to compensation. The Agency Board may authorize reimbursement of expenses incurred by individual Board members.

Section 23. Powers of Agency Board. Except as otherwise provided in this Agreement, the Agency Board shall exercise all powers and conduct all business of the Agency, either directly or by delegation to other bodies or persons. The Agency Board shall provide for officers of the Agency and appoint or employ such staff as may be provided in bylaws of the Agency. The Agency Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Agency. Adoption of the budget may not be delegated. The Agency Board shall receive, review and act upon periodic reports and audits of the funds of the Agency. The Agency Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Agency.

Section 24. Meetings. The Agency Board shall hold a regular meeting on the second Wednesday of each month at 5:30 p.m.; provided that the Agency Board may at any time adopt a resolution to set a different date, time and place for its regular meetings; provided further that, if no agenda is posted for a regular meeting, then such regular meeting shall be deemed cancelled. If any day so fixed for a regular meeting shall fall upon a legal holiday, then such regular meeting shall be held upon the next succeeding business day at the same hour. Each meeting of the Agency Board, including regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, being California Government Code Section 54950, et seq., as amended from time to time. The Agency shall have minutes of regular, adjourned regular, and special meetings kept by the Secretary of the Agency appointed by the Agency Board. A majority of the members of the Agency Board shall be a quorum for the transaction of business; provided, however, that at least one member each of MHSD and Sylvan is present. However, less than a quorum may adjourn a meeting from time to time. A vote of the majority of a quorum at a meeting shall be sufficient to take action.

Section 25. Party Responsibilities. Each Party shall make contributions in the form of annual membership assessments and fees, if any, determined by the Agency Board for the purpose of defraying the costs of providing the annual benefits accruing directly to each Party from this Agreement.

Section 26. Termination and Distribution of Assets. This Agreement may be terminated by the Parties at any time that no Bonds or other obligations of the Agency are outstanding. Upon

termination of this Agreement, all assets of the Agency shall, after payment of all unpaid costs, expenses and charges incurred under this Agreement, be distributed among the Parties hereto in accordance with the respective contributions of each of the Parties.

Section 27. Liability of Agency Board, Officers and Employees. The members of the Agency Board, officers and employees of the Agency shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Agency funds, or failure to invest. No Board member, director, officer or employee shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement; except as required by Section 9 hereof.

Section 28. Bylaws. The Agency Board may adopt bylaws and make modifications thereto from time to time to provide for the administration and management of the Agency, and the regulation of its business and the conduct of its affairs in a manner consistent with this Agreement.

Section 29. Severability. Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 30. Filings with Secretary of State, State Controller, and Local LAFCos. The Chief Administrative Officer of the Agency shall (i) cause to be filed, or shall confirm the filing of, a notice of this Agreement with the office of the Secretary of State within 30 days of its effective date, as required by Section 6503.5 of the Joint Powers Act and within 70 days of its effective date as required by California Government Code Section 53051, (ii) cause a copy of this Agreement to be filed with the State Controller as required by Section 6503.6 of the Joint Powers Act, and (iii) cause to be filed, or shall confirm the filing of a copy of this Agreement with the local agency formation commission (LAFCo) in each county within which all or any part of a Member's territory is located within 30 days of the Agreement's effective date, as required by Section 6503.6 of the Joint Powers Act.

Section 31. Fiscal Year. Unless and until changed by resolution of the Agency Board, the fiscal year of the Agency shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year, which shall be the period from the date of this Agreement to June 30, 2022.

Section 32. Conflict of Interest Code. The Agency shall adopt a Conflict of Interest Code.

Section 33. Effective Date. The effective date of this Agreement shall be _____.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date indicated below.

MODESTO HIGH SCHOOL DISTRICT

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

SYLVAN UNION SCHOOL DISTRICT

By: _____
Title: _____

ATTEST:

By: _____
Title: _____