

REVISED

JOINT EXERCISE OF POWERS AGREEMENT

for

THE CHICO URBAN AREA JOINT POWERS  
FINANCING AUTHORITY

by and between

THE COUNTY OF BUTTE

and

THE CHICO REDEVELOPMENT AGENCY

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**REVISED**  
**JOINT EXERCISE OF POWERS AGREEMENT**  
**FOR THE**  
**CHICO URBAN AREA JOINT POWERS FINANCING AUTHORITY**

**INTRODUCTION**

This Agreement is entered into by and between the County of Butte, a legal subdivision of the State of California (the “County”), and the Chico Redevelopment Agency, a public body, corporate and politic, organized and operating under the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code (the “Agency”), with reference to the following:

A. The Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code (the “JPA Law”) authorizes the County and the Agency to create a joint exercise of powers entity to jointly exercise any powers common to the County and the Agency and to exercise the powers granted under the JPA Law.

B. The County and the Agency are empowered by law to undertake certain projects and programs, and each party possesses the power and authority to finance, construct, maintain and operate public improvements, to incur debts and other obligations, and to protect the public health, safety and welfare.

C. The County, the Agency, and the City of Chico (the “City”) are cooperating in an effort to install and construct public sewer facilities and improvements in locations in the City and adjacent unincorporated territory that are currently served by private septic systems (the “Sewer Project” or the “Project”). The areas in which the Project will be undertaken

(collectively, the “Sewer Project Area”) are all within the City’s sphere of influence, as adopted in 1986 and as thereafter amended (the “Chico Urban Area”). The Sewer Project Area is depicted on Exhibit A to this Agreement.

D. The Sewer Project Area is located, in part, in the Greater Chico Urban Area Redevelopment Project Area (“GCUARPA”), created pursuant to the authority of the Community Redevelopment Law by both the City by Ordinance No. 1968 on October 25, 1993, and amended by Ordinance No. 2110 on June 14, 2004, and the County by Ordinance No. 3102 on October 26, 1993, and amended by Ordinance No. 3882 on August 31, 2004. The 2004 City and County amendments merged the GCUARPA with the Chico Merged Redevelopment Project Area. The merged GCUARPA and Chico Merged Redevelopment Project Area is referred to in this Agreement as “the Chico Amended and Merged Redevelopment Project Area” and includes most of the Sewer Project Area.

E. The County and Agency desire to enter into this Agreement and to form the Chico Urban Area Joint Powers Financing Authority (the “Authority”) to facilitate the financing of the construction and installation of sewer facilities and improvements necessary to carry out the Project (the “Improvements”). Each of the parties has the authority to facilitate and finance the installation and construction of the Improvements. The purpose of this Agreement is to jointly exercise the foregoing common powers in the manner set forth in this Agreement.

F. The County, Agency and City contemplate that the Authority will finance and facilitate the implementation and completion of the Sewer Project in accordance with the terms of this Agreement by applying for, accepting, and receiving state or federal loans or other aid from any agency of the United States of America, the State of California, or any other source which may be subsequently identified (the “JPA Loan”).

G. The County, Agency and City also contemplate that the Agency will underwrite repayment of the JPA Loan by dedicating tax increment revenue generated in the Chico Amended and Merged Redevelopment Project Area (“Tax Increment”) for that purpose, pursuant to its authority under Health and Safety Code Section 33445. In addition, the County, City and Agency contemplate that the City will construct, operate, own and maintain the Improvements, and that fees and charges will be imposed on the use of the Improvements and levied against land served by the Improvements, as needed to secure the costs of operation and maintenance of the Improvements and all costs and expenses incurred by the City for the operation, maintenance and expansion of the City’s sewer trunklines and wastewater pollution control plant necessary to transport and treat effluent discharged to the Improvements.

**ARTICLE 1.**

**PURPOSE, POWERS AND DUTIES**

SECTION 1.1 Authority Created; Effective Date.

(a) There is hereby created a public entity known as the “Chico Urban Area Joint Powers Financing Authority” to assist in financing the Project. The Authority is formed pursuant to the JPA Law, and the members of the Authority are the County and the Agency (the “Members”). The Authority shall be a public entity separate from any and all of its Members.

(b) The effective date of this Agreement and the date on which the Authority shall be deemed formed and existing shall be the first date on which the County and the Agency have both executed this Agreement.

SECTION 1.2 Purpose of Authority. The sole purpose of the Authority is to facilitate the financing of the Improvements. The Authority shall achieve that purpose by applying for the JPA Loan and disbursing any JPA Loan funds to the City. The City will use the JPA Loan funds

to construct and install the Improvements pursuant to that certain agreement between the County and the City titled "Agreement between the County of Butte and the City of Chico for the Extension of Sewer Services and Installation of Certain Public Improvements in the Chico Urban Area" and dated December 5, 2000. As security for the JPA Loan, the Authority shall pledge to the State the Tax Increment that the Agency agrees to pay to the Authority.

SECTION 1.3 Powers. The Authority shall have the power in its own name to do any or all of the following:

(a) Obtain the JPA Loan and issue bonds and otherwise incur debts, liabilities or obligations to finance the Improvements, subject to limitations herein set forth, and provided that the debts, liabilities and obligations of the Authority shall not constitute any debt, liability or obligation of any of the Members.

(b) Finance or refinance indebtedness incurred by the Authority in connection with the purpose of this Agreement.

(c) Apply for letters of credit or other forms of financial guarantees in order to secure the repayment of its obligations under this Agreement and enter into agreements in connection therewith.

(d) Apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States of America, or of the State of California, necessary for the Authority's full exercise of its powers.

(e) Accept security, collateral or other property interests to secure payment of loans or other obligations to the Authority.

(f) Accept Tax Increment from the Agency and pledge that revenue to repayment of the JPA Loan.

(g) Pursuant to Sections 6505.5 and 6509.5 of the JPA Law, invest any money in the treasury of the Authority which is not required for the immediate necessities of the Authority, as provided by Section 53601 of the Government Code.

(h) Disburse funds received by the Authority, including funds from the JPA Loan, to the City as necessary to assist the City in its construction, installation, operation, ownership and maintenance of the Improvements.

(i) Contract for the services of attorneys and financial consultants, and to employ such other persons as it deems necessary to fulfill the purposes of this Agreement.

(j) Make and enter into other contracts necessary to the full exercise of its powers.

(k) Sue and be sued in its own name.

(l) Perform all other acts necessary or proper to carry out fully the purpose of this Agreement and not inconsistent with the JPA Law.

SECTION 1.4 Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the JPA Law, and, except for those powers set forth in Article 4 of the JPA Law, shall be subject (in accordance with Section 6509 of the JPA Law) to the restrictions upon the manner of exercising such powers that are imposed upon the Agency in the exercise of similar powers.

SECTION 1.5 Debts, Liabilities and Obligations of Authority.

(a) The debts, liabilities and obligations of the Authority shall be solely the debts, liabilities and obligations of the Authority, and no Member shall be liable for any of the debts, liabilities or obligations of the Authority. Costs and expenses incurred by the Authority pursuant to this article are deemed to be administrative costs of the Sewer Project eligible for payment from the proceeds of the JPA Loan to the extent not inconsistent with the terms of that Loan.



(b) No party to this Agreement, and no Member, Director or 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 for any other liability of the Authority, or be subject to any liability or accountability by reason of any other obligations of the Authority; provided that this subsection (b) shall not relieve any such Member, Director, officer, agent or employee from the performance of any official duty on behalf of the Authority required by the terms of the JPA Loan or by the instruments authorizing the issuance of any obligations of the Authority.

SECTION 1.6 Duty to Defend and Indemnify. The Authority shall defend, indemnify and hold harmless any Member, Director, officer, employee or agent of the Authority for their acts or omissions taken or done within the scope of their authority. Except as otherwise provided in this Agreement, the funds of the Authority shall be used for such purposes. The Authority may purchase insurance to provide coverage as to all or part of these duties. The Authority's duty to defend and indemnify its Members, Directors, officers, employees and agents, pursuant to this section, shall survive the termination of this Agreement and a Member's withdrawal from the Authority.

SECTION 1.7 Privileges and Immunities; Exemptions; Benefits. Pursuant to Government Code Section 6513, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, employees or agents of any of the Members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties under this Agreement. None of the officers, employees or agents of the Authority shall, by reason of their employment by the

Authority, be deemed to be employed by any of the Members or to be subject to any of the requirements of any Members.

## **ARTICLE 2.**

### **ORGANIZATION**

#### SECTION 2.1 Governing Body.

(a) The business of the Authority shall be conducted by a Board of Directors consisting of four (4) persons (the "Board"). All the power and authority of the Authority shall reside in and be exercised by the Board, subject, however, to the provisions of this Agreement, the JPA Law, and the rights reserved by the parties as herein set forth.

(b) The Agency shall appoint two (2) Directors to the Board and the County shall appoint two (2) Directors to the Board. Initially those Directors shall be, for the Agency, two (2) members of the Agency appointed by the Agency and, for the County, two (2) members of the County's Board of Supervisors appointed by that board. Any Director may designate a substitute representative to serve as a Director on the Board of Directors. Any such substitute shall be an officer or employee of the Agency in the case of the Agency representatives, or an officer or employee of the County in the case of the County representatives.

(c) No Director shall receive any compensation from the Authority for serving as such, but a Director may be reimbursed from the Authority's funds for expenses incurred in the conduct of the Authority's business, subject to any applicable policy of the Authority.

SECTION 2.2 Quorum; Voting Power. A simple majority of the Directors constitutes a quorum of the Board for the purpose of transacting the Authority's business. Except as otherwise provided by law, the unanimous vote of all Directors shall be required for the Authority to take action. Each Director shall have one vote.

SECTION 2.3 Meetings. The Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Division 2, Title 5 of the Government Code, applies to the Authority.

SECTION 2.4 Bylaws and Rules. The Board may adopt, amend and repeal bylaws and rules and regulations for the conduct of its affairs as may be necessary or advisable for the purposes of this Agreement.

SECTION 2.5 Conflicts of Interest Code. To the extent required pursuant to Government Code Section 87300 or other provision of law, the Authority, by resolution, shall adopt a conflicts of interest code.

SECTION 2.6 Officers. The officers of the Authority shall consist of a Chair, Vice-Chair, Executive Director, Deputy Executive Director, Secretary, Treasurer, Auditor and Authority Counsel. The Chairperson and Vice Chairperson shall be rotated from time to time among the Directors in accordance with procedures established by the Board. Except as to the offices of Treasurer and Auditor, the Board shall have the power to appoint the other officers.

SECTION 2.7 Executive Director and Deputy Executive Director. The Authority shall initially have the Agency's Executive Director as the Executive Director of the Authority and the County's Chief Administrative Officer as the Deputy Executive Director of the Authority. The Executive Director and Deputy Executive Director shall serve at the pleasure of the Board of Directors, shall perform all of the functions provided for in this Agreement and any bylaws adopted pursuant to this Agreement, and shall be responsible to the Board for the proper and efficient administration of the Authority as is or hereafter may be placed in their charge, or under their jurisdiction or control pursuant to the provisions of this Agreement, or of any resolution or order of the Board.

SECTION 2.8 Secretary.

(a) The Secretary shall prepare and file with the California Secretary of State:

(1) The notice required by Government Code Section 6503.5, within thirty (30) days after the effective date of this Agreement or any amendment to it.

(2) The statement required by Government Code Section 53051, within seventy (70) days after the effective date of this Agreement or ten (10) days of any change in the facts included in the statement.

(b) The Secretary shall cause minutes to be kept of all meetings of the Board, and shall cause a copy of the minutes to be forwarded to each Director and to each Member.

(c) The Secretary shall give all notices required by law to be given by the Authority or the Board, in the manner directed by the Board and consistent with any requirement of law as to the timing, content and manner of distribution of a particular type of notice.

SECTION 2.9 Treasurer and Auditor.

(a) The Agency's Treasurer shall be the Treasurer of the Authority. The Treasurer shall be the depository for and have the custody of all the money of the Authority from whatever source, and shall have the duties and obligations of the Treasurer as set forth in Sections 6505 and 6505.5 of the JPA Law. The Treasurer shall deposit into the Sewer Improvement Capital Trust Fund, established under Section 4.1, all revenue received by the Authority to repay the JPA Loan and shall disburse money from this fund as necessary to repay the Loan. The Treasurer shall be responsible for receiving quarterly reports and verifying the balance of this report with respect to the balance as maintained by the records of the Auditor.

(b) The Agency's Treasurer shall be the Auditor of the Authority. The Auditor shall have the duties and obligations of the Auditor as set forth in Section 6505 and 6505.5 of the

JPA Law. The Auditor shall assure strict accountability of all receipts and disbursements of the Authority and 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.

(c) The Treasurer and Auditor of the Authority are designated as the public officers who have charge of, handle, or have access to any funds of the Authority, and both shall be bonded as required by Government Code Section 6505.1. The amount of their bonds shall be fixed by the Board by resolution, and the cost of the bonds shall be an operating expense of the Authority.

(d) The Auditor and Treasurer of the Authority shall not be compensated for their work for the Authority, but the Authority shall reimburse the Auditor and Treasurer for operating and out-of-pocket expenses, including those for outside accountants undertaking the annual audit of accounts and records of the Authority.

SECTION 2.10 Authority Office. The Board shall establish the location of the office of the Authority and may change that location as the convenience of the Authority may require. Any change shall be noted by the Secretary under this section, but shall not be considered an amendment to this Agreement.

### **ARTICLE 3.**

#### **FINANCING**

SECTION 3.1 Budget; Fiscal Year. Within ninety (90) days after the first meeting of the Board, and thereafter prior to the commencement of each Fiscal Year, the Board shall adopt a budget for the Authority for the ensuing Fiscal Year. As used in this Agreement, "Fiscal Year" means the period from July 1 in any calendar year to and including June 30 in the succeeding calendar year.

SECTION 3.2 Contributions, Loans and Advances to Authority. Contributions, loans or advances of public funds and loans of personnel, equipment or property may be made to the Authority by the City, the County and the Agency for any of the purposes of this Agreement. Unless otherwise agreed, the cost of every loan or advance shall be repaid immediately upon receipt by the Authority of adequate funds to make the repayment.

#### **ARTICLE 4.**

#### **ACCOUNTING AND AUDITS**

##### SECTION 4.1 Accounts, Audits and Reports.

(a) The Auditor shall establish a Sewer Improvement Capital Trust Fund for deposit of all revenue received by the Authority to repay the JPA Loan, including but not limited to revenue from fees, charges and assessments imposed or levied to fund the Improvements and all Tax Increment received from the Agency.

(b) The Auditor shall also establish and maintain such other funds and accounts as may be required by good accounting practice or as required by any lenders to the Authority.

(c) The records and accounts of the Authority shall be audited annually by a certified public accountant designated by the Auditor. A copy of each audit report shall be filed as a public record with each Member within seven (7) months of the end of the Fiscal Year under examination.

##### SECTION 4.2 Funds Management; Reports.

(a) The Treasurer of the Authority shall receive, have custody of, and disburse Authority funds on checks drawn by the Auditor as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this

Agreement, and shall take such other actions as are necessary to implement or to carry out any of the provisions or purpose of this Agreement.

(b) The books and records of the Authority maintained by the Treasurer shall be open to inspection at all reasonable times by representatives of the Members. The Treasurer, within one hundred twenty (120) days after the close of each Fiscal Year, shall give a complete written report to the Members of all of the Authority's financial activities for that Fiscal Year.

## **ARTICLE 5.**

### **DUTIES OF MEMBERS**

#### SECTION 5.1 Duties of County.

(a) The County shall prepare all documentation necessary for the Authority to file a complete application for the JPA Loan.

(b) The County shall acquire and convey, or cause to be conveyed, to the City all rights-of-way and other interests in real property reasonably required by the City for construction and installation of the Improvements in unincorporated portions of the Chico Urban Area.

(c) The County agrees to authorize the City to impose fees and charges in the unincorporated portions of the Chico Urban Area to cover the ongoing costs of the operation and maintenance of the Improvements, and related costs and expenses incurred for the operation, maintenance and expansion of the City's sewer trunklines and water pollution control plant.

#### SECTION 5.2 Duties of Agency.

(a) Subject to the subordination provisions set forth in subsection (b) below, the Agency pledges and agrees to annually contribute to the Authority, solely to repay the JPA Loan, up to but not more than one million, nine hundred thousand dollars (\$1,900,000) of Tax Increment actually received by the Agency during each Agency Fiscal Year, commencing with

the first Agency Fiscal Year following the effective date of this Agreement and ending with the Agency Fiscal Year for which the last payment is due to be made on the JPA Loan. The Agency shall take all steps legally required for the Agency to be allocated and paid sufficient Tax Increment to meet its obligation under this Section 5.2.

(b) The obligation of the Agency to make the annual contributions of Tax Increment to the Authority, as described in subsection (a), is expressly subordinate to and preempted by:

(1) The obligation imposed on the Agency by Health and Safety Code Section 33334.2 to set aside for low- and moderate-income housing projects not less than 20% of the Tax Increment annually available to the Agency.

(2) The obligations of the Agency imposed by agreements with other public agencies, in effect on the effective date of this Agreement, to pass through to those agencies portions of the Tax Increment.

(3) The priority of all Agency debt existing on the effective date of this Agreement and all future Agency debt in parity with the debt existing on the effective date of this Agreement, provided that, at least thirty (30) days prior to the issuance or incurrence of that future parity debt, the Agency provides to the Authority reasonable evidence that the Agency has sufficient annual Tax Increment to pay the maximum annual debt service on (i) the proposed parity debt, (ii) the Agency's obligation to make annual contributions to the Authority pursuant to this Section 5.2 and (iii) any previously issued or incurred indebtedness to which the Agency's obligations to make annual contributions to the Authority pursuant to this Section 5.2 is subordinate.



(4) The obligations imposed on the Agency by legislation enacted before this Agreement took effect or while this Agreement is in effect that (i) requires the Agency to make payments from Tax Increment to the State of California or other government agencies or (ii) reallocates, redistributes or controls disposition of Tax Increment in any way that deprives the Agency of the ability to make one or more annual contributions to the Authority pursuant to this Section 5.2.

## **ARTICLE 6.**

### **RESCISSION, TERMINATION, WITHDRAWAL, ASSIGNMENT**

SECTION 6.1. Term. The Authority shall continue to exercise the powers conferred upon it by this Agreement until this Agreement is rescinded or terminated as herein provided. If not earlier terminated or rescinded, this Agreement shall terminate and the Authority shall be dissolved upon repayment of the JPA Loan.

SECTION 6.2 Rescission; Termination. This Agreement may be rescinded and the Authority terminated by unanimous written consent of the parties. However, no such rescission or termination shall occur so long as the Authority has any outstanding obligation, including, but not limited to, outstanding debts or contracts. Upon termination of this Agreement and dissolution of the Authority, any surplus money in the possession of the Authority shall be returned to each Member in proportion to any contributions made by such Member. If no such contributions were made, any surplus money shall be divided between the County and the Agency in a manner to be determined by the Members.

SECTION 6.3 Withdrawal of Members. No Member may withdraw from the Authority without the written consent of the other Member.

## ARTICLE 7.

### GENERAL PROVISIONS

SECTION 7.1 Amendments. This Agreement may be amended only by the affirmative vote of both parties. To be effective, all amendments and modifications must be in writing and signed by an authorized representative of both parties.

SECTION 7.2 Assignment. The rights and duties of the Authority or of any party under this Agreement may not be assigned or delegated without the written consent of all parties. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect.

SECTION 7.3 Disclaimers. This Agreement is made solely by and between the County and the Agency as public agencies committed to public health, welfare, and safety. Therefore:

(a) Nothing in this Agreement imposes a duty on the Authority to finance the construction and installation of Improvements in the Sewer Project Area by means other than the JPA Loan.

(b) Nothing in this Agreement creates an entitlement to or guarantees the availability of any particular City or County service or public improvement or any particular level of City or County service to any persons or property within the Chico Urban Area.

(c) Nothing in this Agreement is intended to create any third-party beneficiary rights with respect to any person, agency or entity, whether directly or indirectly affected by this Agreement, except as to the City, and then only as to duties imposed on the Members pursuant to Article 5.

SECTION 7.4 Breach. If a party breaches any covenant contained in this Agreement, such default shall not excuse any other party from fulfilling its obligations under this Agreement, and all parties shall continue to be liable for the performance of all covenants herein contained. The parties hereby declare that this Agreement is entered into for the benefit of the Authority, and the Authority may enforce by any lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative, and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

SECTION 7.5 Notice. Any notice or instrument required to be given to a party shall be delivered by deposit of it in any United States Post Office, registered or certified, postage prepaid, by hand delivery, or by overnight delivery service and shall be addressed as follows:

If to County:            Chief Administrative Officer  
                                 Butte County Administration  
                                 25 County Center Drive  
                                 Oroville, CA 95965

If to Agency:            Executive Director  
                                 Chico Redevelopment Agency  
                                 411 Main Street  
                                 P. O. Box 3720  
                                 Chico, CA 95927

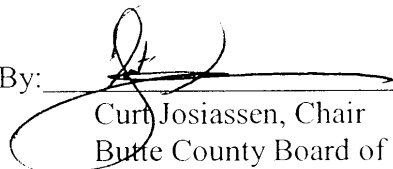
Such notice shall be effective upon receipt or refusal to accept receipt.

SECTION 7.6 Severability. Should any part, term or provision of this Agreement be determined 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 7.7 Supersession of Prior Agreement. This Agreement revises and thereby supersedes in all respects and for all purposes the agreement between the County of Butte and the Chico Redevelopment Agency titled "Joint Exercise of Powers Agreement for the Chico Urban Area Joint Powers Financing Authority by and between the County of Butte and The Chico Redevelopment Agency" and entered into as of August 30, 2005.

COUNTY OF BUTTE

CHICO REDEVELOPMENT AGENCY


By:   
Curt Josiassen, Chair  
Butte County Board of Supervisors

By:   
Gregory T. Jones  
Executive Director

Date: June 1, 2006

Date: JUN 01 2006  
Authorized by Chico Redevelopment  
Agency Minute Order No. RDA 02-05  
Approved June 7, 2005

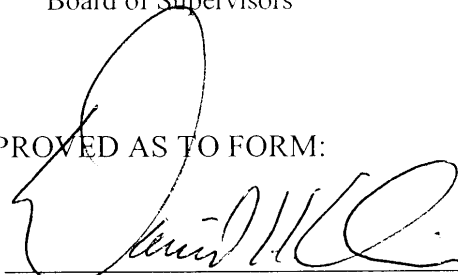
ATTEST:

  
Paul McIntosh, Chief Administrative  
Officer and ex-officio Clerk of the  
Board of Supervisors


ATTEST:

  
Deborah R. Presson  
Agency Secretary

APPROVED AS TO FORM:

By:   
Bruce Alpert, County Counsel  
County of Butte

APPROVED AS TO FORM

By:   
David R. Frank, Agency Counsel  
Chico Redevelopment Agency