

JOINT EXERCISE OF POWERS AGREEMENT

By and Between

CITY OF CLOVIS

and

CITY OF FRESNO

Dated as of July 15, 1993

Creating the

CENTRAL CALIFORNIA JOINT POWERS HEALTH FINANCING AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

THIS JOINT EXERCISE OF POWERS AGREEMENT, dated as of July 15, 1993 (herein called this "Agreement"), by and between the CITY OF CLOVIS, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (herein called the "City of Clovis"), and the CITY OF FRESNO, a municipal corporation and charter city duly organized and existing under and by virtue of the laws of the State of California (herein called the "City of Fresno");

W I T N E S S E T H:

WHEREAS, Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes the City of Clovis and the City of Fresno to create a joint exercise of powers entity (herein called the "Central California Joint Powers Health Financing Authority" or the "Authority") which has the power to jointly exercise any powers common to the City of Clovis and the City of Fresno;

WHEREAS, Community Hospitals of Central California ("CHCC"), Fresno Community Hospital and Medical Center ("FCH") and Sierra Hospital Foundation ("SHF"), each a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (each, a "Member of the CHCC Health System," and hereinafter collectively referred to as the "CHCC Health System"), own and operate certain health care facilities

located in the City of Clovis and the City of Fresno which provide necessary health care services to residents of the City of Clovis and the City of Fresno;

WHEREAS, from time to time, the CHCC Health System desires to finance the acquisition, construction, improvement, renovation, expansion and/or equipping of the health care facilities which the CHCC Health System owns and/or operates, including, without limitation, by refinancing indebtedness incurred for such purposes and/or by reimbursing itself for prior expenditures made for such purposes;

WHEREAS, in order to achieve demonstrable savings in effective interest rate, the CHCC Health System has requested that the City of Clovis and the City of Fresno create the Central California Joint Powers Health Financing Authority in order to facilitate such financing, refinancing and/or reimbursement (each, a "Financing," and hereinafter collectively referred to as "Financings") from time to time, for the benefit of the CHCC Health System, including, without limitation, installment purchase financings;

WHEREAS, the City of Clovis has determined that the execution and delivery of the Joint Powers Agreement in order to facilitate Financings for the benefit of the CHCC Health System or any Member of the CHCC Health System will result in demonstrable savings in effective interest rate, is desirable, is for the common benefit of the City of Clovis and its residents, serves a public purpose and is necessary and proper for municipal purposes;

WHEREAS, the City of Fresno has determined that the execution and delivery of the Joint Powers Agreement in order to facilitate Financings for the benefit of the CHCC Health System or any Member of the CHCC Health System will result in demonstrable savings in effective interest rate, is desirable, is for the common benefit of the City of Fresno and its residents, serves a public purpose and is necessary and proper for municipal purposes; and

WHEREAS, by this Agreement, the City of Clovis and the City of Fresno desire to create and establish the Central California Joint Powers Health Financing Authority for the purposes set forth herein and to exercise the powers described herein;

NOW, THEREFORE, the City of Clovis and the City of Fresno, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

SECTION 1. DEFINITIONS

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified.

Authority

The term "Authority" shall mean the Central California Joint Powers Health Financing Authority created by this Agreement.

Board

The term "Board" shall mean the governing board of the Authority.

Certificates of Participation

The term "Certificates of Participation" shall mean certificates representing an undivided interest in Installment Payments made by the Authority pursuant to an Installment Purchase Agreement.

CHCC

The term "CHCC" shall mean Community Hospitals of Central California, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, or any corporation which is the surviving, resulting or transferee corporation in any merger, consolidation or transfer of assets permitted under the Master Indenture.

CHCC Health System

The term "CHCC Health System " shall mean CHCC, FCH, SHF and any other nonprofit public benefit corporation duly organized and existing under the laws of the State of California which has become a Member of the CHCC Health System pursuant to the provisions set forth in the Master Indenture.

Facilities

The term "Facilities" shall mean the property which is sold to the Authority and sold back by the Authority in connection with an installment purchase financing.

FCH

The term "FCH" shall mean Fresno Community Hospital and Medical Center, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, or any corporation which is the surviving, resulting or

transferee corporation in any merger, consolidation or transfer of assets permitted under the Master Indenture.

Installment Payments

The term "Installment Payments" shall mean the payments made by the Authority pursuant to an Installment Purchase Agreement for the purchase of Facilities.

Installment Purchase Agreement

The term "Installment Purchase Agreement" shall mean an agreement pursuant to which the CHCC Health System or any Member of the CHCC Health System sells certain Facilities to the Authority and the Authority agrees to make Installment Payments to the CHCC Health System or any Member of the CHCC Health System for the purchase of such Facilities.

Installment Sale Agreement

The term "Installment Sale Agreement" shall mean an agreement pursuant to which the Authority sells certain Facilities to the CHCC Health System or any Member of the CHCC Health System and the CHCC Health System or any Member of the CHCC Health System agrees to make payments to the Authority for the purchase of such Facilities.

Law

The term "Law" shall mean Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (Sections 6500-6599), including the Marks-Roos Local Bond Pooling Act of 1985, as amended.

Master Indenture

The term "Master Indenture" shall mean that certain Master Indenture of Trust, dated as of August 1, 1993, among the Corporation, FCH, SHF and a corporate trustee, as originally executed and as it from time to time heretofore or hereafter be supplemented, modified or amended in accordance with its terms.

Member of the CHCC System

The term "Member of the CHCC System" shall mean CHCC, FCH, SHF and each other signatory to the Master Indenture which is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, but excluding any Member of the CHCC System which ceases to be a Member pursuant to the provisions set forth in the Master Indenture.

Project

The term "Project" shall mean the acquisition, construction, improvement, renovation, expansion and equipping of the health care facilities owned and/or operated by the CHCC Health System.

SHF

The term "SHF" shall mean Sierra Hospital Foundation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, or any corporation which is the surviving, resulting or transferee corporation in any merger, consolidation or transfer of assets permitted under the Master Indenture.

SECTION 2. PURPOSE

This Agreement is made pursuant to the Law to provide for the joint exercise of powers common to the City of Clovis and the City of Fresno for the purpose of facilitating the Financing of a Project for the benefit of the CHCC Health System or any Member of the CHCC Health System, by exercising the powers referred to in the recitals hereof and described in Section 5 herein and these powers will be jointly exercised by the Authority for the purpose of facilitating the Financing of a Project for the benefit of the CHCC Health System or any Member of the CHCC Health System.

The Authority will fulfill the purposes of this Agreement by, among other things, participating in installment purchase financings and in connection therewith, authorizing and undertaking the execution and delivery of certain Certificates of Participation, each evidencing an undivided proportionate interest of the owner thereof in the right to receive certain Installment Payments made pursuant to an Installment Purchase Agreement.

The City of Clovis and the City of Fresno hereby agree that the debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of either the City of Clovis or the City of Fresno and that any Certificates of Participation authorized by the Authority for execution and delivery shall not constitute general obligations of the Authority but shall be payable solely from the moneys pledged to the repayment of the principal component of, prepayment premium,

if any, with respect to, or the interest component of such Certificates of Participation under the terms of the indenture, resolution, trust agreement or other instrument pursuant to which such Certificates of Participation are executed and delivered. Such Certificates of Participation shall not constitute debts, liabilities or obligations of the City of Clovis or the City of Fresno.

SECTION 3. TERM

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until February 1, 2050, unless extended or earlier terminated by a supplemental written agreement of the City of Clovis and the City of Fresno; provided, however, that in no event shall this Agreement terminate while any Certificates of Participation authorized by the Authority for execution and delivery remain outstanding under the terms of the indenture, resolution, trust agreement or other instrument pursuant to which such Certificates of Participation are executed and delivered. In any event, the Authority shall cause all records regarding its formation, its existence, any Project, any Certificates of Participation authorized by the Authority for execution and delivery, and all proceedings pertaining to termination of the Authority to be retained for at least six (6) years following such termination or final payment of any Certificates of Participation authorized for execution and delivery by the Authority, whichever is later.

SECTION 4. AUTHORITY

A. Creation of Authority

There is hereby created pursuant to the Law an agency and public entity to be known as the "Central California Joint Powers Health Financing Authority." As provided in the Law, the Authority shall be a public entity separate from the City of Clovis and the City of Fresno. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the City of Clovis or the City of Fresno.

Within thirty (30) days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Law.

B. Governing Board

The Authority shall be administered by the Board, which shall be comprised of four members, the Mayor and the Mayor Pro Tem of the City of Clovis and the Mayor and the Mayor Pro Tem of the City of Fresno. The term of office of any member of the Board shall be the same as such member's term of office or appointment with the City of Clovis or the City of Fresno, as applicable. Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Authority shall determine that

such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

C. Meetings of Board

(1) **Meetings.** The Board shall hold at least one meeting during calendar year 1993. Subsequently, the Board shall hold meetings on such dates and at such times as shall be specified by the Chairperson in a written notice delivered to each Member of the Board, the Treasurer, the Controller and the Secretary of the Authority, the City Clerk of the City of Clovis and the City Clerk of the City of Fresno. Unless otherwise specified in the written notice calling a meeting, meetings shall be held at the business office of the Authority which shall be at 2600 Fresno Street, Fresno, California.

(2) **Legal Notice.** All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 (Sections 54950-54961) of the Government Code of the State of California or any successor legislation hereinafter enacted.

(3) **Minutes.** The Secretary or the Assistant Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the City of Clovis and the City of Fresno.

(4) **Quorum.** A majority of the members of the Board shall constitute a quorum for the transaction of business,

except that less than a quorum may adjourn meetings from time to time until a quorum is obtained.

D. Officers; Duties

(1) The Mayor of the City of Fresno shall serve as Chairperson of the Authority, the Mayor of the City of Clovis shall serve as Vice Chairperson of the Authority, and the City Clerk of the City of Fresno shall serve as Secretary of the Authority and the Deputy City Clerk of the City of Fresno shall serve as Assistant Secretary.

(2) The Controller of the City of Fresno shall serve as the Treasurer of the Authority. Subject to the applicable provisions of any indenture, resolution, trust agreement or other instrument providing for a trustee or other fiscal agent, the Treasurer of the Authority 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 Law.

(3) The Controller of the City of Fresno, who performs the functions of auditor and controller for the City of Fresno, is hereby designated as Controller of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Law. The Controller shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(4) The City of Fresno shall determine the charges to be made against the Authority for the services of the Treasurer and Controller of the Authority.

(5) The Treasurer and Controller of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and such officers shall file an official bond in the amount of \$25,000 as required by Section 6505.1 of the Law; provided that such official bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than \$500.00.

(6) The Controller of the Authority is hereby authorized and directed to prepare or cause to be prepared a special audit as required pursuant to Section 6505 of the Government Code of the State of California every year during the term of this Agreement; provided, however, that the Authority may, by unanimous request of the Board, replace the annual special audit with an audit covering a two-year period.

(7) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

SECTION 5. POWERS

The Authority shall have the power to acquire Facilities from the CHCC Health System or any Member of the CHCC Health System and to sell such Facilities back to CHCC Health System or any Member of the CHCC Health System in order to facilitate completion of the Financing of a Project through the

authorization of the execution and delivery of Certificates of Participation for the purposes set forth in Section 2 hereof, all in accordance with the Law.

The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts; to employ agents and employees; and to sue and be sued in its own name.

Such power shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon the City of Fresno in the exercise of similar powers, as provided in Section 6509 of the Law, except, however, nothing herein shall limit the powers of the Authority under the Marks-Roos Local Bond Pooling Act of 1985.

Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof, including, without limitation, the power to invest funds in accordance with the provisions set forth in Section 6509.5 of the Law.

SECTION 6. TERMINATION OF POWERS

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement as provided in Section 3 or until the City of Clovis and the City of Fresno shall have mutually rescinded this Agreement; provided, however, that in no event shall this Agreement be terminated or rescinded while any Certificates of Participation authorized by

the Authority for execution and delivery remain outstanding under the terms of the indenture, resolution, trust agreement or other instrument pursuant to which Certificates of Participation are executed and delivered.

SECTION 7. FISCAL YEAR

Unless and until changed by resolution of the Board, the fiscal year of the Authority 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 the following June 30.

SECTION 8. DISPOSITION OF ASSETS

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 6 hereof, all assets of the Authority shall be divided into equal portions and shall be distributed to the City of Clovis and the City of Fresno, subject to the provisions of Section 9 hereof.

SECTION 9. CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the City of Clovis and the City of Fresno for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the City of Clovis or the City of Fresno, as the case may be, and the Authority at the time of making such advance. It is mutually understood and agreed that neither the City of Clovis nor the City of Fresno has any obligation to make

advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. The City of Clovis or the City of Fresno may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority. After termination of this Agreement pursuant to Section 3, any surplus money in possession of the Authority shall be returned to the City of Clovis and the City of Fresno in proportion to the unreimbursed contributions each has made.

SECTION 10. AGREEMENT NOT EXCLUSIVE

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the City of Clovis and the City of Fresno, except as the terms of this Agreement may conflict therewith, in which case the terms of this Agreement shall prevail.

SECTION 11. ACCOUNTS AND REPORTS

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 City of Clovis and the City of Fresno and their representatives.

SECTION 12. CONFLICT OF INTEREST CODE

The Authority, unless otherwise exempt, shall, by resolution, adopt a Conflict of Interest Code as required by law.

SECTION 13. BREACH

If default shall be made by the City of Clovis or the City of Fresno in any covenant contained in this Agreement, such default shall not excuse either the City of Clovis or the City of Fresno from fulfilling its obligations under this Agreement and the City of Clovis and the City of Fresno shall continue to be liable for the performance of all conditions herein contained. The City of Clovis and the City of Fresno hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the City of Clovis and the City of Fresno hereby grant to the Authority the right to enforce by whatever 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. Nothing herein shall be construed to create any indebtedness of the City of Clovis or the City of Fresno and neither the tax revenue nor faith and credit of the City of Clovis or the City of Fresno are pledged or encumbered by this Agreement.

SECTION 14. SEVERABILITY

Should any part, term, or provision of this Agreement be decided by the courts 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 parts, terms or provisions hereof shall not be affected thereby.

SECTION 15. SUCCESSORS; ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by supplemental agreement executed by the City of Clovis and the City of Fresno at any time in order to facilitate the Financing of a Project for the benefit of the CHCC Health System or any Member of the CHCC Health System; provided, however, that in no event shall this Agreement terminate while any Certificates of Participation authorized by the Authority for execution and delivery remain outstanding under the terms of the indenture, resolution, trust agreement or other instrument pursuant to which such Certificates are executed and delivered.

SECTION 17. FORM OF APPROVALS

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of the City of Clovis, by resolution duly and regularly adopted by the City Council of the City of Clovis, and, in the case of the City of Fresno, by resolution duly and regularly adopted by the City Council of the City of Fresno, and, in the case of the Authority, by resolution duly and regularly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 18. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the Constitution and laws of the State of California.

SECTION 19. SECTION HEADINGS

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

CITY OF CLOVIS

By 
Mayor

[SEAL]

Attest:

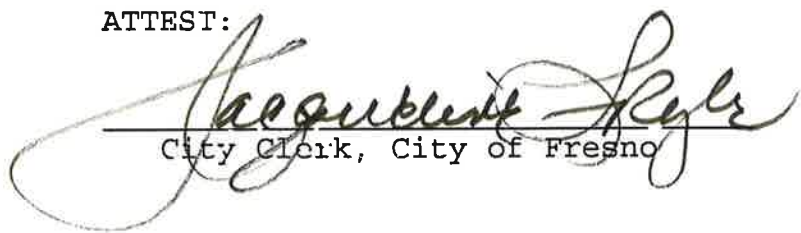

City Clerk, City of Clovis

CITY OF FRESNO

By 
Mayor

[SEAL]

ATTEST:


City Clerk, City of Fresno