

January 4, 2007

Gisela Schulz, Administrator  
East Kern Health Care District  
P.O. Box 2546  
California City, CA 93505

Bill Way, City Manager  
City of California City  
21000 Hacienda Blvd.  
California City, CA 93505

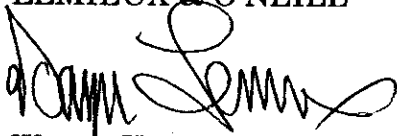
**RE: Joint Powers Authority: Skilled Nursing Facilities**

As reported earlier, the East Kern Health Care District proposes the formation of a joint powers authority to facilitate the issuance of bonds for a facility to be located within California City. We were authorized to draft the formation documents by both agencies after both agencies waive potential conflicts on the part of this office. We enclose a draft of the formation document ("Joint Powers Agreement") for your review and commit.

Very truly yours,

*1/10/07*

LEMIEUX & O'NEILL



Wayne K. Lemieux

*Place an agenda for 2/6/07 for discussion*

WKL/lms  
Enclosure

\*\*\*\*\*DRAFT\*\*\*\*\*  
**JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE  
EAST KERN HEALTHCARE AUTHORITY**

As of \_\_\_\_\_ the **EAST KERN HEALTHCARE DISTRICT** ("District"), and the **CITY OF CALIFORNIA CITY** ("City"), agree as follows:

**Section 1. Purpose.**

This agreement creates a Joint Powers Authority to finance, operate and maintain a skilled nursing facility within the city of California City.

**Section 2. Definitions.**

Unless the context otherwise requires, the following words and terms are defined for the purposes of this agreement:

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State.

"Agreement" means this Joint Exercise of Powers Agreement.

"Authority" means the joint Powers Authority created by this agreement.

"Bonds" means any bonds, notes, certificates of participation or other securities or instruments issued or delivered by or on behalf of the Authority for the benefit of one or more Members.

"Commission" means the governing body of the Authority.

"Members" means, collectively, the parties to this Agreement.

**Section 3. Creation of Authority.**

Pursuant to the Act, there is hereby created a public entity to be known as the "East Kern Healthcare Authority." The Authority shall be a public entity separate and apart from the Members, and shall administer this Agreement.

**Section 4. Commission: appointment.**

The governing body of the Authority shall be a Commission of five (5) Commissioners. The commission shall consist of two (2) Commissioners appointed by the District and two (2) Commissioners appointed by the City; and a fifth Commissioner appointed by a majority vote of the four commissioners appointed by the parties. Commissioners appointed by the Members may, but need not be, elected officials of the Member making the appointment. Each Commissioner shall serve at the pleasure of the Member that appointed such Commissioner; provided the fifth Commissioner shall serve at the pleasure of the Commission. Vacancies of the first four positions on the Commission shall be filled by the governing boards of the respective appointing Members; a vacancy caused by the resignation or expiration of term of the fifth Commissioner shall be filled by a majority vote of the four Commissioners appointed by the Members.

**Section 5. Commission: meetings.**

(a) The date, hour and place of the holding of regular meetings shall be fixed by resolution of the Commission and a copy of such resolution shall be filed with each of the Members. At least one regular meeting shall be held each year. Special meetings of the Commission may be called in accordance with the Brown Act. Meetings of the Commission, shall be called, noticed, held and conducted in accordance with the provisions of Sections 54950 *et seq.* of the Government Code of the State. Such notices shall, at a minimum, be posted at the Members' principal offices.

(b) The Secretary shall keep minutes of the meetings of the Commission and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Commissioner and to the clerk or secretary of each of the Members.

**Section 6. Commission: Voting.**

Each Commissioner shall have one vote. Commissioners holding a majority of the votes shall constitute a quorum for the transaction of business. Less than a quorum may adjourn or continue meetings from time to time. The affirmative votes of at least a majority of a quorum of the Commissioners shall be required to take any action by the Commission. The Commission shall not take action to issue Bonds, except upon a majority vote of all Commissioners, or to expend any funds which would affect or which would be paid by either Member or by persons owning property within the boundaries of that Member, except upon the affirmative vote of each Commissioner representing that Member.

**Section 7. Commission: Bylaws.**

The Commission shall adopt bylaws, rules and regulations for the conduct of business, including a Conflict of Interest Disclosure Code as required by law.

**Section 8. Commission: officers.**

(a) The commission shall elect from its members a chair and vice chair and secretary.

(b) The chair shall assign contracts on behalf of the Authority and perform such other duties as may be imposed by the commission.

(c) The Vice Chair shall act in the absence of the Chair; and

(d) The Secretary shall countersign contracts signed by the Chair or Vice Chair and perform such other duties as may be imposed by the Commission. The Secretary shall cause a copy of this Agreement to be filed with the Secretary of State.

**Section 9. Auditor and Treasurer.**

The Commission shall appoint an Auditor and Treasurer. The Auditor and Treasurer shall have the custody of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in the Act, and shall assure strict accountability of funds and reporting of receipts and disbursements. The Auditor and Treasurer may retain consultants and other professionals to perform functions which may be delegated pursuant to the Act. The Auditor and Treasurer shall have charge of, handle and have access

to accounts, funds and money of the Authority and records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to other records of the Authority.

**Section 10. Legal Advisor.**

The Commission may appoint the legal advisor for the Authority who shall perform such duties as may be prescribed by the Commission.

**Section 11. Other Consultants and Employees.**

The Commission may appoint and employ such other consultants and independent contractors. In the case of consultants and contractors to be retained in connection with the issuance of any Bonds by the Authority, the Commission shall provide its proposed list of consultants and contractors to the staff of both Members for review and comment, and shall not retain any firm or person to whom one or both Members shall object in writing.

**Section 12. Employment Status.**

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

**Section 13. Insurance.**

The Authority shall obtain insurance, in amounts and with such deductions as shall be typical for other joint powers authorities in the State of the same type, to cover the following: general liability; and errors and omissions as to Commissioners and employees. Such insurance may be obtained through or under the auspices of either Member.

**Section 14. General Powers.**

The Authority shall exercise powers common to each of the Members and necessary to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth herein, including but not limited to, the common power of eminent domain with respect to public capital facilities. The Authority may finance the purchase, construction, expansion, improvement or rehabilitation of real or tangible property necessary or convenient for the operation of the Members, or any of them. The Authority shall have all of the powers provided in the Act.

**Section 15. Specific Powers.**

The Authority may do acts necessary for the exercise of the foregoing powers, including but not limited to the following:

- (a) Make and enter into contracts;
- (b) Employ agents or employees;
- (c) Acquire, construct, manage, maintain or operate any buildings, works or improvements;
- (d) Acquire, hold or dispose of public capital facilities;

- (e) Sue and be sued in its own name;
- (f) Incur debts, liabilities or obligations, provided that no debt, liability or obligation shall constitute a debt, liability or obligation of any of the Members;
- (g) Apply for, accept, receive and disburse grants, loans and other aid from any agency of the United States of America or of the State;
- (h) Invest any money in its treasury pursuant to the Act not required for the immediate needs of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as may other local agencies, pursuant to Section 53601 of the Government Code of the State;
- (i) Apply for letters of credit in order to secure the repayment of its Bonds and enter into agreements in connection therewith;
- (j) Carry out and enforce all the provisions of this Agreement; and
- (k) Purchase or lease real property.

**Section 16. Restrictions on Exercise of Powers.**

The powers of the Authority shall be exercised in the manner provided in the Act, and, except as otherwise set forth in the Act, shall be subject to the restrictions upon the manner of exercising such powers imposed upon the Members in the exercise of similar powers.

**Section 17. Obligations of Authority.**

The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the Commissioners or Members.

**Section 18. No Restrictions on Powers of Members Implied.**

The participation by any or all of the Members in the Authority shall not have the effect of circumscribing, limiting or restricting in any fashion or manner whatsoever the powers granted to and exercised by each Member as a public entity.

**Section 19. Assumption of Responsibilities by the Authority.**

As soon as practicable after the date of execution of this Agreement, the Commissioners shall give notice (in the manner required above) of the organizational meeting of the Commission. At said meeting the Commission shall provide for its regular meetings as required by this agreement and elect a Chairperson, Vice-Chairperson and the Secretary.

**Section 20. Delegation of Powers.**

The Authority may acquire by lease, lease-purchase, installment sale agreements, or otherwise, such real or tangible property necessary or convenient for the operation of the Members.

**Section 21. Credit to Members.**

Accounts or funds created and established pursuant to any trust agreement or indenture to which the Authority is a party, and any interest earned or accrued thereon, shall inure to the benefit of the respective Members for which such funds or accounts were created.

**Section 22. Contributions.**

The Members may in the appropriate circumstances when required hereunder:

- (a) Make contributions from their treasuries for the purposes set forth herein,
- (b) Make payments of public funds to defray the cost of such purposes,
- (c) Make advances of public funds for such purposes, such advances to be repaid as provided herein, or
- (d) Use their personnel, equipment or property in lieu of other contributions or advances.

The provisions of Government Code Section 6513 are hereby incorporated into this Agreement.

**Section 23. Costs Incurred in Anticipation of Bond Financing.**

The Authority will retain consultants and expend moneys to prepare for the issuance of Bonds. The members shall contribute sufficient moneys for the payment of such fees and expenses in the proportion of the Member shall benefit from the Bonds authorized to be issued. Members making such contributions shall be entitled to the reimbursement of such contribution from the net proceeds of sale of the related issue of Bonds.

**Section 24. Accounts and Reports.**

To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Auditor and Treasurer shall establish and maintain funds and accounts required by good accounting practice or by any fiscal agency or trust agreement or indenture entered into with respect to the proceeds of Bonds issued by the Authority. The books and records of the Authority in the hands of a trustee or the Auditor and Treasurer shall be open to inspection at reasonable times by representatives of the Members. Within 120 days after the close of each Fiscal Year, The Auditor and Treasurer of the Authority, shall give a complete written report of all financial activities for such Fiscal Year to the Members to the extent such activities are not covered by the report of such trustee. The trustee appointed under any fiscal agency or trust agreement or indenture shall establish suitable funds, furnish financial reports, and provide suitable accounting procedures to carry out the provisions of said fiscal agency or trust agreement or indenture. The trustee may be given such duties in the trust agreement or indenture as may be desirable to carry out this Agreement.

**Section 25. Funds.**

Subject to the any fiscal agency or trust agreement or indenture which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Auditor and Treasurer of the Authority shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted

accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

**Section 26. Annual Budget and Administrative Expenses.**

The Commission shall adopt a budget for administrative expenses annually prior to July 1 of each year. The estimated annual administrative expenses of the Authority shall be allocated by the Authority to the Members equally.

**Section 27. Indemnification.**

The Authority shall indemnify, defend and save harmless the Members, their officers, agents and employees, from and against claims and losses whatsoever occurring or resulting to persons, firms, corporations or other entities furnishing or supplying work, services, materials or supplies to the Authority in connection with the performance of this Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any person, firm, corporation or other entity, for damage, injury or death arising out of or connected with the Authority's or its officers', agents' or employees' acts or omissions under this Agreement.

**Section 28. Power to Enter into Membership Agreements.**

The Authority may enter into Membership Agreements with any Public Agency upon the approval thereof by four-fifths of the Commissioners.

**Section 29. Contents of Membership Agreements.**

Each Membership Agreement shall:

- (a) State that the Public Agency is a Member of the Authority;
- (b) Specify that the purpose of the Membership Agreement is to facilitate the financing of the purchase, construction, expansion, improvement or rehabilitation by the Public Agency of capital facilities necessary for the governmental operation of the Public Agency at a cost (taking into account the cost of such financing) which is less than would be possible if the Public Agency were to acquire the capital facilities independently of the Authority; and
- (c) Specify the fees, if any, to be charged the Public Agency for its participation in financings of the Authority.

**Section 30. Term.**

This agreement shall become effective as of the date of execution and shall continue in full force and effect until terminated by action of the governing body of one or both Members. This Agreement shall not terminate so long as obligations of the Members and Bonds issued pursuant hereto and the interest thereon shall not have been paid in full or adequate provision for such payment shall not have been made as set forth in the proceedings for the issuance thereof. This Agreement shall terminate and the Authority shall be dissolved five (5) years from the date hereof if no bonds shall have been issued by the Authority on or before the date or upon the earlier vote of the Commissioners.

**Section 31. Disposition of Assets.**

Upon termination of this Agreement, property of the Authority shall be divided among the parties in such manner as shall be agreed upon by the parties.

**Section 32. Withdrawal of Members.**

At any time prior to the issuance of Bonds for the benefit of a Member, that Member may withdraw from the Authority.

**Section 33. Notices.** Notices to the parties shall be in writing and shall be sufficient if delivered to:

City of California City  
ATTN: City Manager  
21000 Hacienda Blvd.  
California City, CA 93505

East Kern Healthcare District  
ATTN: Administrator  
P. O. Box 2546  
California City, CA 93505

**Section 34. Enforcement of Agreement.**

The Authority may take legal or equitable actions to enforce this Agreement. Venue shall be in the Superior Court of the County of Kern, California.

**Section 35. Successors.**

This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Members. None of the Members may assign any right or obligation hereunder without the written consent of the other Members.

**Section 36. Execution in Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**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, on the day and year set opposite the name of each of the parties.

**CITY OF CALIFORNIA CITY**

Executed: \_\_\_\_\_, 2007.

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

ATTEST:

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

City Clerk

[Seal]

**EAST KERN HEALTHCARE DISTRICT**

Executed: \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
Robert E. Smith, President

ATTEST:

By: \_\_\_\_\_  
Carmella Cook, Secretary

[Seal]

