

**Meeting Date:** 2/24/2015

**Report Type:** Consent

**Report ID:** 2015-00011

**Title: The Creamery: Declaration of Official Intent and Agreement to Reimburse Certain Expenditures from Proceeds of Indebtedness Resulting from the Issuance of Future Bonds**

**Location:** District 4

**Recommendation:** Pass 1) a Resolution declaring the intent of the City of Sacramento to reimburse certain expenditures from tax-exempt bonds; and 2) a Resolution authorizing the City Manager to execute an agreement with Lewis Land Developers, LLC to reimburse certain development fees from bond proceeds.

**Contact:** Sheri Smith, Program Specialist, (916) 808-7204; Mark Griffin, Program Manager, (916) 808-8788, Department of Finance; Damien Charley, Senior Debt Analyst (916) 808-5517, Office of the City Treasurer

**Presenter:** None

**Department:** Finance

**Division:** Public Improvement Finance

**Dept ID:** 06001321

**Attachments:**

- 1-Description/Analysis
- 2-Resolution-Intent to Reimburse
- 3-Resolution-Agreement
- 4-Agreement

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**City Attorney Review**

Approved as to Form  
Gerald Hicks  
2/18/2015 2:17:38 PM

**Approvals/Acknowledgements**

Department Director or Designee: Leyne Milstein - 1/21/2015 5:35:05 PM

## Description/Analysis

**Issue:** Lewis Land Developers LLC (Developer), the master developer of the Creamery development, has asked the City to form The Creamery Infrastructure Community Facility District No. 2015-02 (Improvements) (CFD) for the purpose of issuing tax exempt financing to fund street and utility-related improvements and development-related fees. The Developer will commence development of The Creamery development (Project), pay the requisite fees, and construct improvements before the issuance of bonds. The debt issuance is anticipated in calendar year 2016.

The Developer desires to be reimbursed for certain fees paid in advance of the tax-exempt financing. Federal tax regulations require that the City of Sacramento declare its intent to reimburse fees under these circumstances. In addition, state law requires that the parties declare their intent to reimburse eligible fees in the form of an agreement between the parties.

**Policy Considerations:** These actions are entirely permissive. The resolutions are passed solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations and state law. They do not bind the City to make any expenditure, to incur any indebtedness, or to proceed with the CFD or Project.

**Environmental Considerations:** The City Council's action in passing these resolutions is for the purpose of approving the reimbursement of fees as part of the formation of a special tax district and the sale of bonds and is, therefore, not a project for purposes of the California Environmental Quality Act.

**Rationale for Recommendation:** Passing these resolutions will allow greater flexibility for the reimbursement of certain fees associated with the Project. Projects are more financially viable with this capability.

**Financial Considerations:** Fees paid by the Developer would be reimbursed from available bond proceeds. The payment of principal and interest on the bonds would be secured by a special tax lien placed on each property within the CFD, without obligation to the City.

**Local Business Enterprise (LBD):** Not applicable.

## **RESOLUTION NO.**

Adopted by the Sacramento City Council

### **DECLARATION OF THE CITY OF SACRAMENTO'S OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM PROCEEDS OF INDEBTEDNESS OF ITS CREAMERY INFRASTRUCTURE COMMUNITY FACILITIES DISTRICT NO. 2015-02**

#### **BACKGROUND**

- A.** Lewis Land Developers LLC (“Developer”), the master developer of the Creamery development, has asked the City to form a community facilities district, The Creamery Infrastructure Community Facility District No. 2015-02.
- B.** Through the issuance of bonds (“CFD Special Tax Bonds”), the City will acquire certain public facilities constructed by Developer and finance certain other capital costs and certain fees paid to develop the Creamery (collectively, the “Project”).
- C.** To finance, on a long-term basis, the costs associated with the Project, the City reasonably expects to issue the CFD Special Tax Bonds (“Debt Obligations”) in calendar 2016, the interest on which is expected to be exempt from income taxation under the United States Internal Revenue Code. The amount of the Debt Obligations is not expected to exceed \$4 million.
- D.** The City expects to pay certain expenditures in connection with the Project before the issuance of the Debt Obligations (“Reimbursement Expenditures”) and to use a portion of the proceeds of the Debt Obligations, to reimburse the Reimbursement Expenditures.
- E.** If the City reimburses the Reimbursement Expenditures from the proceeds of Debt Obligations, then Section 1.150-2 of the United States Treasury Regulations (“Treasury Regulations”) requires the City to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

**Section 1.** The above recitals are true, and the City Council so finds and determines.

- Section 2.** This resolution is adopted solely for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. It does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Project.
- Section 3.** The City declares its official intent to use proceeds of indebtedness to reimburse itself for Reimbursement Expenditures.
- Section 4.** This resolution takes effect when adopted.

## RESOLUTION NO.

Adopted by the Sacramento City Council

### AGREEMENT WITH LEWIS LAND DEVELOPERS LLC FOR THE REIMBURSEMENT OF CERTAIN EXPENDITURES

#### BACKGROUND

- A. Lewis Land Developers LLC (“**Developer**”), the master developer of the Creamery development, has asked the City to form a community facilities district, The Creamery Infrastructure Community Facility District No. 2015-02 (“**CFD**”).
- B. Through the issuance of bonds, the City will acquire certain public facilities constructed by Developer and finance certain fees paid to develop the property.
- C. Developer desires to pay certain fees to commence development in advance of bond issuance and desires that fees paid in advance of the issuance of bonds be reimbursed with proceeds from that bond.
- D. State law requires that parties declare their intent to reimburse fees under these circumstances in the form of an agreement between the parties.
- E. The agreement does not bind the City to make any expenditure, incur any indebtedness, or proceed with the development of the Creamery (“**Project**”).

#### BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1.** The above recitals are true, and the City Council so finds and determines.
- Section 2.** This resolution is adopted solely for purposes of establishing intent to reimburse for certain fees paid in advance of a bond sale. It does not bind the City to make any expenditure, incur any indebtedness, or proceed with the Project or CFD.
- Section 3.** The City Manager is authorized enter into an Agreement to Reimburse Fees from Bond Proceeds with Developer providing that certain development fees paid in advance of a bond sale are deemed eligible as defined by law, the agreement, and to the extent of available bond proceeds.
- Section 4.** This resolution takes effect when adopted.

## AGREEMENT TO REIMBURSE FEES FROM BOND PROCEEDS City of Sacramento and Lewis Land Developers, LLC

### The Creamery Infrastructure Community Facilities District No. 2015-02

1. **Parties.** In this agreement, “the City” refers to the City of Sacramento, a California municipal corporation; and “Developer” refers to Lewis Land Developers, LLC, a Delaware limited liability company (“LLD”) and BlackPine City Flats, LLC, a Delaware limited liability company (“BlackPine”) (collectively “Developer”).
2. **Background.** Developer is developing the real property described in **Exhibit A** (“the Property”). Developer has asked the City to form a community facilities district—to be designated as “The Creamery Infrastructure Community Facilities District No. 2015-02, City of Sacramento, County of Sacramento, State of California” (the CFD)—that will cover the Property and be used to finance, through the issuance of bonds, both of the following: (a) the City’s acquisition of certain public facilities constructed by Developer; and (b) certain fees that Developer must pay to develop the Property. With this agreement, the City and Developer memorialize their intent that proceeds from the sale of bonds be available to finance the fees described in section 3 below if the criteria described in section 4 below are satisfied.
3. **Eligible Fees.** The following fees are eligible for financing with bond proceeds if, in the City’s sole judgment, the criteria set forth in section 4 are satisfied:
  - (a) The City’s Construction Excise Tax set forth in Sacramento City Code, chapter 3.36.
  - (b) The City’s Water Development Fee.
  - (c) The City’s Water Service Tap Fee.
  - (d) The City’s Water Meter Fee
  - (e) The City’s Quimby Park Fee.
  - (f) The City’s Park Development Impact Fee (Sacramento City Code, chapter 18.44).
  - (g) Any other fees the City Attorney, the City Treasurer, and bond counsel for the CFD (Bond Counsel) determine to meet the criteria for reimbursement specified in section 4.

Financing of eligible fees will occur through the City’s reimbursement to Developer from available bond proceeds for fees that Developer has paid. As between LLD and BlackPine, all reimbursements for eligible fees paid by Developer are to be paid to LLD.

4. **Criteria for Reimbursement.** A fee described in section 3 will be eligible for financing with bond proceeds only if the City determines that all of the following criteria have been met:
  - (a) Developer is obligated to pay the fee in connection with development of the Property. A fee that Developer pays itself will be eligible for financing only if

payment occurs on or after February 24, 2015, except as provided otherwise in subsection 4(c).

- (b) The resolution of intention, the resolution of formation, and the resolution to incur bonded indebtedness that are adopted for the CFD identify the fee as eligible for funding with bond proceeds.
- (c) In the opinion of the City Attorney and Bond Counsel, reimbursement is permitted by law and will not jeopardize the tax-exempt status of the bonds.

**5. Assignment.** Developer may assign its right to reimbursement, subject to the City's consent, which the City may not withhold unreasonably. The City Treasurer or designee is authorized to approve any assignment on the City's behalf. To be effective, both an assignment and the City's consent to an assignment must be in writing, approved for legal form by the City Attorney, and approved and executed by the City Treasurer or designee.

**6. The City's Obligation is Limited.** Neither the City's general fund nor any of the City's other funds, accounts, or monies, other than the bond proceeds specified in section 2, will be liable for payment of any obligations arising under this agreement. Those obligations are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, revenues, or other assets. This agreement embodies all of Developer's rights to reimbursement with respect to the fees described in section 3. This section is not to be interpreted as limiting the City's exercise of discretion under any other section of this agreement.

**7. Notices.** Any notice or other communication under this agreement must be in writing and will be considered properly given when delivered or mailed in the manner provided in this section to the following persons:

(a) If to City:                   Public Improvement Financing Unit  
  City of Sacramento  
  915 I Street, New City Hall Third Floor  
  Sacramento, CA 95814-2604  
  Attn: Mark Griffin, Manager

*with a copy to—*               City Treasurer  
  City of Sacramento  
  915 I Street, Historic City Hall, Third Floor  
  Sacramento, CA 95814-2604

(b) If to Developer: Lewis Land Developers  
  c/o Lewis Operating Corp.  
  9216 Kiefer Blvd., Suite 4  
  Sacramento, CA 95826  
  Attn: Phil Rodriguez

Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section. If sent by mail, a notice or other communication will be considered to have been given 48 hours after it has been deposited in the United States Mail, addressed as set forth above, with postage prepaid (registered or certified mail, return receipt requested).

- 8. Attorneys' Fees.** If a party requires the services of any attorneys to secure the performance of this agreement or to seek redress for another party's breach or default, or if litigation or arbitration is necessary to enforce or interpret this agreement, then the prevailing party will be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which that party is entitled.
- 9. Interpretation and Venue.** This agreement is to be interpreted and applied in accordance with California law. Exhibit A is part of this agreement. Any litigation concerning this agreement must be brought and prosecuted in the Sacramento County Superior Court.
- 10. Waiver.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon another party's breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any term or provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
- 11. Execution of Agreement.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
- 12. Entire Agreement.** This agreement sets forth the parties' entire understanding regarding the matters set forth. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by all parties.

\* \* \*

**City of Sacramento**

**Developer**

Lewis Land Developers, LLC,  
a Delaware limited liability company

By:

\_\_\_\_\_  
John F. Shirey  
City Manager

By: Lewis Operating Corp.,  
a California corporation  
Its Sole Manager

By: John M Goodman  
Name: John M. Goodman  
Title: Sr. VP/CEO/CFO

Attest  
City Clerk

By:

\_\_\_\_\_

BLACKPINE CITY FLATS, LLC, a Delaware limited liability company

Approved as to Form  
City Attorney

BY: PRESIDIO PARIS II, LLC, a Delaware limited liability company, its Manager

By:

\_\_\_\_\_  
Senior Deputy City Attorney

BY: PRESIDIO MERCED LAND IV ACTIVE, LLC, a Delaware limited liability company, its Co-Manager

BY: MERCED PACIFIC ACTIVE IV, LLC, a Delaware limited liability company, its Manager

BY: SERIES M4 OF MERCED CAPITAL PARTNERS, LLC, a Delaware limited liability company, its Manager

By: \_\_\_\_\_  
Name:  
Title: Authorized Person

BY: BLACKPINE BUILDERS, INC., a California corporation, its Co-Manager

By: \_\_\_\_\_  
Name: Michael Paris  
Title: President

**City of Sacramento**

**Developer**

Lewis Land Developers, LLC,  
a Delaware limited liability company

By:

\_\_\_\_\_  
John F. Shirey  
City Manager

By: Lewis Operating Corp.,  
a California corporation  
Its Sole Manager

Attest  
City Clerk

By: \_\_\_\_\_  
Name: John M. Goodman  
Title: Sr. VP/CEO/CFO

By:

\_\_\_\_\_

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Approved as to Form  
City Attorney

BY: PRESIDIO PARIS II, LLC, a Delaware limited liability company, its Manager

By:

\_\_\_\_\_  
Senior Deputy City Attorney

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BY: MERCED PACIFIC ACTIVE IV, LLC, a Delaware limited liability company, its Manager

BY: SERIES M4 OF MERCED CAPITAL PARTNERS, LLC, a Delaware limited liability company, its Manager

By:   
Name: \_\_\_\_\_  
Title: Authorized Person

BY: BLACKPINE BUILDERS, INC., a California corporation, its Co-Manager

By: \_\_\_\_\_  
Name: Michael Paris  
Title: President

**City of Sacramento**

**Developer**

Lewis Land Developers, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
John F. Shirey  
City Manager

By: Lewis Operating Corp.,  
a California corporation  
Its Sole Manager

Attest  
City Clerk

By: \_\_\_\_\_  
Name: John M. Goodman  
Title: Sr. VP/CEO/CFO

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

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Approved as to Form  
City Attorney

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By: \_\_\_\_\_  
Senior Deputy City Attorney

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BY: MERCED PACIFIC ACTIVE IV, LLC, a Delaware limited liability company, its Manager

BY: SERIES M4 OF MERCED CAPITAL PARTNERS, LLC, a Delaware limited liability company, its Manager

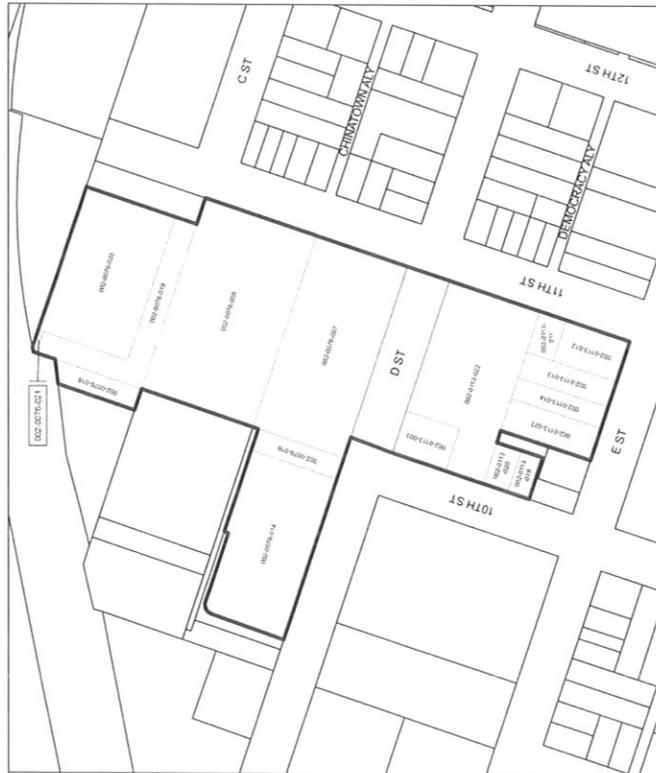
By: \_\_\_\_\_  
Name:  
Title: Authorized Person

BY: BLACKPINE BUILDERS, INC., a California corporation, its Co-Manager

By:   
Name: Michael Paris  
Title: President

# Exhibit A

**BOUNDARY MAP**  
**THE CREAMERY INFRASTRUCTURE**  
**COMMUNITY FACILITIES DISTRICT NO. 2015-02**  
**CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA**  
**SHEET 1 OF 1**



CLERK'S MAP FILING STATEMENT.  
 FILED IN THE OFFICE OF THE CLERK OF CITY OF  
 SACRAMENTO, COUNTY OF SACRAMENTO, STATE  
 OF CALIFORNIA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015

CITY CLERK,  
 CITY OF SACRAMENTO, CALIFORNIA

CLERK'S CERTIFICATE.  
 I HEREBY CERTIFY THAT THE MAP SHOWING BOUNDARY  
 MAP THE CREAMERY INFRASTRUCTURE COMMUNITY FACILITIES  
 DISTRICT NO. 2015-02, CITY OF SACRAMENTO, COUNTY  
 OF SACRAMENTO, STATE OF CALIFORNIA WAS APPROVED BY  
 THE CITY COUNCIL OF THE CITY OF SACRAMENTO AT  
 A MEETING THEREOF, HELD ON THE \_\_\_\_\_ DAY  
 OF \_\_\_\_\_, 2015, BY ITS RESOLUTION NO. \_\_\_\_\_

CITY CLERK,  
 CITY OF SACRAMENTO, CALIFORNIA

COUNTY RECORDER'S FILING STATEMENT.  
 FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015, AT THE  
 HOUR OF \_\_\_\_\_ CLOCK \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ OF MAPS  
 OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS  
 AT PAGE \_\_\_\_\_ IN THE OFFICE OF THE COUNTY RECORDER  
 OF THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA.

COUNTY RECORDER  
 OF THE COUNTY OF SACRAMENTO, CALIFORNIA

BY \_\_\_\_\_ DEPUTY DOCUMENT NO. \_\_\_\_\_

  
**SACRAMENTO**  
 Finance Department  
OFFICE OF THE COUNTY CLERK AND COUNTY RECORDER