

Meeting Date: 11/10/2015

Report Type: Consent

Report ID: 2015-00315

Title: McKinley Village CFD (Agreement to Reimburse Fees from Tax and Bond Proceeds)

Location: District 3

Recommendation: Pass a Motion authorizing the City Manager to execute an agreement with Encore McKinley Village, 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

Presenter: None

Department: Finance

Division: Public Improvement Finance

Dept ID: 06001321

Attachments:

1-Description/Analysis

2-Background

3-Agreement

City Attorney Review

Approved as to Form

Joseph Cerullo

11/4/2015 4:28:30 PM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 10/21/2015 10:24:41 AM

Description/Analysis

Issue: On July 28, 2015, the City Council adopted Resolution No. 2015-0242 establishing the McKinley Village Community Facilities District No. 2015-04 (the CFD) to levy a special tax to finance the acquisition and construction of public capital facilities and to finance governmentally imposed development fees used to fund public facilities. Encore McKinley Village LLC (the Developer), will commence development of the McKinley Village Development (the Project), pay the requisite fees, and construct improvements. Through the issuance of bonds, the City will acquire certain public facilities constructed by the Developer. The debt issuance is anticipated in calendar year 2015.

Policy Considerations: This action is entirely permissive. The agreement is executed principally for purposes of establishing compliance with the requirement of state law that parties declare intent to reimburse fees from bond proceeds from bonds issued after payment of those fees. It does not bind the City to make any expenditure, to incur any indebtedness, or to proceed with the Project.

Environmental Considerations: The Council's action in authorizing the City Manager to execute the agreement is for the purpose of approving the reimbursement of fees from special taxes or bond proceeds as part of the administration of the CFD and is therefore not a "project" for purposes of the California Environmental Quality Act.

Rationale for Recommendation: The recommended action 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 exclusively from available bond proceeds or special-tax revenues. 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 (LBE): Not applicable.

Background

The McKinley Village Project (the Project) is proposed for a site that was in agricultural use and under cultivation until at least the late 1980s as part of Mize's Farm. The eastern portion of the site was planted with a peach orchard, and the remainder was regularly plowed and planted with an assortment of vegetables. The orchard was removed in late 2006.

The site has had multiple development proposals since the 1990s, including a discount shopping mall and two other residential developments with higher densities than the Project. As approved by the City Council on April 29, 2014, the Project will result in a 336-unit residential subdivision with a 4,200-square-foot recreation center and multiple neighborhood parks. The Project comprises several types of housing, including single-family-detached units, condominiums, and optional second units. Construction of the financed improvements is estimated to be completed by 2016, and one bond sale is anticipated.

Purpose of the Proposed Community Facilities District

The "City of Sacramento McKinley Village Community Facilities District No. 2015-04 (Improvements)" (the CFD) will finance certain development fees and public improvements within the public right-of-way and adjacent public-utility easements of the major public roads intersecting, serving, or bordering the CFD's boundary.

Site Plan



AGREEMENT TO REIMBURSE FEES FROM TAX AND BOND PROCEEDS

City of Sacramento McKinley Village Community Facilities District No. 2015-04 (Improvements)

This Agreement to Reimburse Fees from Tax and Bond Proceeds, dated November 10, 2015, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the "City"); and ENCORE MCKINLEY VILLAGE, LLC, a Delaware limited-liability company ("MKV").

Background

MKV is developing the real property identified in Exhibit A (the "Property") and has asked the City to form a community facilities district*—to be designated as "City of Sacramento McKinley Village Community Facilities District No. 2015-04 (Improvements)" (the "CFD")—that will cover the Property and be used to finance both of the following through the issuance of bonds: the City's acquisition of certain public facilities constructed by MKV; and certain fees that MKV must pay to develop the Property.

By this agreement, the City and MKV memorialize their intent that revenues from the special tax the City levies for the CFD and the proceeds of bonds the City issues through the CFD be available to finance the fees described in section 1 below if the criteria described in section 2 or 3 below, as applicable, are satisfied.

With these background facts in mind, the parties agree as follows:

1. **Eligible Fees.** The following fees are eligible for financing with special-tax revenues and bond proceeds if, in the City's sole judgment, the criteria set forth in either section 2 (for special taxes) or section 3 (for bond proceeds) are satisfied:
 - (a) The City's building-excise tax (Sacramento City Code, chapter 3.36), also known as the major-street-construction tax.
 - (b) The City's water-system-development fee (Sacramento City Code, section 13.04.820).
 - (c) The City's water-service-connection fee (Sacramento City Code, section 13.04.790).
 - (d) The City's water-meter fee (Sacramento City Code, section 13.04.290).
 - (e) The City's Quimby fee for parks and recreational facilities (Sacramento City Code, chapter 16.64).
 - (f) The City's park-development-impact fee (Sacramento City Code, chapter 18.44).

* Community facilities districts are established under the Mello-Roos Community Facilities Act of 1982, set out at California Government Code sections 53311 through 53368.3.

- (g) The Sacramento Regional County Sanitation District's sewer-impact fee, but only if covered by a Joint Community Facilities Agreement between the district and the City as required by California Government Code section 53316.2.
 - (h) The Sacramento Area Flood Control Agency's development-impact fee, but only if covered by a Joint Community Facilities Agreement between the district and the City as required by California Government Code section 53316.2.
 - (i) The Sacramento City Unified School District's school-impact fee, but only if covered by a Joint Community Facilities Agreement between the district and the City as required by California Government Code section 53316.2.
 - (j) Any other fees the City determines to meet the criteria for reimbursement.
- 2. Criteria for Reimbursement from Special-Tax Revenues.** A fee identified in section 1 will be eligible for reimbursement from special-tax revenues only if the City determines, in its sole judgment, that all of the following criteria have been satisfied for that fee:
- (a) MKV is obligated to pay the fee in connection with development of the Property.
 - (b) MKV pays the fee on or after November 10, 2015, and requests that the City reimburse the payment from special-tax revenues.
 - (c) The resolution of formation that was adopted for the CFD identifies the fee as eligible for reimbursement from special-tax revenues.
 - (d) The City's Finance Department has determined, in its sole discretion and after consulting with the City Attorney's Office, that reimbursing the payment from special-tax revenues is appropriate.
 - (e) For a fee imposed by a government agency other than the City, the City and the other agency have entered into an agreement, such as a "joint community facilities agreement," that to the satisfaction of the City Attorney and bond counsel for the CFD obligates the agency (1) to use the fees solely for public facilities in accordance with law; and (2) to allow the City to inspect the agency's records of spending those fees.
- 3. Criteria for Reimbursement from Bond Proceeds.** A fee described in section 1 will be eligible for reimbursement from bond proceeds only if the City determines, in its sole discretion, that all of the following criteria have been met for that fee:
- (a) MKV is obligated to pay the fee in connection with development of the Property.
 - (b) MKV pays the fee on or after November 10, 2015, and requests that the City reimburse the payment from bond proceeds.

- (c) The resolution of intention, the resolution of formation, and the resolution deeming it necessary to incur bonded indebtedness that are adopted for the CFD identify the fee as eligible for reimbursement from bond proceeds.
- (d) In the opinion of the City Attorney and bond counsel for the CFD, reimbursement from bond proceeds is permitted by law and will not jeopardize the tax-exempt status of the bonds.
4. **Assignment.** MKV may assign its right to reimbursement subject to the City’s consent, which the City may not withhold unreasonably. The City Treasurer or his 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 signed by the City Treasurer or his designee.
5. **Reimbursement Limit.** The total amount that the City pays to MKV under this agreement from any combination of special-tax revenues and bond proceeds generated through the CFD may not exceed any reimbursement or expenditure limit in the Acquisition and Shortfall Agreement related to the CFD.
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 special-tax revenues and the bond proceeds specified in the Background, 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 MKV’s rights to reimbursement with respect to the fees identified in section 1. This section 5 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 and effective only when mailed or delivered in the manner provided by this section 6 to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A 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 6.

If to the City:

City of Sacramento
 Public Improvement Financing
 New City Hall
 915 I Street, Third Floor
 Sacramento, California 95814
 Attention: Mark Griffin, Manager

with a copy to—

If to MKV:

Encore McKinley Village, LLC
 c/o The New Home Company
 2220 Douglas Blvd, Suite 240
 Roseville, California 95661
 Attention: Kevin Carson

with copies to—

City of Sacramento
Office of the City Treasurer
Historic City Hall
915 I Street, Third Floor
Sacramento, California 95814

RCI-McKinley Village, LLC
c/o Riverview Capital Investments, Inc.
3301 C Street, Suite 1000, Second Floor
Sacramento, California 95816
Attention: Phil Angelides

Encore Housing Opportunity Fund II, L.P.
One Letterman Drive
Building C, Suite 3800
San Francisco, California 94129
Attention: Hector Calderon

8. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibit A is part of this agreement.
9. **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.
10. **Effective Date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
11. **Counterparts.** 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 and is intended to be their final, complete, and exclusive expression of those matters. 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.

(Signature Page Follows)

City of Sacramento

By: _____
Leyne Milstein, Finance Director for
John F. Shirey, City Manager
Date: _____, 2015

Attest
City Clerk

By: _____

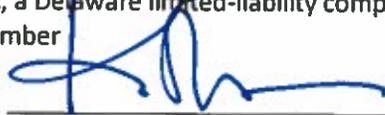
Approved as to Form
City Attorney

By: _____
Senior Deputy City Attorney

Encore McKinley Village, LLC

By: McKinley Village, LLC, a Delaware limited-liability
company, its managing member

By: The New Home Company Northern California,
LLC, a Delaware limited-liability company,
member

By: 

Signature

Kevin S. Carson

Print Name

President

Print Title

Date: October 21, 2015

Exhibit A

BOUNDARY MAP
MCKINLEY VILLAGE COMMUNITY FACILITIES
DISTRICT NO. 2015-04 (IMPROVEMENTS)
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 THE BOUNDARY MAP OF MCKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT NO. 2015-04 (IMPROVEMENTS) FOR THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO AT A REGULAR 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 _____ O'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:

 COUNTY OF SACRAMENTO, CALIFORNIA

BY, DEPUTY: _____ DOCUMENT NO. _____

APNs: 081-0170-013-0000
 001-0170-028-0000
 003-0081-006-0000
 003-0081-011-0000

SACRAMENTO
 Finance Department