



# REPORT TO COUNCIL

## City of Sacramento

# 26

915 I Street, Sacramento, CA 95814-2604  
www. CityofSacramento.org

Consent  
October 17, 2006

Honorable Mayor and  
Members of the City Council

**Title:** Natomas Central Community Facilities District (CFD), Approve Agreement to Reimburse Fees

**Location/Council District:** North Natomas – Southwest corner of Del Paso Road and El Centro Road, located in Council District 1.

**Recommendation:** Adopt a **Resolution:** 1) authorizing reimbursement from the future bond proceeds associated with the Natomas Central Community Facilities District No. 2006-02; and 2) approving the **Agreement** to Reimburse Fees from Bond Proceeds.

**Contact:** Thomas Berke, Assistant City Treasurer, 808-5168, Janelle Gray, Public Finance and Banking Manager, 808-8296; Kimberlie Gladden, Senior Debt Analyst, 808-2675

**Presenters:** Not Applicable

**Department:** City Treasurer's Office

**Division:** Finance

**Organization No:** 0900

### Description/Analysis

**Issue:** K. Hovnanian Forecast Homes Northern, Inc. (Forecast), the landowner of the Natomas Central CFD has asked the City to form a community facilities district. Through the issuance of bonds the City will acquire certain public facilities constructed by Forecast and reimburse Forecast for certain fees paid to develop the property.

With the agreement attached, the City and Forecast memorialize their intent that proceeds from the sale of bonds be available to finance the fees described on Attachment 2.

**Policy Considerations:** 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.



**Environmental Considerations:** The City Council's action in adopting the resolution is for the purpose of approving an agreement as part of the formation and sale of bonds, therefore, not a project for purposes of the California Environmental Quality Act.

**Rationale for Recommendation:** The issuance of the bonds will allow for the acquisition and construction of authorized facilities and in turn assist in the growth and development of the North Natomas area.

**Financial Considerations:** Forecast will cash fund fees and improvements and will be reimbursed at a later time through available bond proceeds. Financing of eligible fees will occur in one of two ways: for a fee that Forecast has paid, the City will reimburse Forecast from available bond proceeds; and for a fee that Forecast owes but has not paid, the City will use available bond proceeds to pay the fee on Forecast's behalf.

The payment of principal and interest on the bonds is secured by a special tax lien placed on each property within the CFD, without obligation to the City.

**Emerging Small Business Development (ESBD):** City Council adoption of the attached resolution is not affected by City policy related to the ESBD Program.

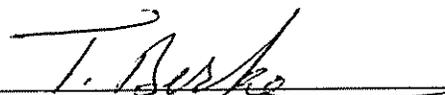
Respectfully Submitted by:

  
\_\_\_\_\_  
Kimberlie Gladden  
Senior Debt Analyst

Approved by:

  
\_\_\_\_\_  
Janelle Gray  
Public Finance & Banking Manager

Recommendation Approved:

  
\_\_\_\_\_  
Thomas S. Berke  
Assistant City Treasurer

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## **BACKGROUND**

The proposed Natomas Central CFD No. 2006-02 consists of approximately 398 gross developable acres. At full build-out, Natomas Central will be a 2,400+ unit subdivision, with a mix of ten different housing types, a K-8 elementary school, 30+ acres of parks (and additional open space), 27 acre detention basin/lake, a fire station, recreation center, and other amenities.

City Council is scheduled to adopt resolutions of intention to levy a special tax and incur bonded indebtedness as well as set a public hearing on October 10, 2006. The current landowners in the CFD are authorizing the issuance of up to \$35 million in bonds for the district. It is anticipated that the bonds will be issued in the Spring of 2007.

### Purpose of the CFD

The proposed district 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 and/or bordering the district boundary.

## Agreement to Reimburse Fees from Bond Proceeds

### Natomas Central Community Facilities District No. 2006-02

1. **Parties.** In this agreement, “the City” refers to the **City of Sacramento**, a California municipal corporation; and “Forecast” refers to **K. Hovnanian Forecast Homes Northern, Inc.**, a California corporation.
2. **Background.** Forecast is developing the real property described in **Exhibit A** (the Property). Forecast has asked the City to form a community facilities district<sup>1</sup>—to be designated as “Natomas Central Community Facilities District No. 2006-02, 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 Forecast; and (b) certain fees that Forecast must pay to develop the Property. With this agreement, the City and Forecast 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 (Sacramento City Code, chapter 3.36).
  - (b) The City’s Sewer Development Fee.
  - (c) The City’s Water Development Fee.
  - (d) The City’s Housing Trust Fund Fee.
  - (e) The City’s Water-and-Sewer Tap Fee.
  - (f) The City’s Quimby Park Fee.
  - (g) The City’s Habitat Conservation Fee (Sacramento City Code, chapter 18.40).
  - (h) The City’s Natomas Area Development Fees (Sacramento City Code, chapter 18.24).
  - (i) The City’s Park Development Impact Fee (Sacramento City Code, chapter 18.44).
  - (j) Fees imposed by school districts.
  - (k) Fees imposed by the Sacramento Regional County Sanitation District.
  - (l) Fees imposed by Sacramento County Sanitation District No. 1.

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<sup>1</sup> Community Facilities Districts are established under the Mello-Roos Community Facilities Act of 1982, set out at Government Code sections 53311 through 53368.3.

- (m) Fees imposed by the Sacramento Municipal Utility District.
- (n) Fees imposed by the Sacramento Metropolitan Air Quality Management District.
- (o) 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 in one of two ways: for a fee that Forecast has paid, the City will reimburse Forecast from available bond proceeds; and for a fee that Forecast owes but has not paid, the City will use available bond proceeds to pay the fee on Forecast's behalf.

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) The City has financed, through the issuance of bonds, the acquisition from Forecast of all authorized public facilities needed to serve the Property when it is developed, and bond proceeds are still available to finance all or part of the fee. "Authorized public facilities" means facilities identified in the CFD formation documents as eligible for financing with bond proceeds.
  - (b) Forecast is obligated to pay the fee in connection with development of the Property. A fee that Forecast pays itself will be eligible for financing only if payment occurs on or after July 21, 2006, except as provided otherwise in subsection 4(e).
  - (c) 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.
  - (d) 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.
  - (e) For the City's Habitat Conservation Fee, the fee must be associated with a public facility the City acquired or will acquire with bond proceeds. Such a fee will be eligible even if paid before July 21, 2006.
  - (f) For a fee imposed by a government agency other than the City, the City and the other agency have entered into an agreement that, to the satisfaction of the City Attorney and Bond Counsel, obligates the agency (1) to use the fees solely for public facilities and in accordance with all federal tax statutes and regulations applicable to the bonds and the bond proceeds (e.g., arbitrage restrictions); and (2) to report to the City on the agency's spending of the bond proceeds, or, at the City's option, to allow the City to inspect the agency's records of spending the bond proceeds.



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**

**K. Hovnanian Forecast Homes  
Northern, Inc.**

By: \_\_\_\_\_  
Ray Kerridge  
City Manager

By: \_\_\_\_\_  
Richard J. Balestreri  
Senior Vice President

Date: \_\_\_\_\_, 2006

Date: \_\_\_\_\_, 2006

Attest  
City Clerk

Approved for Legal Form  
City Attorney

By: \_\_\_\_\_  
City Clerk

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

## **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 NATOMAS CENTRAL COMMUNITY FACILITIES DISTRICT NO. 2006-02, SPECIAL TAX BONDS (2006)**

#### **BACKGROUND**

- A.** The City Council has determined to construct and acquire certain public facilities authorized under its Natomas Central Community Facilities District No. 2006-02, including collector roadways, intersection widening and associated landscaping for the nature park and open space (collectively, the "Project").
- B.** To finance, on a long-term basis, the costs associated with the Project, the City reasonably expects to issue its Natomas Central Community Facilities District No. 2006-02 Special Tax Bonds, the interest on which is to be exempt from income taxation under the United States Internal Revenue code (the "Debt Obligations"). The amount of the Debt Obligations is not expected to exceed \$35,000,000.
- C.** The City expects to pay certain expenditures in connection with the Project before the issuance of the Debt Obligations (the "Reimbursement Expenditures") and to use a portion of the proceeds of the Debt Obligations, to reimburse the Reimbursement Expenditures.
- D.** If the City reimburses the Reimbursement Expenditures from the proceeds of Debt Obligations, then Section 1.150-2 of the United States Treasury Regulations (the "Treasury Regulations") requires the City to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing.
- E.** The City Council is fully advised as to this matter.

#### **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 Manager or his designee is hereby authorized and directed to execute and deliver the Agreement to Reimburse Fees from Bond Proceeds in substantially the form presented to this meeting, with such changes as are approved by the City Manager in consultation with the City Treasurer, City Attorney and Bond Counsel, such approval and consultation to be conclusively evidenced by such execution and delivery. The City Clerk of the City is authorized to attest its execution.
- Section 4.** The City declares its official intent to use proceeds of indebtedness to reimburse itself for Reimbursement Expenditures.
- Section 5.** This resolution takes effect when adopted.