REPORT TO COUNCIL
City of Sacramento

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

Consent
October 16, 2007

Honorable Mayor and
Members of the City Council

Title: Declaration of Intent to Reimburse Certain Expenditures from Bond Proceeds and Approval of Agreement to Reimburse Fees – Natomas Landing CFD No. 2007-02

Location/Council District: Natomas Landing Development (Northeast corner of Del Paso Road and El Centro Road)/Council District 1.

Recommendation: Adopt a **Resolution** 1) stating the City's "official intent" to reimburse itself from future bond proceeds associated with the Natomas Landing Community Facilities District No. 2007-02; and 2) approving an **Agreement** to reimburse Ose Properties certain development fees from future bond proceeds.

Contact: Salina Cheung, Program Specialist, (916) 808-5236; Mark Griffin, Fiscal Manager, (916) 808-8788

Presenters: Not Applicable

Department: Planning

Division: Public Improvement Financing

Organization No: 4915

Description/Analysis

Issue: Ose Properties, the owner of the Natomas Landing development, has asked the City to form a community facilities district. Through the issuance of bonds, the City will acquire certain public facilities constructed by Ose Properties and reimburse Ose Properties for certain fees paid to develop the property.

As required by federal tax regulations, the attached resolution states the City's "official intent" to reimburse itself from bond proceeds for certain expenditures. The resolution also approves an agreement confirming that certain development fees paid by Ose Properties before the CFD is formed will be eligible for reimbursement from bond proceeds. This action in no way obligates the City to approve a development proposal or to issue bonds.

Policy Considerations: This resolution is adopted for two reasons. The principal reason is to establish compliance with the requirements of state law that when the City pays bond proceeds to a private party, it is either for the present acquisition of a public improvement, or to discharge a valid contractual obligation incurred at the time it acquired a public improvement or received a fee applicable to a public improvement. The Resolution accomplishes this by approving the Agreement to Reimburse Fees from Bond Proceeds.

The second, and secondary, reason to adopt the Resolution is to ensure compliance with federal tax law if the City, at any point, decides to advance funds toward any of the public improvements and wants to preserve the right to reimburse itself from the proceeds of tax-exempt bonds to be sold in the future. There is no present intention to have the City advance funds for this project, but this Resolution protects the City's rights should that, nonetheless, occur.

This action is entirely permissive. 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, it is not a project for purposes of the California Environmental Quality Act.

Rationale for Recommendation: The reimbursement of fees from bonds permits the financing of fees through bond debt regardless of when the fees are paid. Projects are more financially viable with this capability.

Financial Considerations: Financing of eligible fees will occur in one of two ways: for a fee that Ose Properties has paid, the City will reimburse Ose Properties from available bond proceeds; and for a fee that Ose Properties owes but has not paid, the City will use available bond proceeds to pay the fee on Ose Properties' behalf.

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.

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: _____
Mark Griffin
Fiscal Manager, Planning Department

Approved by: _____
Carol Shearly
Director, Planning Department

Recommendation Approved:

_____
Ray Kerridge
City Manager

Table of Contents:

Report pg 1

Attachments

1 Agreement to Reimburse Fees pg 4

2 Resolution pg 10

Attachment 1

AGREEMENT TO FINANCE FEES & COST REIMBURSEMENTS WITH BONDS

City of Sacramento and Ose Properties No. 2

Natomas Landing Community Facilities District No. 2007-02

This agreement, dated October 16, 2007, for purposes of identification, is between the **City of Sacramento** (▪the City▪), a California municipal corporation; and **Ose Properties No. 2** ("Ose Properties"), a California limited partnership.

Background

A. Ose Properties is developing the real property described in **Exhibit A** (the "Property"). Ose Properties has asked the City to form a community facilities district[1]—to be designated as ▪Natomas Landing Community Facilities District No. 2007-02, 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, one or more of the following: (1) costs the City incurs to construct certain public facilities; (2) costs the City incurs to acquire certain public facilities constructed by Ose Properties; (3) development fees Ose Properties must pay to develop the Property; and (4) cost reimbursements Ose Properties must pay to the City under City Agreement No. 2007-0873.

B. By this agreement, the City and Ose Properties intend to memorialize their intent that proceeds from the sale of bonds be available to finance both of the following: (1) the development fees described in section 1 below, but only if the criteria described in section 2 below are satisfied; and (2) the cost-reimbursement payments described in section 3 below.

With these background facts in mind, the City and Ose Properties agree as follows:

1. **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 2 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 Water-Meter Fee (Sacramento City Code, section 13.04.290).

   (g) The City▪s Quimby Park Fee.

   (h) The City▪s Habitat Conservation Fee (Sacramento City Code, chapter 18.40).

   (i) The City▪s Natomas Area Development Fees (Sacramento City Code, chapter 18.24).

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

(j) The City's Park Development Impact Fee (Sacramento City Code, chapter 18.44).

(k) Fees imposed by school districts.

(l) Fees imposed by the Sacramento Regional County Sanitation District.

(m) Fees imposed by Sacramento County Sanitation District No. 1.

(n) Fees imposed by the Sacramento Municipal Utility District.

(o) Fees imposed by the Sacramento Metropolitan Air Quality Management District.

(p) 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 2.

Financing of eligible fees will occur in one of two ways: for a fee that Ose Properties has paid, the City will reimburse Ose Properties from available bond proceeds; and for a fee that Ose Properties owes but has not paid, the City will use available bond proceeds to pay the fee on Ose Properties' behalf.

2. **Criteria for Fee Financing.** A fee described in section 1 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 Ose Properties 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) Ose Properties is obligated to pay the fee in connection with development of the Property.

(c) If Ose Properties pays the fee, then it does so on or after the effective date of this agreement, defined below in section 11.

(d) The resolution of formation that is adopted for the CFD identifies the fee as eligible for funding with bond proceeds.

(e) The City Attorney and Bond Counsel determine, in their sole discretion, that using bond proceeds to finance the fee is permitted by law and will not jeopardize the tax-exempt status of the bonds.

(f) For the City's Habitat Conservation Fee, if payment occurs before the effective date of this agreement (defined below in section 11), then—

(1) the fee must be associated with either (A) a public facility the City acquires with bond proceeds on or after the effective date; or (B) a public facility the City acquires with bond proceeds before the effective date that is covered by a reimbursement agreement or City policy allowing for reimbursement; and

(2) reimbursement will be limited to the portion of the fee attributable to the facility, less any applicable fee credits.

(g) For a fee imposed by a government agency other than the City, the City and the other agency have entered into an joint communities facilities 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.

3. **Cost-Reimbursement Payments.** Ose Properties' reimbursement payments under City Agreement No. 2007-0873 (titled "Agreement for Widening Del Paso Road and Improving a Portion of El Centro Road" and dated August 27, 2007) will be eligible for financing with bonds proceeds if the City Attorney and Bond Counsel determine, in their sole discretion, that using bond proceeds to finance the reimbursement payments is permitted by law and will not jeopardize the tax-exempt status of the bonds. These payments, estimated to total $479,422, represent Ose Properties' share of the City's costs to improve portions of Del Paso and El Centro Roads and to install a traffic signal at the intersection of those roads. The City shall reimburse Ose Properties, from available bond proceeds, for Ose Properties' actual reimbursement payments to the City under City Agreement No. 2007-0873.

4. **Assignment.** Ose Properties may assign its reimbursement rights under this agreement, subject to the City's consent, which the City may not withhold unreasonably. The City Treasurer 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.

5. **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 above 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 Ose Properties' rights to reimbursement with respect to the fees described in section 1 and the cost reimbursement described in section 3. By signing this agreement, Ose Properties acknowledges that its payment of any fees described in section 1 and its obligations under City Agreement No. 2007-0873 are *not* conditioned upon later reimbursement from the proceeds of bonds sold through the CFD; that this agreement *does not obligate* the City to form the CFD or issue bonds; and that the City has no legal or equitable obligation to reimburse Developer for the fees described in section 1 or the cost reimbursement described in section 3, except as specifically provided in this agreement.

6. **Notices.** Any notice or other communication under this agreement must be in writing and must be delivered or mailed to the following persons:

(a) If to the City: Planning Department
Public Improvement Financing Division
City of Sacramento
915 I Street, Third Floor
Sacramento, CA 95814-2604
Attn: Manager

with a copy to: City Treasurer
City of Sacramento
915 I Street, HCH Third Floor
Sacramento, CA 95814-2604
Attn: Manager, Public Finance & Banking

(b) If to Ose Properties: Ose Properties, Inc.

2399 American River Drive, Suite 7
Sacramento, CA 95825
Attn: Enlow Ose

Notices will be effective when actually received, and the parties shall not refuse or evade delivery or mailing of any notice. Either 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.

7. **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.

8. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that the rule of interpretation in 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. **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.

11. **Effective Date.** This agreement is effective as of the date both parties have signed below.

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

By: _____
Ray Kerridge, City Manager
Date: October __, 2007

Attest:
Sacramento City Clerk

By: _____

Approved for Legal Form
Sacramento City Attorney

By: _____

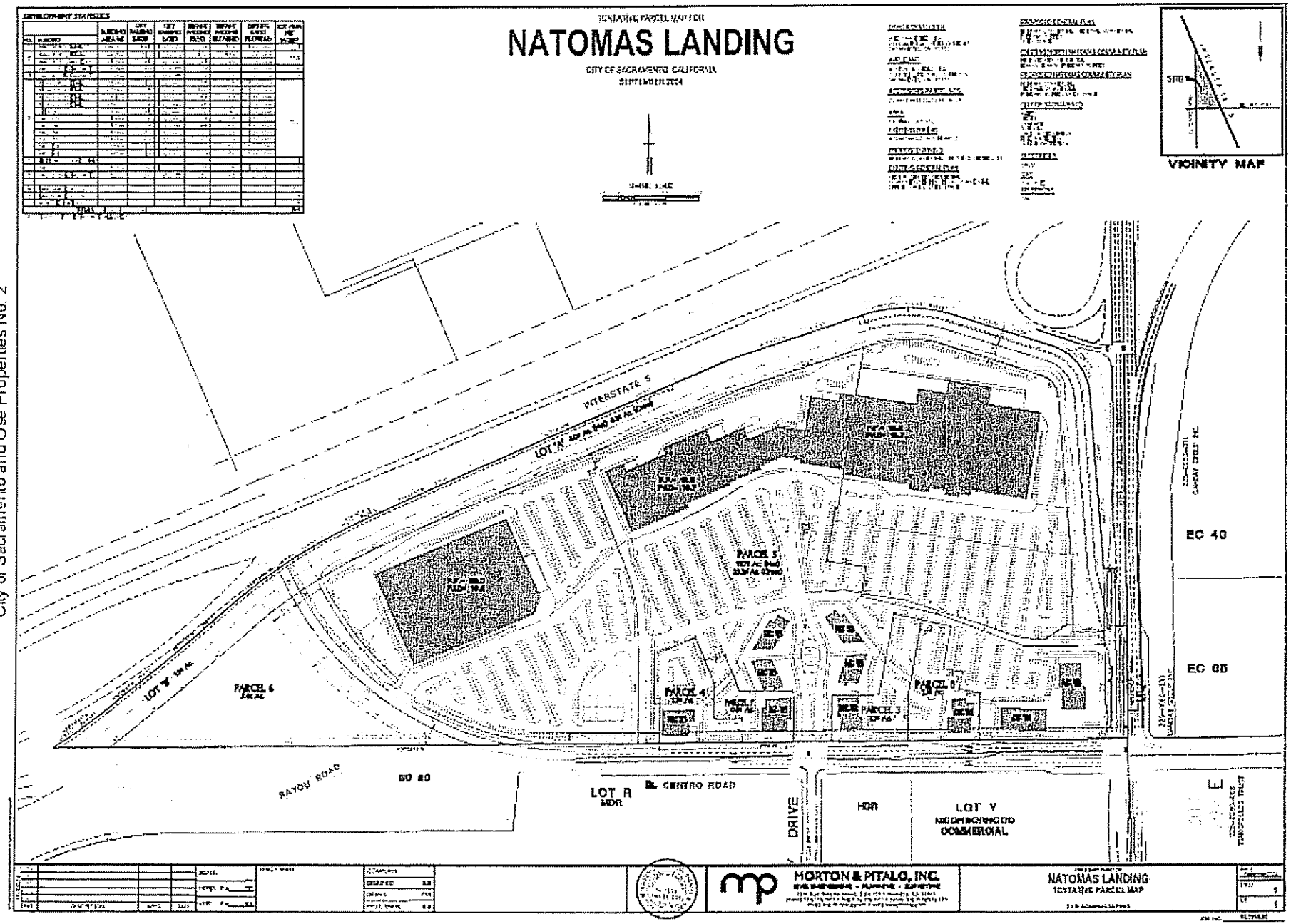
Ose Properties No. 2

By: **Ose Properties, Inc.**
its general partner

By: _____
Enlow Ose, President
Date: October __, 2007

Exhibit A

Agreement to Reimburse Fees from Bond Proceeds
City of Sacramento and Ose Properties No. 2



Attachment 2

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 LANDING COMMUNITY FACILITIES DISTRICT NO. 2007-02, SPECIAL TAX BONDS (2007) AND APPROVAL OF AGREEMENT TO REIMBURSE FEES

BACKGROUND

A. The City Council has determined to construct and acquire certain public facilities authorized under its Natomas Landing Community Facilites District No. 2007-02, including drainage facilities, travel lanes, medians, frontage improvements and associated landscaping (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 Landing Community Facilities District No. 2007-02 Special Tax Bonds, the interest on which is to be exempt from income taxation under the United States Internal Revenue code (the "Debt Obligations").

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.