

RESOLUTION NO. 2004-190

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF **MAR 16 2004**

RESOLUTION APPROVING ANNEXATION AND REIMBURSEMENT AGREEMENT

DEVELOPMENT FEE FINANCING COMMUNITY FACILITIES DISTRICT NO. 95-01 ANNEXATION No. 2

THE CITY COUNCIL OF THE CITY OF SACRAMENTO RESOLVES:

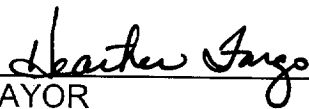
As part of the proceedings for improvements in Development Fee Financing Community Facilities District No. 95-01 Annexation No. 2, City of Sacramento, County of Sacramento, State of California ("95-01"), the City Council hereby approves that certain Annexation and Reimbursement Agreement by and between the City of Sacramento (the "City") and each owner of the following property within CFD 95-01:

Assessor's Parcel Numbers:	052-0010-032	052-0010-081
	052-0010-082	052-0010-083
	052-0010-084	052-0010-085
	052-0010-086	052-0010-087
	052-0010-088	052-0010-089

in substantially the form as the Annexation and Reimbursement Agreement attached hereto.

The Mayor is hereby authorized to execute the Annexation and Reimbursement Agreement and the City Clerk is authorized to attest its execution.

A copy of the executed Agreement shall be filed in the office of the City Clerk.


MAYOR

ATTEST:


CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO: 2004-190

DATE ADOPTED: MAR 16 2004

ANNEXATION AND REIMBURSEMENT AGREEMENT

**COMMUNITY FACILITIES DISTRICT NO. 95-01
(DEVELOPMENT FEE FINANCING)
CITY OF SACRAMENTO
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA**

THIS AGREEMENT is entered into as of the _____ day of _____, 2004 by and between the City of Sacramento, a municipal corporation (the "City"), and _____, a _____, (Owner)

RECITALS

(A) Owner possesses certain residential real property (the "Property") which Owner desires to develop within the City. The Property is described on Exhibit "A" attached hereto and by this reference made a part hereof.

(B) In order to develop the Property, Owner must pay certain fees and charges (the "Fees and Charges" listed on Exhibit "B" attached hereto and by this reference made a part hereof) of the City and of various other governmental agencies. The proceeds of the Fee and Charges are used to pay for public infrastructure needed to serve the requirements of the new development.

(C) Owner has requested that the City commence and complete proceeding for the annexation to the existing Development Fee Financing Community Facilities District No. 95-01, City of Sacramento, County of Sacramento, State of California (the "District") pursuant to the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982," ("Act"). Of Property for the purpose of selling bonds in an amount sufficient to pay certain of the Fees and Charges.

(D) Section 53314.9 of the Act provides that at any time. Either before or after the formation of the District, the City Council of the City (the "Council") may accept advances of funds from any source, including private entities, and may provide for the use of those funds for any purpose authorized by the District, and further provides that the Council may enter into an agreement with the entity advancing funds to repay all of a portion of the funds advanced, and this Agreement is entered into under the authority of Section 53314.9 of the Act.

AGREEMENT

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties agree as follows:

Section 1. The City shall initiate and prosecute proceedings pursuant to the Act for the annexation of the Property to the District. Such proceeding shall include but not be limited to, election pursuant to Sections 53330 et seq. and Sections 53339 et seq. of the

Government Code on (i) the question of the annexation of the Property to the District, and (ii) the annual levy of special taxes on all taxable property within the District for the payment of principal and interest on the bonds of the District and the annual administrative expenses of the City and District in levying and collection such special taxes, paying the principal and interest on such bonds and providing for the registration, exchange and transfer of such bonds, including the fees of fiscal agents and paying agents, and any necessary replenishment for the reserve fund for such bonds, or accumulation of funds for future bond payments, which bonds shall be used to finance the payment of the Fee and Charges. Owner shall cooperate with City in its conduct of the proceeding for and the annexation of the Property to the District and acknowledges that any recalcitrance on the part of the Owner, or any failure of the Owner to sign the normal waivers of time limits in order to expedite the annexation of the Property to the District, will relieve the City of its obligation under this Section.

Section 2. The Owner has paid, or will promptly, upon the execution hereof, pay the Fees and Charges. Owner acknowledges that until paid, the City is relieved of its obligation under Section 1. It is agreed that upon payment, the Fees and Charges will be immediately considered committed to their authorized purposes and it, for any reason, the annexation of the property to the District is not completed or funds do not become available for repayment to the Owner, there shall be no return of any Fees and Charges to the Owner except in the case of direct reimbursement from the City as a result amendment, modification, recalculation or correction of the Fees and Charges themselves in accordance with normal City practice.

Section 3. It is understood and agreed that the ability to fund the Fees and Charges by means of an issue of tax-exempt municipal bonds of the City is subject to various limitation and restrictions, both under State and Federal Law. The city will include all such Fees and Charges in the tax-exempt financing as it feels it may, after consultation with the City's bond counsel. Fees and Charges, which are not included in such financing shall not be reimbursed, and the City's determination on the inclusion or exclusion of any element of the Fees and Charges in the tax-exempt financing shall be in its sole and exclusive discretion and shall be final.

Section 4. Notwithstanding the provision of Section 2 and 3, the City and the Owner may, by separate agreement, provide for the deferral of the Fees and Charges, or for the repayment of the Fees and Charges from sources other than the proceeds of tax-exempt bonds of the District (which sources may include the proceeds of the special taxes of the District, or the proceeds of taxable bonds of the District), but not such agreement providing for repayment from any source related to the District may or shall constitute a debt or liability of the City or the District. Nothing in this Agreement creates or implies any obligation on the part of the City to enter into any such separate agreement.

Section 5. This Agreement does not constitute a debt or liability of the City or the District, and the Owner may not look for reimbursement to any source other than the proceeds of the proposed bonds (or, pursuant to Section 4. special taxes). More specifically, the Owner may not look to the general fund of the City nor any other funds or accounts of the City for reimbursement hereunder.

Section 6. When and if the annexation of the Property to the District is completed, and when and if tax-exempt bonds of the District are issued and the proceeds thereof are actually received by the City, the City agrees to repay to the Owner, only from the bond proceeds, and subject to the limitations of section 3 hereof, the Fees and Charges financed pursuant to the Agreement.

Section 7. The District shall automatically, upon execution of this Agreement and upon completion of the annexation of the Property to the District, become a party to this Agreement, and all provisions hereof which apply to the City shall also apply to the District. The City Council, acting for the District, shall perform all parts of this Agreement, which will require performance on the part of the District.

Section 8. Prior to a bond issuance to finance the reimbursement obligation of Section 6, hereof, Owner may not assign this Agreement or any right or duty hereunder without the express written approval of the City. As a condition of such approval, the City may require proof of the financial responsibility and experience of the proposed assignee, both to the satisfaction of the City in its discretion, as well as an express assumption of all liability hereunder by the assignee.

Section 9. Prior to issuance of any bonds, the Owner will execute a landowner/developer disclosure certificate as required by the bond underwriter. Owner's failure to deliver the required certificate will excuse the City from any obligation to issue bonds hereunder.

Section 10. All consents, approvals and determinations required of either the City or Owner pursuant to this Agreement shall be promptly given or made, and shall not be unreasonably withheld if all conditions to such consents, approvals and determinations have been satisfied.

Section 11. This agreement contains the entire agreement between the parties with respect to the matters herein provided for, and may be amended by a subsequent written agreement signed on behalf of both parties. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties. This Agreement shall be construed and governed by the Constitution and laws of the State of California. Should either party to this Agreement commence a court action or proceeding against the other party with respect to this Agreement, the party prevailing in such action or proceeding shall be entitled to receive from the losing party its attorney's fees, expert witness fees, court costs, and other cost incurred by it in prosecuting or defending such action or processing.

Section 12. This Agreement may be executed in several counterparts, each of which shall be an original of the same Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of date first above written.

CITY OF SACRAMENTO

Mayor

Attest:

City Clerk

Approved for legal form:

City Attorney

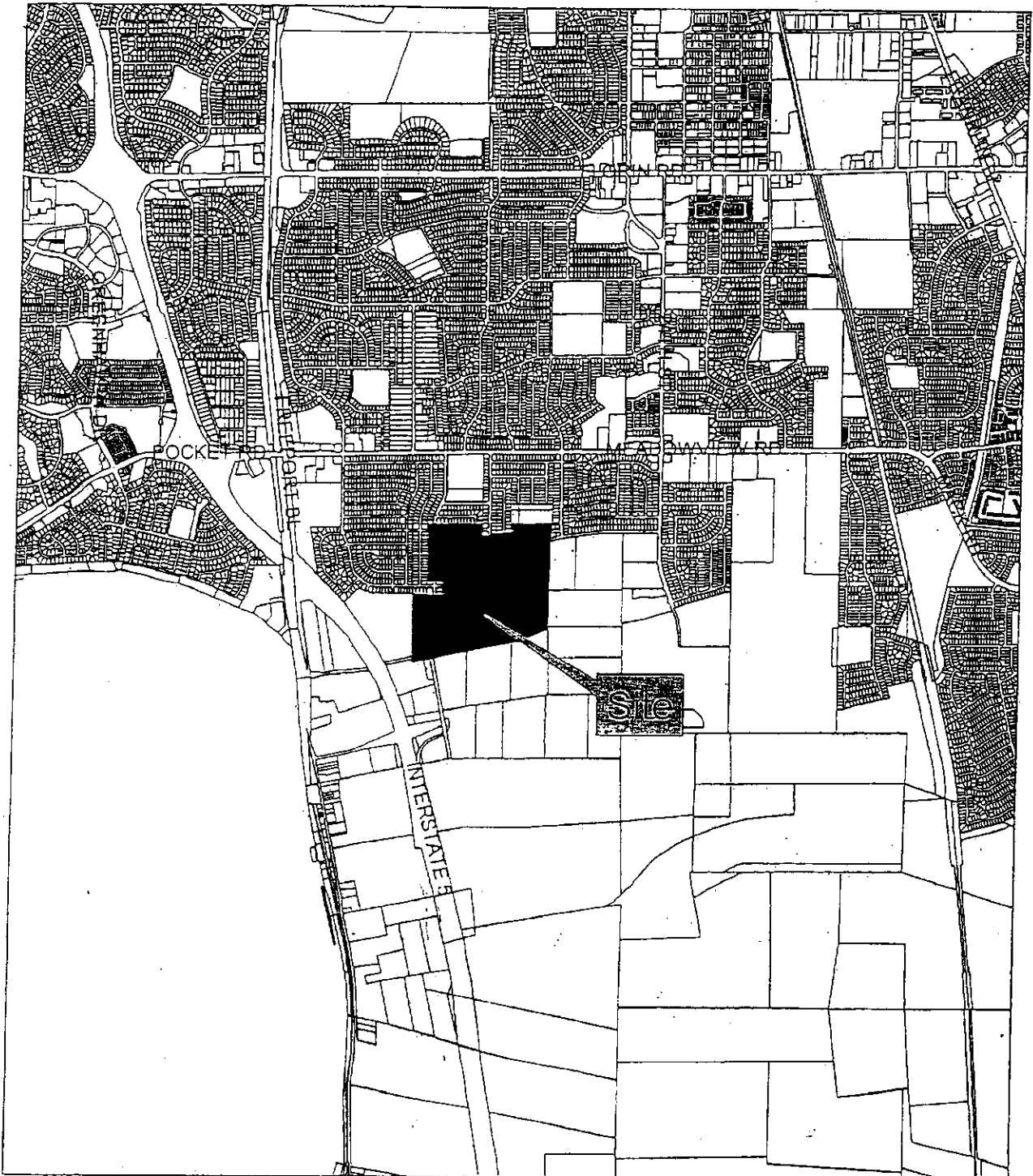
OWNER

By: _____

Its: _____

EXHIBIT A

Development Fee Financing CFD Annexation #2



PUBLICWORKS
Special Districts

B Mueller
12/30/03

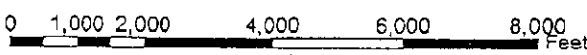


EXHIBIT B

DEVELOPMENT FEE FINANCING CFD NO. 95-01 ANNEXATION No. 2

Eligible Development Fees that can be funded through DFF CFD No. 95-01:

- Construction Excise Tax (Major Street Construction Tax)
- Sewer Development Fee
- Water Development Fee
- Water and Sewer Tap Fee
- Sterling Fee (Schools) ^a
- Regional Sanitation Fee
- Sanitary Sewer Trunk Fee
- SMUD Fees.
- Quimby Park Fee
- Any other development fees that the City deems eligible.

^a 450 of the 519 lots in DFF CFD No. 95-01 Annexation No. 2 are within the Sacramento City Unified School District CFD No. 2 and therefore, are not subject to the Sterling Fee; the remaining 69 lots are not within CFD No. 2 and would be subject to the Sterling Fee.^a