

RESOLUTION NO. 2002-213

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AUTHORIZING THE EXECUTION OF A JOINT COMMUNITY FACILITIES AGREEMENT WITH THE ELK GROVE COMMUNITY SERVICES DISTRICT

WHEREAS, development occurring within Elk Grove requires the acquisition and construction of public facilities, improvements, and other property (referred to herein generally as “facilities”), including facilities for which the Elk Grove Community Services District (the “District”) has responsibility;

WHEREAS, the City levies developer fees to provide funding for the acquisition and construction of required public facilities and also will, in accordance with its policies, provide financing for such acquisition and construction through the formation of community facilities districts pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Sections 53311, et seq. (the “Act”), the levy of special taxes, and the issuance of bonds secured by those special taxes;

WHEREAS, Government Code Section 53316.2 provides that a public entity may use a community facilities district to finance facilities owned by an entity other than the agency that forms the community facilities district, but only pursuant to a joint community facilities agreement or joint exercise of powers agreement with that other entity;

WHEREAS, the City Council duly considered the contents of the draft joint community facilities agreement between the City and the District (the “Agreement”), a copy of which is on file with the City Clerk, and hereby determines that the execution of the Agreement would be beneficial to the residents of the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove that:

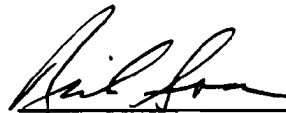
1. **Recitals**. Each of the above recitals is incorporated herein and is true and correct.

2. **Authorization of Officers to Execute and Deliver Agreements**. The City Council hereby authorizes and directs the Mayor, the City Manager, the Director of Administrative Services, and the City Clerk, and each of them individually (the “Designated Officers”), for and in the name of and on behalf of the City, to execute and deliver the Agreement in substantially the form of the draft presented to this meeting, which Agreement is hereby approved, with such changes, insertions, revisions, corrections, or amendments as shall be approved by the Designated Officer or Officers executing the Agreement for the City. The execution of the Agreement by a Designated Officer or Officers of the City shall constitute conclusive evidence of such officer’s or officers’ and the City Council’s approval of the Agreement and any such changes, insertions, revisions, corrections, or amendments.

3. **General Authorization.** The Designated Officers and other officers of the City, and each of them individually, are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to effect the purposes of this resolution. All actions heretofore taken by officers, employees, and agents of this City that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

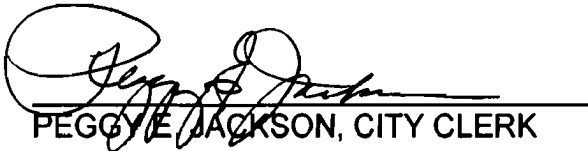
4. **Effective Date.** This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Elk Grove City Council on 4th day of December 2002.



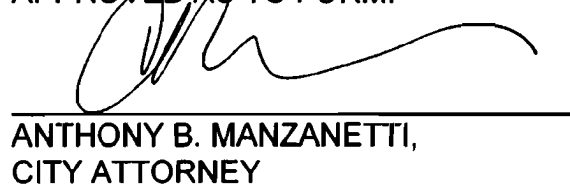
RICK SOARES, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

AYES: Soares, Briggs, Cooper
Scherman, Leary
NOES: None
ABSTAIN: None
ABSENT: None

**JOINT COMMUNITY FACILITIES AGREEMENT
BETWEEN THE CITY OF ELK GROVE
AND THE ELK GROVE COMMUNITY SERVICES DISTRICT**

This Joint Community Facilities Agreement (this "Agreement") dated December __, 2002, is entered into by and between the City of Elk Grove (the "City"), a municipal corporation of the State of California, and the Elk Grove Community Services District (the "District"), a public agency organized under the laws of the State of California.

RECITALS

WHEREAS, development occurring within Elk Grove requires the acquisition and construction of public facilities, improvements, and other property (referred to herein generally as "facilities"), including facilities for which the District has responsibility;

WHEREAS, the City levies developer fees to provide funding for the acquisition and construction of required public facilities and also will, in accordance with its policies, provide financing for such acquisition and construction through the formation of community facilities districts pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Sections 53311, et seq. (the "Act"), the levy of special taxes, and the issuance of bonds secured by those special taxes;

WHEREAS, Government Code Section 53316.2 provides that a public entity may use a community facilities district to finance facilities owned by an entity other than the agency that forms the community facilities district, but only pursuant to a joint community facilities agreement or joint exercise of powers agreement with that other entity;

WHEREAS, the Elk Grove City Council and the District Board of Directors have, prior to the execution of this Agreement, duly considered the contents of this Agreement and have each determined, by resolution, that the execution of this Agreement would be beneficial to the residents of the City and the residents of the District;

NOW, THEREFORE, in order to permit the City to use funds generated from community facilities districts that it forms to be used to provide facilities owned or operated by the District, the City and the District hereby agree as follows:

1. **Recitals.** Each of the above recitals is incorporated herein and is true and correct.

2. **Establishment and Administration of the City's Community Facilities Districts.** The City will be solely responsible for the initiation and completion of all legal procedures required for the community facilities districts that it forms. The City will also have sole responsibility to employ and pay all required consultants, annually levy the special taxes, collect and enforce the special taxes, administer the community facilities districts, issue and pay debt service on any bonds issued, and comply with all state and federal requirements pertaining to the proceedings and the bonds, including the requirements of the United States Internal Revenue Code and associated regulations. The District will not be considered a participant in the formation proceedings for the community facilities districts, nor will it for any purpose be considered an issuer of the bonds or responsible for their payment.

3. **Sale of Bonds and Use of Proceeds.** The City shall be responsible for the timing of the sale of any bonds, the amounts sold, and the application of the proceeds of the sales. The City anticipates that proceeds from the sale of bonds shall be made available substantially in accordance with Section 7 (Disbursement of Bond Proceeds). The City shall maintain records relating to the disbursements of proceeds of the sale of its bonds.

4. **Facilities That May Be Provided.** The facilities that may be provided pursuant to this Agreement include any of the public facilities that the District now or hereafter is authorized to own or operate, including without limitation parks, recreational facilities and equipment, landscaping, sidewalks, pathways, trails, soundwalls, fire stations, and fire-fighting and emergency medical equipment. Before designating or allocating any bond proceeds for the construction of facilities other than landscaping, sidewalks, soundwalls, and other facilities required of developers as conditions of approval of development entitlements, the City shall confer with the District concerning the design, cost, and location of the facilities.

5. **Acquisition Agreements.** When facilities that the City elects to fund with special taxes or bonds will be constructed by land developers or other parties (“constructors”), the City will enter into acquisition agreements with the constructors. The acquisition agreements will provide that any facilities to be owned or operated by the District must be designed and constructed to the satisfaction of the District.

6. **Disbursement of Bond Proceeds.** The City agrees that, prior to paying for District facilities, the City shall review and approve all costs requested to be paid and that payment will not be provided until the District has accepted such facilities for operation and/or maintenance (or has indicated to the City that the District will accept the facilities). The District agrees to provide assistance to the City in determining compliance by a constructor or other provider of facilities with the requirements of the District.

7. **Acceptance of Facilities.** Following inspection and subsequent approval of the facilities by the City, the City shall tender the facilities to the District for acceptance. The District’s acceptance of title to, and agreement to provide operation and/or maintenance for, any facilities provided hereunder is subject to inspection and subsequent approval of the facilities by the District. Following acceptance of facilities by the District, the District shall be solely responsible for the maintenance and/or operation thereof.

8. **Limited Obligations.** The District’s obligations hereunder shall be limited to the obligations assumed by it with respect to the acceptance of facilities for operation and/or maintenance. The District shall have no obligation or responsibility whatsoever with respect to the issuance and sale of bonds, for the payment of principal and interest thereon, or for the levy of the special taxes required to provide debt service. The City shall have the sole responsibility in such matters.

9. **No Separate Entity.** The parties do not intend to form a separate joint exercise of powers authority by this Agreement; instead, the parties intend that the City Council act on behalf of the City on all matters for which the City is responsible under the Act and this Agreement and that the District’s Board of Directors act on behalf of the District in all matters for which it is responsible under this Agreement. Whenever approval of an action by the City

and/or the District is required under the Act or this Agreement, the parties contemplate that such action be submitted to the City Council and/or the Board for approval by resolution, or to the officer to whom approval authority has been delegated, prior to the parties' taking such action.

10. Indemnification.

a. **By the City.** The City shall, to the full extent permitted by law, indemnify, defend and hold the District, and its officers, employees, agents and contractors harmless from and against any and all liabilities, losses, claims, damages, and expenses in connection therewith, including attorneys fees and expenses, arising out of or as a result of the proceedings for the formation of any community facilities district, the levy and collection of the special taxes, and the issuance, sale and administration of the bonds and bond proceeds.

b. **By the District.** The District shall, to the full extent permitted by law, indemnify, defend and hold the City, and its officers, employees, agents and contractors harmless from and against any and all liabilities, obligations, losses, claims, damages and expenses in connection therewith, including attorneys fees and expenses, arising out of or as a result of the acceptance of facilities by the District for operation and/or maintenance.

c. **Notice of Claims.** The City and the District mutually agree to give notice to each other of any claim or liability hereby indemnified against following either's learning thereof.

11. Termination. This Agreement shall terminate upon the earlier occurrence of the following events: (a) the dissolution pursuant to section 53338.5 of the Act of all the community facilities districts established by the City to finance facilities; or (b) the written notification of either party to the other the Agreement is terminated.

12. Notice. Any notice, payment or instrument required or permitted by this Agreement to any party shall be deemed to have been received when personally delivered to any party or seventy-two (72) hours following mailing of the same, first class, postage prepaid, addressed as follows:

City:	City of Elk Grove 8400 Laguna Palms Way Elk Grove, CA 95758 Attn: Director of Administrative Services
District	Elk Grove Community Services District 8820 Elk Grove Blvd, Suite 1 Elk Grove, CA 95624 Attn: Administrative Services Director

13. Captions. Captions to sections of this Agreement are for convenience purposes only, and are not part of this Agreement.

14. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this

Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

15. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

16. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both parties.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and the year first written above.

ELK GROVE COMMUNITY SERVICES DISTRICT

By _____
Chair of the Board of Directors

Attest:

Clerk of the Board

Approved as to form:

District Counsel

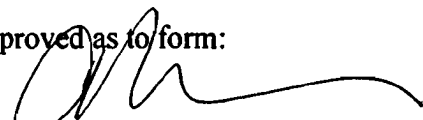
CITY OF ELK GROVE

By  _____
Rick Soares, Mayor

Attest:

Peggy Jackson, City Clerk

Approved as to form:



Anthony Manzanetti, City Attorney