

**COMMUNITY FACILITIES DISTRICT NO. 17-I
(WESTERN CHULA VISTA DIF FINANCING PROGRAM)**

ANNEXATION PROCEEDINGS FEE AGREEMENT

THIS ANNEXATION PROCEEDINGS ADVANCE DEPOSIT AGREEMENT is made and entered into this ____ day of _____, 20____ (the “Agreement”), by and between the CITY OF CHULA VISTA, a chartered municipal corporation (the “City”), and _____ (the “Owner”).

RECITALS

- A. The Owner has requested that the City initiate proceedings under the provisions of the “Mello-Roos Community Facilities Act of 1982,” as amended (Government Code Section 53311 and following) (the “Mello-Roos Act”), to annex certain property owned by Owner (the “Property”) to Community Facilities District No. 17-I (Western Chula Vista DIF Financing Program) (“CFD No. 17-I”);
- B. The City shall incur certain costs in conducting the proceedings to annex the Property to CFD No. 17-I (the “Annexation Proceedings”);
- C. Pursuant to Section 53318(d) of the Act, Owner’s request is not required to be acted upon by the City until Owner has paid to the City a fee (the “Annexation Fee”) that the City Council of the City has determined is sufficient to compensate the City for all costs incurred conducting the Annexation Proceedings (the “Annexation Costs”);
- D. Owner agrees to pay the Annexation Fee to the City as provided for herein for the payment of all costs incurred by the City in conducting the Annexation Proceedings.
- E. The parties hereto wish to enter into an Agreement to memorialize the terms and conditions pursuant to which Owner shall pay the Annexation Fee.

AGREEMENT

The parties hereto, for mutual consideration, agree as follows:

Section 1. Annexation Fee Payments.

(a) Owner shall pay the Annexation Fee to the City in such amounts and at such times as specified below to pay all Annexation Costs incurred by the City in conducting the Annexation Proceedings. The Annexation Costs shall, include without limitation, the following costs incurred by the City:

City staff, City Attorney, City special counsel and City special tax consultant time, if any, utilized in the following tasks:

- (1) Preparation of this Agreement,
- (2) Determination and verification of property ownership,
- (3) Preparation of the Rate and Method of Apportionment of the Special Tax,
- (4) Preparation of the Agreement for Deferral of Development Impact Fees,
- (5) Preparation of the Consent and Waiver form for execution by the Owner, ballot materials, the staff report pertaining to the resolution certifying the results of the election, such resolution itself and the Amendment to Notice of Special Tax Lien,
- (6) Request for verification from the Registrar of Voters of the County of San Diego that no voters are registered to vote within the Property;
- (7) Preparation of a boundary map of the Property;
- (8) Review of executed Consent and Waiver, verification of ownership of the Property and authorization of the Owner's representative to execute the Consent and Waiver on behalf of the Owner;
- (9) Canvass of the ballot;
- (10) Recordation of the Amendment to Notice of Special Tax Lien;
- (11) Providing information to the Owner or the Owner's representative regarding the Annexation Proceedings and responding to questions from the Owner or the Owner's representative.

Nothing contained herein shall preclude the City from contracting with the its special tax consultant, special counsel or other consultant to provide the any one or more of the above tasks.

All such costs and expenses are collectively referred to as the "Annexation Costs."

(b) The Annexation Fee payments shall be made to the City pursuant to the following schedule:

(1) Owner shall pay an initial Annexation Fee installment in the amount of \$2,000, receipt of which is hereby acknowledged by the City.

(2) It is anticipated that the Annexation Costs may exceed the initial payment set forth in clause 1 above, and that it may be necessary that Owner pay additional installments to the City in order to pay the full amount of Annexation Costs. If, at any time, the amount of the available funds from the payments on deposit with the District falls below \$ 250.00 and the City reasonably determines that the remaining Annexation Costs will exceed the remaining amount of payments on deposit with the City, the City shall notify Owner in writing of that determination and of the estimated additional amount which Owner must pay to the City in order for the City to pay the additional amount of the Annexation Costs. Upon receipt of such notification, Owner shall pay the additional amount specified therein with the City within five (5) business days of the date thereof. If Owner fails to pay

any such additional amount to the City, the City may suspend or terminate the Annexation Proceedings. The sole source for the payment of the Annexation Costs shall be the amounts paid by Owner to the City pursuant to this Agreement, and the City's responsibility to pay the Annexation Costs shall be limited to the amounts so paid by Owner.

Section 2. **Records.** The City agrees to keep records consistent with its regular accounting practices of the amount of monies paid to the City by Owner and the expenditure of such monies. Additionally, the City shall enter into and maintain contracts with all consultants, if any, that shall specify the scope of services pertaining to the Annexation Proceedings and compensation to be paid to such consultants for such services. Such records and contracts shall be available for review by the Owner during normal business hours upon reasonable notice to the City.

Section 3. **Reimbursement.** If the Annexation Proceedings are not completed and are abandoned for any reason at any time prior to the successful annexation of the Property to CFD No. 17-I, there will be no obligation on the part of the City or CFD No. 17-I to reimburse Owner for any monies previously paid by Owner to the City and expended to pay Annexation Costs pursuant to this Agreement; provided, however, the City does agree to return to Owner any monies previously paid by Owner which remain on deposit with the City and which the City determines are in excess of the amount necessary to pay for any outstanding Annexation Costs previously incurred by the City.

Section 4. **Ownership of Documents.** All documentation prepared as a part of the Annexation Proceedings shall become the property of the City, regardless as to whether the Property is actually annexed to CFD No. 17-I.

Section 5. **No Obligation to Annex the Property to CFD No. 17-I.** Owner acknowledges that the decision of the City Council to annex the Property to CFD No. 17-I is an exercise of the legislative authority of the City Council and that the City may not enter into a contract to obligate the City Council to exercise its legislative discretion in a particular manner. This Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the City to approve the annexation of the Property to CFD No. 17-I. The City expressly reserves the right to abandon the Annexation Proceedings for any reason at any time prior to the completion thereof.

Section 6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 7. **Authority to Execute Agreement.** The City and the Owner represent that the individuals signing this Agreement have full right and authority to bind their respective parties to this Agreement.

Section 8. **Successor and Assigns.** This Agreement shall be binding on and inure to the benefit of the respective parties and their respective heirs, legal representatives, successors and assigns. Owner may not assign its rights or obligations hereunder except upon written notice to the City within ten (10) days of the date of such assignment indicating the name and address of the assignee. Upon such notice and the assumption by the assignee in writing delivered to the City of the rights, duties and obligations of the Owner arising under or from this Agreement, Owner shall be released for all future duties or obligations arising under or from this Agreement.

Section 9. **Singular and Plural; Gender.** Whenever used herein, the singular number shall include the plural, the plural number shall include the singular, and the masculine feminine or neuter gender shall include the others whenever the context of the Agreement so indicates.

Section 10. **Entire Agreement.** This Agreement contains the entire Agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be altered, modified or amended except by an instrument in writing executed by all of the parties.

Section 11. **Governing Law.** This Agreement has been executed in and shall be governed by the laws of the State of California.

Section 12. **Construction.** This Agreement has been reviewed by legal counsel for both the City and the Owner and shall be deemed for all purposes to have been jointly drafted by the city and the Owner. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The language in all parts of this Agreement, in all cases, shall be construed as a whole and in accordance with its fair meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives of the parties hereunder. The captions of the sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

Section 13. **Severability.** In the event that any one or more of the provisions of this Agreement that is or are material to the entering into this Agreement by either Owner or the City shall for any reason be held to be unenforceable in any material respect by a court of competent jurisdiction, Owner and the City may mutually agree that such unenforceability shall not affect any other provision of this Agreement, and that this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein. If Owner and the City fail to so mutually agree, this Agreement shall terminate, without penalty to either party, after the giving by one party of thirty (30) days' prior written notice to the other party. In such event, the city shall use all efforts to minimize any and all Annexation Costs and shall return to Owner any monies previously advanced which remain on deposit with the City and which the City determines are in excess of the amount necessary to pay for any outstanding Annexation Costs previously incurred by the City.

Section 14. **Notices.** All notices and demands shall be given in writing by personal delivery or first-class mail, postage prepaid. Notices shall be addressed as appears below for the respective party; provided that, if any party gives notice of a change of name of address, notices to the giver of that notice shall thereafter be given as demanded in that notice. Notices shall be deemed received seventy-two (72) hours after deposit in the United States mail.

CITY: City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: Director of Development Services

OWNER: _____

Section 15. **Time of the Essence.** Time is of the essence in the performance of the parties respective obligations herein contained.

Section 16. **Waiver.** The waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered a waiver by such party of any other covenant, condition or promise. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and any provision of this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

Section 17. **Amendment.** No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

Section 18. **Termination.** Either party may terminate this Agreement by giving the other party ten (10) business days prior written notice, and in the case of the Owner, by also paying to the City an amount of money which, together with the remaining balance of the payments paid by Owner pursuant to Section 1 above, will be sufficient to pay all costs incurred to the date of termination pursuant to the terms of this Agreement, and in the case of the City, by also refunding to Owner any remaining balance of the amounts paid by Owner pursuant to Section 1 above after payment of all costs incurred to the date of termination.

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Signature Page
to
Community Facilities District Advance Deposit and Reimbursement Agreement
between
the City of Chula Vista
and
Owner

IN WITNESS WHEREOF, the City and Owner have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms.

CITY OF CHULA VISTA

By: _____
Name/Title: Gary Halbert, City Manager

OWNER:

By: _____
Name/Title: _____