

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, TO (1) AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO FORM A COMMUNITY FACILITIES DISTRICT WITHIN THE TERRITORIAL LIMITS OF THE CITY OF FRESNO TO FINANCE CERTAIN PUBLIC IMPROVEMENTS AND DEVELOPMENT IMPACT FEES; (2) EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF THE COMMUNITY FACILITIES DISTRICT FINANCING; AND (3) AUTHORIZING STAFF TO COOPERATE WITH THE AUTHORITY AND ITS CONSULTANTS IN CONNECTION THEREWITH

WHEREAS, the City of Fresno (City) is a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (State); and

WHEREAS, the California Statewide Communities Development Authority (Authority) is a California joint-exercise of powers authority lawfully formed and operating within the State pursuant to an agreement (Joint Powers Agreement) entered into as of June 1, 1988 under the authority of Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code; and

WHEREAS, the City is a party to the Joint Powers Agreement and, by virtue thereof, a member a "Program Participant" of the Authority; and


WHEREAS, the Joint Powers Agreement was entered into to establish the Authority as an agency authorized to issue bonds to finance projects within the territorial limits of its Program Participants; and

WHEREAS, the Joint Powers Agreement authorizes the Authority to undertake financing programs under any applicable provisions of State law to promote economic

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Resolution No. \_\_\_\_\_

development, the stimulation of economic activity, and the increase of the tax base within the jurisdictional boundaries of its Program Participants; and

WHEREAS, the “Mello-Roos Community Facilities Act of 1982,” being Chapter 2.5, Part 1, Division 2, Title 5 (beginning with Section 53311) of the Government Code of the State (Act) is an applicable provision of State law available to, among other things, finance public improvements necessary to meet increased demands placed upon local agencies as a result of development; and

WHEREAS, there is a development project commonly known as “Fancher Creek” within the jurisdictional boundaries of the City, being developed by Fancher Creek Properties LLC (respectively, the “Development Project” and the “Developer”); and

WHEREAS, the City has previously adopted its Resolution No. 2010-58, authorizing the Authority to form a community facilities district for the Development Project and the Authority has previously formed its Community Facilities District No. 2012-01 (Fancher Creek), City of Fresno, County of Fresno, State of California (2012 CFD) for the Development Project; and

WHEREAS, the Developer has requested the City to consider formation of a new community facilities district for the Development Project under the Act to facilitate the repayment of bonds issued for the 2012 CFD and the reformulation of the special tax to align with actual development that has occurred within the Development Project; and

WHEREAS, the City does not desire to allocate City resources and City staff time to the formation and administration of a community facilities district and to the issuance of bonds; and

WHEREAS, the Development Project has and will promote economic development, the stimulation of economic activity and the increase of the tax base within the City; and

WHEREAS, both the Authority and the City are “local agencies” under the Act; and

WHEREAS, the Act permits two or more local agencies to enter into a joint community facilities agreement to exercise any power authorized by the Act; and

WHEREAS, the City desires to enter into such an agreement with the Authority to authorize the Authority to form a community facilities district within the territorial limits of the City to finance certain public improvements through the financing of certain development impact fees required of the Development Project; and

WHEREAS, nothing herein constitutes the City’s approval of any applications, Development Project entitlements and/or permits, and such, to the extent required in the future, are subject to and contingent upon the City’s approval following, to the extent applicable, environmental review in compliance with the California Environmental Quality Act; and

WHEREAS, nothing herein affects, without limitation, requirements for and/or compliance with any and all applicable and/or necessary improvement standards, land use requirements or subdivision requirements relating to the Development Project or any portion thereof, which obligations are and shall remain independent and subsisting; and

WHEREAS, the City Council is fully advised in this matter.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Fresno that it does hereby find, determine, declare and resolve as follows:

1. The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to municipal affairs of the City, and the statements, findings and determinations of the City set forth in the recitals above are true and correct.

2. This resolution shall constitute full “local approval,” under Section 9 of the Joint Powers Agreement, and under the Authority’s Local Goals and Policies (see below), for the Authority to undertake and conduct proceedings in accordance herewith and under the Act to form a community facilities district (the “Community Facilities District”) with boundaries substantially as shown on Exhibit A, attached hereto, and to authorize a special tax within the Community Facilities District and to issue bonds for the Community Facilities District. The Authority is further authorized to designate improvement areas under the Act in its discretion.

3. The Joint Powers Agreement, together with the terms and provisions of this resolution, shall together constitute a joint community facilities agreement between the City and the Authority under the Act. As, without this resolution, the Authority has no power to conduct proceedings under the Act to form the Community Facilities District, adoption by the Commission of the Authority of the Resolution of Intention to form the Community Facilities District under the Act shall constitute acceptance of the terms hereof by the Authority.

4. This resolution and the agreement it embodies are determined to be beneficial to the residents of the City and are in the best interests of the residents of the City, and of the future residents of the area within the Community Facilities District.

5. The Authority has adopted Local Goals and Policies as required by Section 53312.7 of the Act. The City approves the use of those Local Goals and Policies in

connection with the Community Facilities District. The City hereby agrees that the Authority may act in lieu of the City under those Local Goals and Policies in forming and administering the Community Facilities District.

6. Pursuant to the Act and this resolution, the Authority may conduct proceedings under the Act to form the Community Facilities District and to have it authorize the financing of the facilities and the fees set forth on Exhibit B, attached hereto. All of the facilities, whether to be financed directly or through fees, are facilities that have an expected useful life of five years or longer and are facilities that the City or other local public agencies, as the case may be, are authorized by law to construct, own or operate, or to which they may contribute revenue. The facilities are referred to herein as the "Improvements," and the Improvements to be owned by the City are referred to as the "City Improvements." The fees are referred to as the "Fees," and the Fees paid or to be paid to the City are referred to as the "City Fees."

7. The City Council certifies to the Commission of the Authority that all of the City Improvements, which are expected to be financed with the proceeds of the City Fees, are necessary to meet increased demands placed upon the City as a result of development occurring or expected to occur within the Community Facilities District.

8. The Authority will apply the special tax collections initially as required by the documents under which any bonds are issued; and thereafter, to the extent not provided in the bond documents, may pay its own reasonable administrative costs incurred in the administration of the Community Facilities District. The Authority will remit any special tax revenues remaining after the final retirement of all bonds to the City. The City will

apply any such special tax revenues it receives for authorized City Improvements or the City Fees and its own administrative costs only as permitted by the Act.

9. The Authority will administer the Community Facilities District, including employing and paying all consultants, annually levying the special tax and all aspects of paying and administering the bonds, and complying with all State and Federal requirements appertaining to the proceedings, including the requirements of the United States Internal Revenue Code. The City will cooperate fully with the Authority in respect of the requirements of the Internal Revenue Code and to the extent information is required of the City to enable the Authority to perform its disclosure and continuing disclosure obligations with respect to the bonds, although the City will not participate in nor be considered to be a participant in the proceedings respecting the Community Facilities District (other than as a party to the agreement embodied by this resolution) nor will the City be or be considered to be an issuer of the bonds.

10. In the event the Authority forms the Community Facilities District and special tax revenues become available to finance the Improvements (including through the financing of the Fees), or the Authority completes issuance and sale of bonds and bond proceeds become available to finance the City Improvements and the City Fees, the Authority shall establish and maintain one or more special funds for deposit of such special tax revenues and bond proceeds (collectively, the "Acquisition and Construction Fund"). The portion of special tax revenues and bond proceeds which is intended to be utilized to finance the Improvements and the Fees shall be deposited in the Acquisition and Construction Fund. The Acquisition and Construction Fund will be available to fund

the City Improvements and the City Fees in the manner specified in the documents issuing bonds.

11. As respects the Authority, the City agrees to fully administer, and to take full governmental responsibility for, the construction and ownership of the City Improvements and for the administration and expenditure of the City Fees including but not limited to environmental review, approval of plans and specifications, bid requirements, performance and payment bond requirements, insurance requirements, contract and construction administration, staking, inspection, acquisition of necessary property interests in real or personal property, the holding back and administration of retention payments, punch list administration, and the Authority shall have no responsibility in that regard.

12. The City agrees to indemnify and to hold the Authority, its other members, and its other members' officers, agents and employees, and their officers, agents and employees (collectively, the "Indemnified Parties") harmless from any and all claims, suits and damages (including costs and reasonable attorneys' fees) arising out of or in connection with the City Fees, including the design, engineering, construction and installation of the City Improvements. The City reserves the right, as respects the Developer, to require the Developer to assume by contract with the City any portion or all of this responsibility.

13. As respects the Authority, the City agrees, once the City Improvements are constructed according to the approved plans and specification and the City and Developer have put in place any applicable arrangements for the funding of maintenance of City Improvement, to take maintenance responsibility for the City Improvements, and to

indemnify and hold harmless the Indemnified Parties to the extent provided in the preceding paragraph from any and all claims, etc., arising out of the use and maintenance of the City Improvements.

14. The City acknowledges the requirement of the Act that if the City Improvements are not completed prior to the adoption, by the Commission of the Authority, of the Resolution of Formation of the Community Facilities District, the City Improvements must be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City. The City acknowledges that this means all City Improvements must be constructed under contracts that require the payment of prevailing wages as required by Section 1720 and following of the Labor Code of the State of California. The Authority makes no representation that this requirement is the only applicable legal requirement in this regard.

15. The City hereby consents to the formation of the Community Facilities District in accordance with this resolution and consents to the assumption of jurisdiction by the Authority for the proceedings respecting the Community Facilities District with the understanding that the Authority will hereafter take each and every step required for or suitable for consummation of the proceedings, the levy, collection and enforcement of the special tax, and the issuance, sale, delivery and administration of the bonds, all at no cost to the City and without binding or obligating the City's general fund or taxing authority.

16. The terms of the agreement embodied by this resolution may be amended by a writing duly authorized, executed and delivered by the City and the Authority, except that no amendment may be made after the issuance of the bonds by the Authority that would be detrimental to the interests of the bondholders without complying with all of the



bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding bonds.

17. No person or entity, including the Developer, shall be deemed to be a third party beneficiary of this resolution, and nothing in this resolution (either express or implied) is intended to confer upon any person or entity other than the Authority and the City (and their respective successors and assigns) any rights, remedies, obligations or liabilities under or by reason of this resolution.

18. This resolution shall remain in force until all bonds have been retired and the authority to levy the special tax conferred by the Community Facilities District proceedings has ended or is otherwise terminated.

19. The City Council hereby authorizes and directs the City Manager, City Finance Director and other appropriate City staff to cooperate with the Authority and its consultants and to do all things necessary and appropriate to carry out the intent of this resolution and the Community Facilities District financing, and to execute any and all certificates and documents in connection with the bond issuance as shall be approved by the City Manager after consultation with the City Attorney and the Authority's bond counsel.

20. The City Council hereby approves delivery of a certified copy of this resolution to the Authority's Bond Counsel, Orrick, Herrington & Sutcliffe LLP.

21. This resolution shall be effective upon final approval.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_ Date  
Deputy

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_ Date  
Jennifer Quintanilla  
Senior Deputy City Attorney

EXHIBIT A

COMMUNITY FACILITIES DISTRICT BOUNDARIES

[ATTACHED]

## **EXHIBIT B**

### **AUTHORIZED IMPROVEMENTS AND FEES**

Eligible facilities and fees that may be financed by a Community Facilities District formed by the Authority include all improvements and fees authorized under the Act, including but not limited to the following:

#### **Transportation Improvements**

Eligible onsite and off-site roadway improvements include, but are not limited to: acquisition of land and easements; roadway design; project management; bridge crossings and culverts; clearing, grubbing, and demolition; grading, soil import/export, paving (including slurry seal), and decorative/enhanced pavement concrete and/or pavers; joint trenches, underground utilities and undergrounding of existing utilities; dry utilities and appurtenances; curbs, gutters, sidewalks, bike trails (including onsite and off-site), enhanced fencing, and access ramps; street lights, signalization, and traffic signal control systems; bus turnouts; signs and striping; erosion control; median and parkway landscaping and irrigation; entry monumentation; bus shelters, bus and transit improvements including transfer stations and regional public transit improvements; masonry walls; traffic control and agency fees; and other improvements related thereto. Eligible improvements for the roads listed herein also include any and all necessary underground potable and recycled water, sanitary sewer, and storm drainage system improvements.

#### **Water System Improvements**

Authorized onsite and off-site facilities include any and all water facilities designed to meet the needs of development within the Community Facilities District. These facilities include, but may not be limited to: water storage, treatment and distribution facilities including waterlines and appurtenances, gate valves, pressure reducing stations, flow meters, fire hydrants, and other improvements related thereto such as site clearing, grading and paving; curbs and gutters; booster pump stations & power; stand-by generators; site lighting, drainage, sanitary sewer, and water service; landscaping and irrigation; access gates, and fencing; and striping and signage.

#### **Recycled Water System Improvements**

Authorized onsite and off-site facilities include any and all recycled water system facilities designed to meet the needs of development within the Community Facilities District. These facilities include, but may not be limited to: treatment and distribution facilities including pipelines and appurtenances, gate valves, flow meters, booster pump pressurization system, and other improvements related thereto - such as site clearing, grading and paving; curbs and gutters; booster pump stations; stand-by generators; site lighting, drainage, sanitary sewer, and water service; landscaping and irrigation; access gates, and fencing; and striping and signage.

## **Drainage System Improvements**

Authorized onsite and off-site facilities include any and all drainage and storm drain improvements designed to meet the needs of development within the Community Facilities District. These facilities include, but may not be limited to: excavation and grading, pipelines and appurtenances, outfalls and water quality measures, detention/retention basins, drainage pretreatment facilities, drainage ways/channels, pump stations, landscaping and irrigation; access roads, gates, and fencing; and striping and signage and other improvements related thereto.

## **Wastewater System Improvements**

Authorized onsite and off-site facilities include any and all wastewater facilities designed to meet the needs of development within the Community Facilities District. These facilities include, but may not be limited to, pipelines and all appurtenances thereto; manholes; tie-in to existing main lines; force mains; lift stations; upgrades to existing lift stations; odor-control facilities; and permitting related thereto; and related sewer system improvements.

## **Park, Parkway and Open Space Improvements**

Authorized onsite and off-site facilities include any and all improvements to parks, parkways and open space required for development within the Community Facilities District. These facilities include, but may not be limited to: grading, turf, shrubs and trees, landscaping irrigation, site lighting, drainage, sanitary sewer and water service, pedestrian and bicycle trails, protective fencing (including soundwalls), pedestrian/bicycle bridges, storm drain crossings, wetland mitigation, hawk mitigation for authorized facilities herein, access gates and fencing and related open space improvements. Authorized facilities include acquisition of any and all parkland as well as open space/bike trail/public access easements required for development within the Community Facilities District.

## **Public Safety Improvements**

Authorized onsite and off-site facilities include any and all police, fire and other public safety facilities designed to meet the needs of development within the Community Facilities District. These facilities include, but may not be limited to: police stations, fire stations, emergency medical service stations, and administrative buildings for safety and emergency; landscaping and irrigation; access gates, and fencing; and striping and signage.

## **Development Impact Fees**

Authorized facilities include the direct funding of any facility types for which the Local Agency collects a development impact fee.

## **Refinancing of Special Taxes**

The Community Facilities District may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a Community Facilities District or may pay debt service on that indebtedness, including the special tax collected for the 2012 CFD and any bonds or debt related thereto.

### **Other Incidental Expenses and Bond Issuance Costs**

In addition to the above facilities, other incidental expenses as authorized by the Act, including, but not limited to, the cost of planning and designing the facilities (including the cost of environmental evaluation, remediation and mitigation); engineering and surveying; construction staking; utility relocation and demolition costs incidental to the construction of the public facilities; costs of project/construction management; costs (including the costs of legal services) associated with the formation of the Community Facilities District; issuance of bonds (if any); determination of the amount of taxes; collection of taxes; payment of taxes; costs of calculating and providing reimbursements from one-time special tax payments; or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District; and any other expenses incidental to the formation and implementation of the Community Facilities District and to the construction, completion, inspection and acquisition of the authorized facilities.