



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 21-0175
MAY 25 2021

REPORT RE:

**JOINT COMMUNITY FACILITIES AGREEMENT
BY AND AMONG CITY OF LOS ANGELES,
CITY OF LOS ANGELES COMMUNITY FACILITIES
DISTRICT NO. 11 (PONTE VISTA), AND
LOS ANGELES UNIFIED SCHOOL DISTRICT**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 13-1646-S7

Honorable Members:

This Office presents for consideration the Joint Community Facilities Agreement (JCFA) by and among the City of Los Angeles (City), City of Los Angeles Community Facilities District No. 11 (Ponte Vista) (CFD 11), and Los Angeles Unified School District (LAUSD). The JCFA pertains to the financing of certain LAUSD school facilities with proceeds from bonded indebtedness incurred by CFD 11.

BACKGROUND

On October 28, 2020, the City Council adopted two resolutions to initiate the formation of CFD 11 pursuant to the Mello-Roos Community Facilities Act of 1982 (Act). On December 1, 2020, the City Council held a public hearing to consider the proposed formation. At the close of the public hearing, the City Council adopted three ordinances that would put forth to the qualified electors of the proposed CFD 11 the question of whether to authorize the levying of a special tax within CFD 11, to authorize CFD 11 to

incur bonded indebtedness, and to establish an appropriations limit for CFD 11. The question was presented to the qualified electors through a special election held on February 3, 2021.

On February 9, 2021, the City Council certified the results of the special election wherein at least two-thirds of the qualified electors authorized the levying of a special tax within CFD 11, authorized CFD 11 to incur bonded indebtedness to finance certain public facilities, and established an appropriations limit for CFD 11. Among the public facilities proposed to be financed by CFD 11 are certain LAUSD school facilities (LAUSD Facilities).

JCFA

Under Section 53316.2 of the Act, a joint community facilities agreement is required when a community facilities district finances facilities to be owned or operated by an entity other than the agency that created the community facilities district.¹ The expected bond financing of the LAUSD Facilities, which will be owned and operated by LAUSD, is a financing arrangement within the meaning of Section 53316.2.

CFD 11 is located within the jurisdiction of both the City and LAUSD. To account for and mitigate the impact the residential development of CFD 11 may have on school facilities, State law allows LAUSD to impose and collect from the Developer certain fees (School Fees) to account for potential facility needs of LAUSD from the development.

In lieu of paying the School Fees directly, the Developer proposed that the LAUSD Facilities be financed with bonded indebtedness incurred by CFD 11, for which LAUSD agreed. Proceeds from the bonds issued by the CFD 11 will therefore be made available to LAUSD to fund the construction of future LAUSD Facilities. A draft JCFA has been prepared which memorializes this understanding. Parties to the agreement are the City, CFD 11, and LAUSD.

On October 6, 2020, the Board of Education of LAUSD, through a resolution, declared that the JCFA would be beneficial to the residents within LAUSD's boundaries and approved and authorized the execution of the JCFA. If the City Council also declares, through a resolution, that the JCFA would be beneficial to the residents of the City, the City Council may authorize the execution of the JCFA.

CEQA

The JCFA is not a "project" under the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15378(b) provides that the creation of a

¹ A JCFA is intended to share the limited financing capacity found within a community facility district between the local government agencies that have a shared interest in the development of the community facilities district. For CFD 11, the shared agency interest is between the City and LAUSD.

government funding mechanism which does not involve a commitment to any specific project is not a project under CEQA.

RECOMMENDATION

Provided this City Council finds that the JCFA benefits the residents of the City, this Office recommends and respectfully requests that the City Council authorize the execution of the JCFA.

If you have any questions regarding this matter, please contact Deputy City Attorney Charles Hong at (213) 978-7782. He or another member of this Office will be available when you consider this matter and to answer any questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney



By DAVID MICHAELSON
Chief Assistant City Attorney

CSH:CSH:mc
Attachment

JOINT COMMUNITY FACILITIES AGREEMENT

by and among

CITY OF LOS ANGELES

and

**CITY OF LOS ANGELES
COMMUNITY FACILITIES DISTRICT NO. 11
(PONTE VISTA)**

and

LOS ANGELES UNIFIED SCHOOL DISTRICT

Dated as of _____, 2021

JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this “Joint Facilities Agreement”), dated as of _____, 2021, is by and among the CITY OF LOS ANGELES, a charter city organized and existing under the laws of the State of California (the “City”), CITY OF LOS ANGELES COMMUNITY FACILITIES DISTRICT NO. 11 (PONTE VISTA), a community facilities district organized and existing under the laws of the State of California (the “Community Facilities District”), and the LOS ANGELES UNIFIED SCHOOL DISTRICT, a school district organized and existing under the laws of the State of California (“LAUSD”).

WITNESSETH:

WHEREAS, the property described in Exhibit A attached hereto (the “Property”), is commonly referred to as Ponte Vista;

WHEREAS, the Property is within the jurisdiction of the City and LAUSD;

WHEREAS, LAUSD has, pursuant to Section 65995 *et seq.* of the California Government Code, imposed certain fees (the “School Fees”) on development projects within LAUSD to mitigate the impact of such development projects on school facilities;

WHEREAS, pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), the Council of the City (the “City Council”) has established the Community Facilities District, the boundaries of which include substantial portions of the Property;

WHEREAS, pursuant to the Act, the qualified electors of the Community Facilities District have authorized the levy of special taxes (the “Special Taxes”) upon the land within the Community Facilities District and the issuance of bonds (the “Bonds”) secured by the Special Taxes, the proceeds of which are to be used to finance certain public facilities;

WHEREAS, the public facilities proposed to be financed by the Community Facilities District include certain facilities to be owned and operated by the City (the “City Facilities”) and certain school facilities, including any land, rights-of-way or easements necessary for any of such facilities, to be owned and operated by LAUSD (the “LAUSD Facilities”);

WHEREAS, SoCal San Pedro SPV 1, LLC (the “Developer”), which is in the process of developing the Property, has proposed that the LAUSD Facilities be financed by the Community Facilities District in lieu of LAUSD requiring the payment of School Fees for the development project on the Property;

WHEREAS, LAUSD has agreed to provide a credit against the obligation to pay School Fees for the development project on the Property, if and only to the extent that Bond proceeds are made available to LAUSD to finance LAUSD Facilities;

WHEREAS, Section 53316.2 of the Act provides that a community facilities district may finance facilities to be owned or operated by an entity other than the agency that created the community facilities district only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to said Section;

WHEREAS, Section 53316.2 of the Act further provides that at any time prior to the adoption of the resolution of formation creating a community facilities district or a resolution or resolutions authorizing issuance of bonds pursuant to Section 53356 of the Act, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to said Section and Sections 53316.4 and 53316.6 of the Act to exercise any power authorized by the Act with respect to the community facilities district being created if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to the residents of that entity;

WHEREAS, the City Council and the Board of Education of LAUSD have each adopted such a resolution; and

WHEREAS, the City, the Community Facilities District and LAUSD desire to enter into this Joint Facilities Agreement in accordance with Sections 53316.2, 53316.4 and 53316.6 of the Act in order to provide for the financing of the LAUSD Facilities through the issuance of Bonds by the Community Facilities District;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. The Community Facilities District; Issuance of Bonds. (a) The Developer has agreed to be responsible for any and all costs incurred in connection with the establishment of the Community Facilities District. LAUSD shall have no responsibility or liability for any costs incurred in connection with the establishment or the administration of the Community Facilities District or for the issuance of the Bonds.

(b) It is anticipated that the Community Facilities District will issue Bonds to finance the acquisition, construction and installation of the City Facilities and the LAUSD Facilities. The City Council, acting as the legislative body of the Community Facilities District, shall, in its sole discretion, and at no cost or expense to LAUSD, determine whether, when, under what conditions and to what extent Bonds shall be issued to finance the acquisition, construction and installation of the City Facilities and the LAUSD Facilities, or any combination thereof. In no event shall LAUSD have any right to compel the Community Facilities District to issue Bonds to finance the acquisition, construction and installation of LAUSD Facilities or to disburse Bond proceeds to pay the costs of the acquisition, construction and installation of LAUSD Facilities.

(c) The City has been informed by the Developer, and acknowledges, that if Bond proceeds are not made available to LAUSD to pay the costs of the acquisition, construction and installation of the LAUSD Facilities, the builders within the Community Facilities District shall be responsible for the School Fees payable to LAUSD, including any premiums with respect thereto as set forth in the Mitigation Agreement, dated as of April 15, 2021 (the "Mitigation Agreement"), by and among LAUSD, the Developer and the builders within the Community Facilities District.

Section 2. LAUSD Facilities. It is anticipated that the Community Facilities District will issue Bonds, a portion of the proceeds of which are to be available to finance the acquisition, construction and installation of the LAUSD Facilities. If the Community Facilities District issues

Bonds for such purpose, the Community Facilities District shall notify LAUSD of the amount of such proceeds available for such purpose within 15 days of such proceeds becoming so available. Neither the City nor the Community Facilities District makes any representation that, if proceeds of Bonds are made available to finance the acquisition, construction and installation of the LAUSD Facilities, such proceeds will be sufficient to finance the acquisition, construction and installation of all of the LAUSD Facilities, and neither the City nor the Community Facilities District shall have any liability to LAUSD if such proceeds are insufficient for such purpose. If the Community Facilities District does not issue Bonds to finance the acquisition, construction and installation of the LAUSD Facilities, neither the City nor the Community Facilities District shall have any obligation to provide any amounts to finance or pay the costs of the acquisition, construction and installation of the LAUSD Facilities.

Section 3. Disbursements. (a) Bond proceeds available for the acquisition, construction and installation of the LAUSD Facilities shall be deposited in a special fund or account (howsoever the same may be denominated, the “LAUSD Facilities Account”) to be established under the indenture, fiscal agent agreement or other instrument pursuant to which the Bonds are issued (howsoever the same may be denominated, the “Indenture”).

(b) The Indenture shall provide that, to the extent that Bond proceeds are available therefor, the trustee or fiscal agent under the Indenture (howsoever the same may be denominated, the “Trustee”) shall cause disbursements to be made from the LAUSD Facilities Account from time to time to pay the costs of the acquisition, construction and installation of the LAUSD Facilities upon submission of a written request of LAUSD stating (i) the name and address of the person to whom payment is to be made, (ii) the amount to be paid, (iii) that an obligation in such amount has been incurred by LAUSD, (iv) the purpose for which the obligation to be paid was incurred, (v) that each item of the obligation to be paid constitutes a cost of the LAUSD Facilities, and (vi) that the obligation to be paid has not been the subject of a prior LAUSD request for disbursement from the LAUSD Facilities Account.

(c) Moneys on deposit in the LAUSD Facilities Account shall be invested at the direction of the Community Facilities District. The Community Facilities District shall cause the Trustee to at all times keep proper books of record and account, prepared in accordance with its current practice, in which accurate entries shall be made of all deposits into the LAUSD Facilities Account, all disbursements therefrom and all investment earnings credited thereto. The Community Facilities District shall cause the Trustee to make copies of such books of record and account available to LAUSD upon reasonable notice and under reasonable circumstances as agreed to by the Trustee.

Section 4. Credit for School Fees. LAUSD has informed the City that the Mitigation Agreement provides the conditions for, and the allocation of, the granting of the credit against the School Fees upon the deposit of proceeds of the Bonds in the LAUSD Facilities Account.

Section 5. Construction, Ownership and Maintenance of City Facilities and LAUSD Facilities. (a) The City shall be solely responsible for the acquisition, construction and installation of the City Facilities, and LAUSD shall have no responsibility therefor or liability with respect thereto. The City Facilities shall be and remain the sole and separate property of the City and shall be operated, maintained and utilized by the City. LAUSD shall not have any ownership interest in

the City Facilities, and LAUSD shall have no responsibility for the operation, maintenance or utilization of the City Facilities or any liability with respect thereto.

(b) LAUSD shall be solely responsible for the acquisition, construction and installation of the LAUSD Facilities, and the City shall have no responsibility therefor or liability with respect thereto. The LAUSD Facilities shall be and remain the sole and separate property of LAUSD and shall be operated, maintained and utilized by LAUSD. The City shall not have any ownership interest in the LAUSD Facilities, and the City shall have no responsibility for the operation, maintenance or utilization of the LAUSD Facilities or any liability with respect thereto.

Section 6. Tax Matters. (a) In connection with the issuance of any Bonds, a portion of the proceeds of which are to be made available to finance the acquisition, construction and installation of the LAUSD Facilities, LAUSD shall execute and deliver such certifications and agreements, in form and containing terms and conditions reasonably acceptable to LAUSD, as may be reasonably required in order for bond counsel to conclude that interest on such Bonds will be excluded from gross income under Section 103 of the Internal Revenue Code of 1986.

(b) Unless LAUSD otherwise informs the Community Facilities District at the time of issuance of Bonds, the proceeds of which are to finance LAUSD Facilities, the Community Facilities District may deem LAUSD to have represented at such time that the acquisition, construction and installation of the LAUSD Facilities to be financed with such proceeds will be substantially completed within three years from the date of issuance of such Bonds.

Section 7. Indemnification. (a) The City agrees to protect, indemnify, defend and hold LAUSD, and its officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits actions, decrees, judgments, awards, attorneys' fees and court costs which LAUSD, or its officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from LAUSD, or its officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of the acquisition, construction, installation, operation, maintenance or utilization of the City Facilities. If the City fails to do so, LAUSD shall have the right, but not the obligation, to defend the same and charge all of the direct and incidental costs of such defense, including any attorneys' fees or court costs, to and recover the same from the City.

No indemnification is required to be paid by the City for any claim, loss or expense arising from the willful misconduct or active negligence of LAUSD, or its officers, employees or agents.

(b) LAUSD agrees to protect, indemnify, defend and hold the City and the Community Facilities District, and their respective officers, employees and agents, and each of them, harmless from and against any and all claims, losses, expenses, suits actions, decrees, judgments, awards, attorneys' fees and court costs which the City or the Community Facilities District, or their respective officers, employees and agents, or any combination thereof, may suffer or which may be sought against or recovered or obtained from the City or the Community Facilities District, or their respective officers, employees or agents, or any combination thereof, as a result of or by reason of or arising out of or in consequence of the acquisition, construction, installation, operation, maintenance or utilization of the LAUSD Facilities. If LAUSD fails to do so, the City and the Community Facilities District shall have the right, but not the obligation, to defend the

same and charge all of the direct and incidental costs of such defense, including any attorneys' fees or court costs, to and recover the same from LAUSD.

No indemnification is required to be paid by LAUSD for any claim, loss or expense arising from the willful misconduct or active negligence of the City or the Community Facilities District, or their respective officers, employees or agents.

Section 8. Nature of Agreement; Allocation of Special Taxes. This Joint Facilities Agreement shall constitute a joint community facilities agreement entered into pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Act. The entire amount of the proceeds of the Special Taxes shall be allocated and distributed to the City.

Section 9. Limitation of Rights to Parties. Nothing in this Joint Facilities Agreement expressed or implied is intended or shall be construed to give to any person other than the City, the Community Facilities District and LAUSD any legal or equitable right, remedy or claim under or in respect of this Joint Facilities Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the City, the Community Facilities District and LAUSD.

Section 10. Notices. All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:

City of Los Angeles
City Administrative Officer
200 North Main Street, 15th Floor
Los Angeles, California 90012
Attention: Debt Management Group
Email:

If to the Community Facilities District:

City of Los Angeles Community Facilities
District No. 11 (Ponte Vista)
c/o City of Los Angeles
City Administrative Officer
200 North Main Street, 15th Floor
Los Angeles, California 90012
Attention: Debt Management Group
Email:

If to LAUSD:

Los Angeles Unified School District
333 South Beaudry Avenue, 26th Floor
Los Angeles, California 90017
Attention: Mr. David Hart, Chief Financial Officer
Email: david.hart1@lausd.net

With a copy to:

Los Angeles Unified School District
333 South Beaudry Avenue, 23rd Floor
Los Angeles, California 90017
Attention: Chief Facilities Counsel
Email: mark.a.miller@lausd.net

And a copy to:

Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, Suite 2800
Los Angeles, California 90017
Attention: James M. Rishwain, Jr.
Email: jrishwain@pillsburylaw.com

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by electronic mail, on the date sent, but only if confirmation of the receipt of such electronic mail is received or if notice is concurrently sent by another means specified herein, (d) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 11. California Law. This Joint Facilities Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 12. Severability. If any part of this Joint Facilities Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Joint Facilities Agreement shall be given effect to the fullest extent reasonably possible.

Section 13. Successors. This Joint Facilities Agreement shall be binding upon and inure to the benefit of the successors of the parties hereto.

Section 14. Counterparts. This Joint Facilities Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Joint Facilities Agreement as of the date first written above.

CITY OF LOS ANGELES

By: _____

APPROVED AS TO FORM:
MICHAEL N. FEUER, CITY ATTORNEY

By: _____
Deputy City Attorney

**CITY OF LOS ANGELES
COMMUNITY FACILITIES DISTRICT
NO. 11 (PONTE VISTA)**

By: _____

**LOS ANGELES UNIFIED SCHOOL
DISTRICT**

By: _____

EXHIBIT A

DESCRIPTION OF PROPERTY

The Property consists of the real property identified as the following Los Angeles County Assessor Parcel Numbers:

7442-034-001 through -066

7442-035-001 through -053

7442-036-001 through -021

7442-037-001 through -005, -007 through -014, -017, and -018

7442-038-001 through -048

7442-039-001 through -021