



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute an Agreement with Cosumnes Community Services District (CCSD) for Fee Collection and Disbursements of Citywide Development Impact Fees eligible for financing by the Statewide Community Development Infrastructure Program (SCIP)

MEETING DATE: February 8, 2017

PREPARED BY: Brandon Merritt, Finance Analyst II

DEPARTMENT HEAD: Brad Koehn, Director of Finance and Administrative Services

RECOMMENDED ACTION:

Adopt resolution authorizing the City Manager to execute an agreement with Cosumnes Community Services District (“CCSD”) for fee collection and disbursements of Citywide development impact fees eligible for financing by the Statewide Community Development Infrastructure Program (“SCIP”)

BACKGROUND INFORMATION:

The California Statewide Communities Development Authority (CSCDA) is a joint powers authority (“JPA”) sponsored by the League of California Cities and the California Association of Counties. The member agencies of CSCDA include approximately 356 cities and 57 counties throughout California. The City of Elk Grove is currently a member of CSCDA, and participates in its Statewide Community Infrastructure Program (“SCIP”), pursuant to Council adoption of Resolution No. 2012-96 on May 23, 2012.

The Statewide Community Development Infrastructure Program (“SCIP”) was instituted by CSCDA in 2002 to allow property developers in participating cities and counties to finance the development impact fees (“DIFs”) that would be payable upon receiving entitlements or building permits. Elk Grove currently offers this as a financing option for eligible Citywide impact fees that will be imposed on development within the City.

The SCIP program also offers financing for eligible public capital improvements (“Projects”). If a property developer chooses to participate, the selected Projects and DIFs owed to the City will be financed by the issuance of tax-exempt bonds by CSCDA. CSCDA will impose a special assessment on the property (and proportionately on any subsequently subdivided lots) to repay the bonds issued to finance the fees and infrastructure. The DIFs are subject to requisition by the City at any time to make authorized fee expenditures. By holding and investing the money until it is spent, SCIP administrators are able to monitor the investment earnings (which come to the City) for federal tax law arbitrage purposes.

The benefits to the property developer include:

- Only property developers who choose to participate in the program will have assessments imposed on their property. These may ultimately be passed along to the home buyer.
- Instead of paying cash for infrastructure and DIFs, the property developer receives low-cost, tax-exempt financing of those eligible fees and infrastructure, freeing up capital for other purposes.
- Developers of smaller projects, both residential and commercial, can have access to tax-exempt financing of infrastructure. Before the inception of SCIP, only projects large enough to justify the formation costs of an assessment or community facilities district had access to tax-exempt financing.

The benefits to the City include:

- SCIP financing is an attractive incentive for smaller projects and can be used as an economic development tool.
- As with a typical special tax financing, the City is not liable to repay the bonds issued by CSCDA or the levies imposed on the participating properties.
- CSCDA handles all district formation, district administration, bond issuance and bond administration functions. A participating city can

provide tax-exempt financing to property developers through SCIP with limited staff time to administer the program.

- Providing tax-exempt financing helps participating cities and counties cushion the impact of rising public capital improvements costs and development impact fees on property developers.
- The availability of financing may encourage developers to pull permits and pay fees in larger blocks, giving the participating city immediate access to revenues for public infrastructure, rather than receiving a stream of revenues over time.

The proposed agreement authorizes the City Manager to execute an agreement with the Cosumnes Community Services District (“CCSD”) regarding the collection and disbursement of eligible Citywide development impact fees. This Agreement is needed because the City acts as a collection and disbursement entity on behalf of CCSD for multiple development impact fee programs. Specifically, this is a tri-party Agreement between the City, CSCDA, and CCSD, to define the parameters within which all three entities will operate for the collection and disbursement of fees affected by a SCIP financing.

This Agreement was required by CSCDA as the City is a program participant in CSCDA’s Joint Powers Authority (“JPA”) governance structure, while CCSD is not. If this Agreement were not in place, then a Developer would not be able to use SCIP to finance fees that the City passes through to CCSD. Further, the Agreement defines the method by which CCSD may receive these fees that normally get passed through to it by the City: in the case of a SCIP financing, it will requisition the Trustee that holds the funds.

The only Citywide development impact fees currently eligible for financing through SCIP are the Roadway fees and Parks fees. Roadway fee revenues belong to the City, and Parks fee revenues belong either to the City or the CCSD, depending on the location of the project. Infrastructure is only reimbursable if it will be publicly owned, and has been reviewed and approved by the City’s Development Services Department. Further, it must be submitted in accordance with the Department’s Reimbursement Policies and Procedures.

Both the CCSD and CSCDA boards have approved this Fee Collection and Disbursement Agreement.

FISCAL IMPACT:

There is no fiscal impact to the General Fund if the City Council adopts this resolution. The City will be able to requisition Roadway development impact fee funds in the same amount that would have otherwise been paid had there been no SCIP financing. Additionally, the City will have access to the Roadway funds up front rather than waiting for those fees to be paid for each building permit had there been no SCIP financing.

The CCSD will also have access to the Parks funds up front (depending on where the project is located) without the City's involvement. CCSD will be able to requisition the funds directly from the Trustee, pursuant to the rules established in this Agreement.

ATTACHMENTS:

1. Resolution
2. Fee Collection and Disbursements Agreement

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE
COSUMNES COMMUNITY SERVICES DISTRICT (CCSD) FOR FEE COLLECTION
AND DISBURSEMENTS OF CITYWIDE DEVELOPMENT IMPACT FEES ELIGIBLE
FOR FINANCING BY THE STATEWIDE COMMUNITY DEVELOPMENT
INFRASTRUCTURE PROGRAM (SCIP)**

WHEREAS, the City of Elk Grove (the “City”) is a participant in the Statewide Community Infrastructure Program (“SCIP”) of the California Statewide Communities Development Authority (“CSCDA”) pursuant to Council adoption of Resolution No. 2012-96 on May 23, 2012; and

WHEREAS, as a participant in SCIP, the City has established an account with CSCDA held by Wilmington Trust, National Association, as trustee (the “SCIP Trustee”), and administered by BLX Group, LLC (the “SCIP Program Administrator”) in which certain amounts collected on behalf of the City in connection with SCIP are held (the “City SCIP Account”); and

WHEREAS, various entities (the “Fee Recipients”) are entitled to receive certain amounts paid by developers of real property within the City as impact fees, connection fees or other capital charges (the “Eligible Fees”) eligible for financing through SCIP; and

WHEREAS, the City anticipates that various Fee Recipients may request that the City assist them in financing their Eligible Fees through SCIP; and

WHEREAS, in order to allow the Eligible Fees of Fee Recipients to be financed through SCIP, the City, each Fee Recipient and CSCDA must enter into a Fee Collection and Disbursement Agreement (the “Fee Collection Agreement”) providing that, for any parcel which applies for SCIP financing, the City will collect the Eligible Fees on behalf of the Fee Recipient and remit them to CSCDA for deposit in a separate subaccount within the City SCIP Account and that CSCDA will make or cause to be made disbursements from such subaccount to the Fee Recipient in accordance with properly executed requisitions of the Fee Recipient; and

WHEREAS, the Fee Collection Agreement in substantially the form attached hereto, is on file with the City Clerk and is presented to the City Council for consideration.

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

Section 1. Recitals. The foregoing recitals are hereby found and determined to be true and correct.

Section 2. Authorization. The Fee Collection Agreement in substantially the form attached hereto is hereby approved. The City Manager or designee (an “Authorized Officer”) is hereby authorized to enter into a Fee Collection Agreement in

substantially said form at the request of any Fee Recipient, including but not limited to the Cosumnes Community Services District (CCSD), with such modifications and changes thereto as the Authorized Officer, in consultation with the City Attorney and Orrick, Herrington & Sutcliffe LLP, as bond counsel for SCIP, shall approve, such approval to be conclusively established by the execution of each Fee Collection Agreement. The Authorized Officer is hereby authorized and directed to execute each Fee Collection Agreement, as so modified, on behalf of the City.

Section 3. **Effective Date.** This resolution shall take effect from and after the date of its passage.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 8th day of February 2017.

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS
CITY ATTORNEY

**CITY OF ELK GROVE AGREEMENT WITH COSUMNES
COMMUNITY SERVICES DISTRICT FOR FEE COLLECTION AND
DISBURSEMENTS OF CITYWIDE DEVELOPMENT IMPACT FEES ELIGIBLE FOR
FINANCING BY THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM
(SCIP)**

This Fee Collection and Disbursement Agreement (this “Agreement”), dated as of _____, 2017, by and between the the **City of Elk Grove**, a municipal corporation (the “SCIP Participant”), and **Cosumnes Community Services District** (“Fee Recipient”), a California special district, and the **California Statewide Communities Development Authority** (“CSCDA”);

RECITALS

WHEREAS, the Fee Recipient is entitled to receive from time to time certain amounts paid by developers of real property (each a “Developer”) within the jurisdiction of the SCIP Participant as impact fees, connection fees or other capital charges;

WHEREAS, the SCIP Participant is a participant in CSCDA’s Statewide Community Infrastructure Program (“SCIP”) pursuant to its adoption of Resolution No. 2012-96 on May 23, 2012; and

WHEREAS, as a participant in SCIP, the SCIP Participant has established an account with CSCDA held by Wilmington Trust, National Association, as trustee (the “SCIP Trustee”) and administered by BLX Group LLC (the “SCIP Program Administrator”) in which certain amounts collected on behalf of the SCIP Participant in connection with SCIP are held (the “SCIP Participant SCIP Account”); and

WHEREAS, certain fees or capital charges collected by Fee Recipient (the “Fees”) are eligible for financing through SCIP, subject to approval of Bond Counsel (as defined herein);

WHEREAS, the Fees may be paid to Fee Recipient by Developers, for subsequent reimbursement from the proceeds of bonds (the “Bonds”) issued through SCIP, or the Fees may be paid directly to Fee Recipient from proceeds of the Bonds;

WHEREAS, in order to allow the Fees to be financed through SCIP, Fee Recipient has requested that for any Developer which applies for SCIP financing with respect to Fees payable for a development project within the SCIP Participant’s jurisdiction, SCIP Participant collect the Fees and remit them to CSCDA for deposit in a separate subaccount within the SCIP Participant SCIP Account;

WHEREAS, in accordance with Fee Recipient’s request, and in order to allow the Fees to be financed through SCIP, the SCIP Participant has determined to collect the Fees on Fee Recipient’s behalf and to remit the Fees to CSCDA to be held in a separate subaccount within the SCIP Participant SCIP Account, and to make or cause to be made disbursements from such subaccount in accordance with properly executed requisitions of the Fee Recipient in the form attached as Exhibit B hereto; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and the above referenced recitals, which are true and correct and incorporated herein, SCIP Participant and Fee Recipient agree as follows:

Section 1. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

“Authorized Officer” means (a) when used with respect to CSCDA, any member of the governing board of CSCDA and such additional person or persons, if any, duly designated by CSCDA in writing to act on its behalf, and (b) when used with respect to Fee Recipient, any person or persons duly designated by Fee Recipient in writing to act on its behalf,.

“Bond Counsel” means Orrick, Herrington & Sutcliffe LLP, or any other nationally recognized firm appointed by CSCDA to serve as bond counsel in connection with the issuance of Bonds.

“Bonds” means bonds issued by CSCDA to finance development impact fees, including the Fees, in connection with SCIP.

“CSCDA” means the California Statewide Communities Development Authority, its successors and assigns.

“Fee Recipient” means the Cosumnes Community Services District, a California special district.

“Fees” means those certain development-related fees to be financed through SCIP, approved by Bond Counsel and payable from time to time to Fee Recipient.

“SCIP” means the Statewide Community Infrastructure Program, a program of CSCDA.

“SCIP Funds” means payments of Fees received by Fee Recipient, as more fully described in Section 3, together with all of the investment earnings on such Fees.

“SCIP Participant” means the City of Elk Grove, California.

“SCIP Participant SCIP Account” means the SCIP Participant’s account with CSCDA held by the SCIP Trustee and administered by the SCIP Program Administrator in which certain amounts collected on behalf of the SCIP Participant in connection with SCIP are held.

“SCIP Program Administrator” means BLX Group LLC, its successors and assigns or any other administrator appointed by CSCDA as the administrator of SCIP.

“SCIP Trustee” means Wilmington Trust, National Association, its successors and assigns.

Section 2. Collection of Fees; SCIP Financing.

(a) Fee Recipient acknowledges that it has the authority to collect and use the Fees for its own benefit. Fee Recipient acknowledges that, subject to approval as set forth in Section 3, the Fees may be financed through SCIP, and agrees to allow the SCIP Participant to collect the Fees from time to time with respect to Developers applying for SCIP financing on the Fee Recipient's behalf (i) from such Developers prior to the issuance of a particular series of Bonds, or (ii) from proceeds of a particular series of Bonds following the issuance of such Bonds.

(b) For any Developer applying for SCIP financing of Fees pertaining to a project within the jurisdiction of the SCIP Participant, the SCIP Participant agrees to collect the Fees from time to time for the Fee Recipient's benefit. Upon collection, the SCIP Participant shall remit the Fees to CSCDA, to be deposited as set forth in Section 4.

Section 3. Approval of Fees. The Authorized Officers of Fee Recipient, or their designees, are authorized under this Agreement to approve the financing of Fees through SCIP. No Fee may be financed through SCIP except with the written approval of an Authorized Officer of Fee Recipient or his designee, which approval shall be evidenced by the signature of such Authorized Officer next to each such Fee shown on Exhibit A attached hereto or in such other written form as may be acceptable to the parties hereto. The written approval of an Authorized Officer shall be required only once rather than on a project-by-project basis, and such approval shall constitute approval for the financing of such authorized fees for any and all applications which may be received by CSCDA requesting financing of such authorized fees for a given project.

Section 4. Agreement to Hold Fees in SCIP Account. CSCDA agrees to receive or cause to be received by the SCIP Trustee the Fees collected by the SCIP Participant on behalf of the Fee Recipient. CSCDA shall establish or cause to be established within the SCIP Participant SCIP Account a separate subaccount (the "CCSD Subaccount"). The Fees shall be deposited in the CCSD Subaccount and held there by the SCIP Trustee and segregated from all other funds within the SCIP Participant SCIP Account, and except for investment purposes, shall not be commingled with any other funds held by the SCIP Trustee. Investment earnings on the CCSD Subaccount shall be retained in such subaccount for the benefit of the Fee Recipient except to the extent a portion of such earnings are requested to pay rebate or yield reduction payments to the U.S. Treasury pursuant to the Internal Revenue Code. Amounts on deposit in the CCSD Subaccount shall be disbursed only in accordance with Section 5 of this Agreement.

Section 5. Disbursements from SCIP Account. CSCDA shall disburse or cause to be disbursed moneys on deposit in the CCSD Subaccount only as provided herein. Moneys on deposit in the CCSD Subaccount shall be disbursed pursuant to written requisitions of the Fee Recipient, in substantially the form attached hereto as Exhibit B and executed by an Authorized Officer of the Fee Recipient. CSCDA, the SCIP Program Administrator and the SCIP Trustee may conclusively rely on such requisitions for purposes of making such disbursements.

All disbursements from the CCSD Subaccount to the Fee Recipient shall be made by wire transfer of immediately available funds or by check payable to the Fee Recipient's bank

account number at a bank located within the United States on file with the SCIP Trustee, unless another method of payment is requested in writing by the Fee Recipient.

Section 6. Term of this Agreement. This Agreement shall be in full force and effect from this date to and including its termination by mutual written agreement of the parties hereto. CSCDA agrees to terminate this agreement upon request of Fee Recipient upon delivery to CSCDA of an opinion by Bond Counsel to the effect that the termination of this Agreement will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

Section 7. Amendment of this Agreement. This Agreement may be amended only by a written instrument executed by the parties hereto; provided that any such amendment shall be conditioned upon delivery to CSCDA of an opinion of Bond Counsel to the effect that such amendment will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

Section 8. Successors in Interest. This Agreement and all of the provisions hereof shall be binding on the parties hereto and their successors and assigns.

Section 9. Third Party Beneficiaries. The SCIP Program Administrator is expressly declared to be a third party beneficiary of this Agreement. No other third party beneficiary of this Agreement is intended or implied. Except as to the express third party beneficiary identified herein, nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any other third party.

Section 10. Severability. If any section, paragraph, sentence, clause or provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, sentence, clause or provision shall not affect any of the remaining provisions of this Agreement.

Section 11. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.

Section 12. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

Section 13. Notices. Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to this Agreement shall be addressed to the appropriate party at the addresses set forth below.

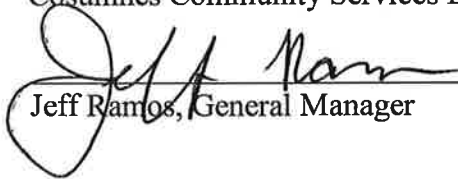
SCIP Participant:

City of Elk Grove
ATTN: City Manager
8401 Laguna Palms Way

IN WITNESS WHEREOF, each Party has executed this Agreement as of the date set forth beside their signatures below.

Dated: 2/2, 2017

Cosumnes Community Services District



Jeff Ramos, General Manager

Dated: _____, 2017

City of Elk Grove

Laura Gill, City Manager

Dated: _____, 2017

California Statewide Communities Development Authority

Authorized Signatory

APPROVED AS TO FORM:

Dated: _____, 2017

Best Best & Krieger LLP

Sigrid Asmundson
General Counsel, Cosumnes Community Services District

Dated: _____, 2017

City of Elk Grove

Jonathan P. Hobbs
City Attorney

IN WITNESS WHEREOF, each Party has executed this Agreement as of the date set forth beside their signatures below.

Dated: _____, 2017

Cosumnes Community Services District

Jeff Ramos, General Manager

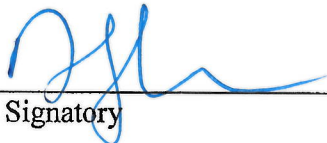
Dated: _____, 2017

City of Elk Grove

Laura Gill, City Manager

Dated: Feb. 1, 2017

California Statewide Communities Development Authority



Authorized Signatory

APPROVED AS TO FORM:

Dated: _____, 2017

Best Best & Krieger LLP

Sigrid Asmundson
General Counsel, Cosumnes Community Services District

Dated: _____, 2017

City of Elk Grove

Jonathan P. Hobbs
City Attorney

Elk Grove, CA 95758

Fee Recipient:

Cosumnes Community Services District
ATTN: General Manager
8820 Elk Grove Blvd.
Elk Grove, CA 95624

IN WITNESS THEREOF, each Party has executed this Agreement as of the date set forth beside their signatures below.

Dated: _____, 2017

Cosumnes Community Services District

Jeff Ramos, General Manager

Dated: _____, 2017

City of Elk Grove

Laura Gill, City Manager

Dated: _____, 2017

California Statewide Communities Development
Authority

Authorized Signatory

APPROVED AS TO FORM:

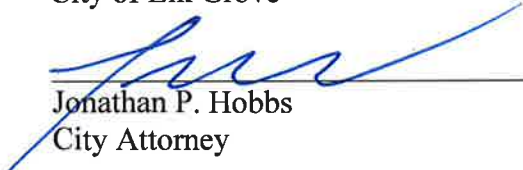
Dated: _____, 2017

Best Best & Krieger LLP

Sigrid Asmundson
General Counsel, Cosumnes Community
Services District

Dated: _____, 2017

City of Elk Grove



Jonathan P. Hobbs
City Attorney

EXHIBIT A

Approved Fees

Fee	Project	Expected Amount	Approved by Authorized Officer	Date

EXHIBIT B

SCIP Disbursement Form

To: BLX Group LLC
SCIP Program Administrator
777 S. Figueroa St., Suite 3200
Los Angeles, California 90017
Attention: Vo Nguyen
Phone: 213-612-2152
Fax: 213-612-2499

Re: Statewide Community Infrastructure Program

The undersigned, a duly authorized officer of the Cosumnes Community Services District, hereby requests a disbursement from the CCSD Fee Subaccount associated with the above captioned financing and certifies that the amounts of development impact fees financed thereby and listed below have been or will be spent by the Cosumnes Community Services District for public capital improvements as of the date indicated below or within 5 years thereafter:

Subaccount(s)	Amount

Total:

Wiring Instructions:

The undersigned hereby additionally certifies as follows:

1. The use to which these funds have been or will be put is a permitted use pursuant to the fees indicated for public capital improvements, and this disbursement is not being made for the purpose of reinvestment.
2. None of the expenditures for which payment is requested have been reimbursed previously from other sources of funds.
3. If the Total amount above is greater than the funds held by SCIP on behalf of the Cosumnes Community Services District, the Program Administrator is authorized to amend the amount requested to be equal to the amount of such funds.
4. To the extent the disbursement is being made prior to the date the bonds have been issued, this disbursement form serves as the declaration of official intent of the Cosumnes Community Services District,

pursuant to Treasury Regulations 1.150-2, to reimburse itself with respect to expenditures made from the Fees Sub-accounts referenced above in the amount requested.

Dated: _____

Signature: _____

Print Name: _____