



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Resolutions Addressing Funding for Community Improvements in Area Plans

HEARING DATE: JULY 22, 2010

Project Name: Development Stimulus Part II
Case Number: 2010.0499U [Board File No's 10-0870 and 10-0871]
Initiated by: Mayor Newsom, Supervisors Dufty and Maxwell
Introduced: June 22, 2010
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Reviewed by: Sarah Dennis, Senior Planner

Recommendation: Recommend Approval with Modifications

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PROPOSED RESOLUTIONS AND JOINT COMMUNITY FACILITIES AGREEMENT

The Planning Commission will consider two proposed Resolutions and a related Joint Community Facilities Agreement between ABAG and the City of San Francisco as described below. In addition to these two Resolutions the Commission may consider similar proposals related to the provision of community improvements in area plans. The two resolutions include:

- **BF 100870 [Area Plan Infrastructure Finance Committee]** This proposed Resolution introduced by Supervisor Maxwell would establish an Area Plan Infrastructure Finance Committee to supervise a consultant study to develop policy criteria and recommendations on the use of Infrastructure Finance Districts (IFDs) in newly adopted Area Plans, including within the Eastern Neighborhoods Area Plans, determine the appropriate steps to form IFDs, and to supervise the formation of a pilot Infrastructure Finance District (IFD) in Rincon Hill.
- **BF 100871 [Resolution Approving Formation of a Community Facilities District and financing by the ABAG Finance Authority For Nonprofit Corporations in accordance with State law, and approving related agreement]** This resolution introduced by Mayor Newsom and Supervisor Dufty would approve the formation of a community facilities district and the issuance of special tax bonds by the ABAG Finance Authority For Nonprofit Corporations related to City fees and charges applicable to new development projects; make certain findings; approve the form of Joint Community Facilities Agreement; and granting general authority to City officials to take actions necessary or desirable to implement the purposes of this Resolution.

BACKGROUND

What is a Community Facilities District? In 1982, the Mello-Roos Community Facilities Act of 1982 (CA Government Code §53311-53368.3) was created to provide an alternate method of financing public improvements and services. The Act allows any county, city, special district, school district or joint

powers authority to establish a Mello-Roos or Community Facilities District (CFD) which allows for financing of public improvements and maintenance, repairs, and services. The services and improvements that Mello-Roos CFDs can finance include streets, sewer systems and other basic infrastructure, police protection, fire protection, ambulance services, schools, parks, libraries, museums and other cultural facilities. CFDs cannot finance infrastructure for childcare facilities, administration of programs, and monitoring and reporting. By law, the CFD is also entitled to recover expenses needed to form the CFD and administer the annual special taxes and bonded debt. If there are less than 12 registered voters within a proposed CFD, the special tax may be approved by a 2/3 vote of property owners in the district. Property owner votes are weighted based on the ownership of land area in the district. **Simply put, property owners agree to impose a new property tax assessment for a period of 20-30 years and a public entity (in this case, ABAG) issues tax-exempt bonds supported by the increased assessment revenues to fund public infrastructure. The Mayor's resolution seeks Board authorization to allow a future property owner or group of property owners to request that ABAG form an Infrastructure Impact Fee CFD in the future. It does not create the CFD—this work would be completed by the property owner(s) and ABAG. Other property owners could then annex into such a Citywide CFD at later points in time, based on their individual circumstances and needs.**

What is an Infrastructure Finance District? Infrastructure Finance Districts (IFDs) are another means for funding public improvements. (CA Government Code §53395) Similar to redevelopment tax increment law, when an IFD is formed, a "base year" property assessed valuation is set. As property values rise over time within the IFD boundaries and associated property tax revenues rise, a portion of this new increment of property value over the base year may be diverted from the General Fund and directed instead toward specific public infrastructure projects in and around the district, instead of to the General Fund, while the original base year property tax revenues would continue to flow to the General Fund. IFDs may be used to finance the construction of public infrastructure such as roads, transit, water systems, sewer projects, flood control, childcare facilities, libraries, parks, and solid waste facilities. IFDs cannot pay for maintenance, repairs, operating costs, and services. To form an IFD, a city or county must develop an infrastructure plan, send copies to every landowner, consult with any affected agencies, and hold a public hearing. Similar to a CFD, if there are less than 12 registered voters within a proposed IFD, the district may be approved by a 2/3 vote of property owners in the district. IFDs may be non-contiguous. Property owner votes are weighted based on ownership of land area in the district. **Simply put, an IFD allows a portion of incremental new property tax revenues above a baseline to be pledged to tax-exempt bonds that can be used to fund specific public infrastructure improvements. IFDs essentially replicate tax increment financing outside of the redevelopment process.**

The Way It Is Now Summary:

In the past several years, the Department has adopted a number of new area plans. These plans include a wide variety of open space, pedestrian improvements, transit improvements and economic development initiatives. Most of the plans include a set of impact fees designed to help pay for these improvements. Monies collected from impact fees are projected to provide for only approximately 30-50% of the needed public improvements.

The Board of Supervisors directed the City's Capital Planning Committee to establish the Eastern Neighborhoods Infrastructure Finance Working Group (ENIFWG¹) to recommend funding strategies for the remaining 50-70% of the funds needed to implement the plans. The ENIFWG produced a July 2009 report that provides an overview of several strategies for funding the considerable set of infrastructure projects recommended in the Eastern Neighborhoods Plans. The ENIFWG's recommendations included study and formation of Community Facilities Districts and Infrastructure Finance Districts.

The Way It Would Be Summary:

- **BF 100870 [Area Plan Infrastructure Finance Committee]** This proposed Resolution introduced by Supervisor Maxwell would direct the Capital Planning Committee to establish an Area Plan Infrastructure Finance Committee (APIF Committee). This committee would
 1. manage and oversee a consultant study to inform the formation of an IFD and CFD in the Eastern Neighborhoods as recommended by ENIFWG;
 2. develop a clear statement of policy criteria to guide the use of IFDs in recently adopted Area Plans as recommended by ENIFWG;
 3. review and supervise the formation of the proposed Rincon Hill Pilot IFD based on the proposed IFD policy criteria; and
 4. provide such proposals or recommendations within six (6) months of study initiation.

The Committee would be composed of no more than four members of the public (including one member from the Market & Octavia CAC and one from the Eastern Neighborhoods CAC) and one representative each from the Planning Department, the Office of Economic and Workforce Development, the Mayor's Office of Public Policy and Finance, the Controller's Office and the Capital Planning Committee and other implementing agencies.

- **BF 100871 [Resolution Approving Formation of a Community Facilities District and financing by the ABAG Finance Authority For Nonprofit Corporations in accordance with State law, and approving related agreement]** This resolution introduced by Mayor Newsom and Supervisor Dufty would allow the ABAG Finance Authority for Nonprofit Corporations to form a citywide community facilities district and ultimately issue of special tax bonds to cover the costs related to City infrastructure impact fees for new development projects. Proceeds from the sale of the bonds would be used to pay the City's existing and future infrastructure impact fees at the regular collection time so that the provision of neighborhood infrastructure is not delayed. It is important to emphasize that from the City's perspective, all impact fees are paid when otherwise due. The CFD program is merely a financing mechanism for paying impact fees and not a means to "defer" or delay fee payment. In addition, the CFD program is entirely optional. If the resolution is approved by the Board of Supervisors, individual property owners would still need to apply to ABAG to form or "annex" into the Citywide CFD after it is formed. To provide

¹ The working group includes representatives from the Planning Department; the Office of Economic and Workforce Development; the Mayor's Office of Public Policy and Finance; the Controller's Office, Office of Economic Analysis; Department of Public Works, Division of Finance and Budget; Office of the City Administrator, Capital Planning Program; and the public.

the Board with some discretionary control over this future financing program, the Mayor's Office has proposed that the total amount of CFD-backed bonds issued could not exceed \$75,000,000.

Process Clarifications: Under a CFD program, the project sponsor must pay all impact fees when otherwise due; the City would have no involvement in the process other than collecting its fees and verifying how they are spent. All developments would be eligible to annex into CFDs. However due to the fixed costs associated with annexing into a CFD, it is estimated that only large projects with more than \$2 million worth of impact fees would be likely to participate.

REQUIRED COMMISSION ACTION

As Board Resolutions, there is no legal requirement for the Commission to render advice or take action on these measures. However, the Mayor's Office of Economic Development specifically requested review by the Commission. Accordingly, the proposed Resolutions are before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department strongly recommends that the Commission recommend *approval with modifications* to the proposed Resolutions and adopt the attached Draft Resolution to that effect.

Recommended Modifications

BF 100870 [Area Plan Infrastructure Finance Committee]

- **Seek additional funding to extend Pilot Program to Eastern Neighborhoods.** In addition to the pilot IFD proposed for Rincon Hill, it is important that the Infrastructure Finance Committee be tasked with development of an IFD for the Eastern Neighborhoods Plan Area. Funding for this additional study should be identified in the short term by the APIF Committee, as the Eastern Neighborhoods has an existing infrastructure deficit that the City could address by establishing an IFD.
- **Ensure that the Committee Studies the Long-term Effects on the General Fund.** Capturing an increment of new increases in property values for the specific benefit of a limited geographic area necessarily diverts that revenue from the General Fund over a 30-year time period. While a significant amount of this new tax increment is made possible by increases in zoned development potential and other improvements generated *by* the area plans, only a *portion* of the net increase in property tax revenues should be diverted towards area plan needs, thereby enabling continued revenue to flow to the General Fund to fund needed Citywide services. To ensure this flow continues, the Committee should carefully study the effect of various "pass-through" schemes on General Fund revenues to ensure that City services, as a whole, are well-funded.

BF 100871 [Formation of a Community Facilities District and financing by the ABAG Finance Authority For Nonprofit Corporations in accordance with State law, and approving related agreement]

- **Cap the amount of area plan impact fees to ensure that all tax-exempt bond monies derived from the Citywide CFD program can be used for all neighborhood infrastructure plan activities, including administration of the community improvements programs, and monitoring and reporting.** While the definitions of CFDs would indicate that not all infrastructure identified in the Community Improvements programs can be funded by CFDs, the Planning Department would like to discuss this issue with the City Attorney's Office and counsel for ABAG. One issue to determine is if revenues derived from the CFD program can cover *all* intended neighborhood infrastructure impact fee uses prior to Board approval of the Resolution and related Joint Community Facilities Agreement. Any restrictions on the use of such funds must be made clear in the Agreement. If necessary, this Agreement should be modified to limit the use of CFD financing to only the portion of the fees that can legally be paid by CFD funding.

There are two points that, while not modifications, should be noted by the Commission:

1. **Does the financial burden shift from land owner to resident?** Experts do not agree on which party (land owner, developer, or homeowner) absorbs the costs of impact fees. Factors that influence which party carries the burden include: the elasticity of land prices, market demand for housing, how long an impact fee has existed, and other development financing trends. From a policy perspective, ideally land owners absorb the added costs of impact fees, as land values in San Francisco have risen over 300% in recent years. If developers or homeowners absorb the added cost, new development may be stalled or delayed. By amortizing the payment of impact fees over a 30-year period, it is possible that a Citywide CFD could shift the financial burden of impact fees away from landowners and towards future homeowners. But viewed as a stimulative policy, this would help spur development.
2. **The proposed Citywide Infrastructure Impact Fee CFD does not create a new funding source for public infrastructure; it merely finances the costs of existing infrastructure impact fees.** The proposed program would allow developers to finance the cost of the City's existing impact fees with a new CFD 30-year property tax assessment instead of financing these fees privately. For instance if a development owes \$2.5 million in impact fees, a developer could opt into the CFD and ABAG would then issue a bond for \$2.5 million based on increased property tax assessments for the subject property. ABAG would pay the City the \$2.5M when the impact fees were otherwise due. ABAG, not the City, would then be responsible for servicing the bonds by collecting principal and interest payments for the bond issuance from the future property owners of the development subject to the CFD. Over time ABAG recoups more than \$2.5 million to cover both the cost of the bond and interest. Accordingly, this is not an additive funding source. The ENIFWG report also proposes CFDs as an additive source of funding - but that would be in addition to impact fees and existing property taxes. Such a CFD would need to be approved by 2/3 of the voters and would be in addition to the proposed Citywide Infrastructure Impact Fee CFD.

BASIS FOR RECOMMENDATION

The proposed Resolutions would assist funding the infrastructure needs that have been identified in recent community plan work.

Adoption of the proposed resolutions will address some of the recommendations from the ENIFWG report. Specifically, the reported recommended (among other recommendations) that the Board of Supervisors address the following issues that are addressed by the resolution:

- Adopt by resolution a clear statement of policy criteria to guide the use of TIF outside of a redevelopment project area and the creation of a customized TIF tool through state legislation; **The APIF Committee is tasked with developing this policy.**
- Commission a consultant study to inform the formation of an IFD and CFD, including determining the potential boundaries of the IFD and CFD, the eligible infrastructure and services funded by the districts, the appropriate tax rates, the appropriate portion of tax increment, and the estimated bonding capacity. **The APIF Committee is tasked with reviewing a consultant study, policy criteria and review of the Rincon Hill Pilot IFD prior to initiation of any IFD.**

These proposed resolutions begin to address the infrastructure needs identified in the areas plans that are currently 50-70% unfunded.

ENVIRONMENTAL REVIEW

The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department received no letters in support or opposition of the proposed Resolutions.

RECOMMENDATION:	Recommendation of Approval with Modifications
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 10-0870
- Exhibit C: Board of Supervisors File No. 10-0870
- Exhibit D: Draft Joint Community Facilities Agreement between ABAG and San Francisco

☒ BF 100870 [Area Plan Infrastructure Finance Committee]

1 [Area Plan Infrastructure Finance Committee.]

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3 **Resolution establishing an Area Plan Infrastructure Finance Committee to supervise a**
4 **consultant study to develop policy criteria and recommendations on the use of**
5 **Infrastructure Finance Districts (IFDs) in newly adopted Area Plans, including within**
6 **the Eastern Neighborhoods Area Plans, determine the appropriate steps to form IFDs,**
7 **and to supervise the formation of a pilot Infrastructure Finance District (IFD) in Rincon**
8 **Hill.**

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10 Note: Additions are single-underline italics Times New Roman;
11 deletions are ~~strikethrough italics Times New Roman~~.
12 Board amendment additions are double underlined.
13 Board amendment deletions are ~~strikethrough normal~~.

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15 WHEREAS, The Board of Supervisors adopted the Eastern Neighborhoods Area Plans
16 (ENAP, Ordinance No. 297-08) which rezoned portions of the largely industrial neighborhoods
17 of the Mission, Eastern South of Market Area, Central Waterfront, and Showplace Square/
18 Potrero Hill to promote a balanced mix of residential and sustainable commercial development
19 along with a package of public benefits and infrastructure improvements; and

20 WHEREAS, An ENAP Needs Assessment was prepared which identified specific
21 demands for public infrastructure to accommodate projected new growth and the ENAP
22 impact fees were only projected to meet up to 50% of the projected cost of such new
23 infrastructure, the Board of Supervisors directed the Capital Planning Committee (CPC) to
24 establish a nine-member subcommittee called the Eastern Neighborhoods Infrastructure
25 Finance Working Group (ENIFWG) to recommend funding strategies for the ENAP
(Resolution No. 510-08); and

1 WHEREAS, The ENIFWG produced and unanimously approved on July 1, 2009, a
2 report entitled *Strategies for Funding the Public Improvements in the Eastern Neighborhoods*
3 *Area Plans* (the Strategies Report) that evaluated potential funding alternatives to meet
4 infrastructure needs in the ENAP, and which could be similarly applicable to other recently
5 adopted Area Plans, and made four recommendations to the Board of Supervisors on how the
6 City could move forward; and

7 WHEREAS the CPC reviewed and unanimously accepted the Strategies Report and its
8 four recommendations to the Board of Supervisors on July 6, 2009, which recommendations
9 included: (1) commissioning a consultant study to inform the formation of an IFD and CFD in
10 the ENAP, including determining the potential boundaries of the IFD and CFD, appropriate tax
11 rates, appropriate portion of tax increment, and the total estimated bonding capacity under a
12 variety of growth scenarios; (2) developing a clear statement of policy criteria to guide the use
13 of an IFD in the ENAP and (3) developing criteria for a potential future modified IFD tool; and

14 WHEREAS, The Board of Supervisors has also adopted comprehensive Area Plans in
15 Rincon Hill, Market and Octavia, Balboa Park and Visitacion Valley which have also rezoned
16 existing use districts to reduce land use conflicts and to encourage diverse housing affordable
17 to a range of incomes and commercial and mixed-uses along with a package of public
18 benefits and infrastructure improvements; and,

19 WHEREAS, The City anticipates significant new housing units and other commercial
20 development within these Plan Areas, and this future development will impact each Plan
21 Area's neighborhood infrastructure by generating greater need for new investment in
22 recreation and open space facilities, transit and transportation improvements, streetscape
23 improvements and community facilities and other improvements identified in the public
24 benefits package for each Area Plan; and,

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1 WHEREAS, To ensure that new neighborhood infrastructure is provided concurrently
2 with the demands generated by new growth in both the ENAP and in each of the above listed
3 Area Plans, the lessons learned from the Strategies Report should be applied on a broader
4 policy basis; and,

5 WHEREAS, Detailed recommendations on the development of an Infrastructure
6 finance district, including boundaries, revenue projections, and related infrastructure
7 improvements would prepare the City to pursue the establishment of an IFD which would
8 support growth in the Eastern Neighborhoods and move towards completing the Eastern
9 Neighborhoods priority projects identified by the Board of Supervisors; and,

10 WHEREAS, A project sponsor on Rincon Hill, Harrison Fremont LLC, has recently
11 expressed interest in funding the formation of a pilot IFD in the Rincon Hill Area Plan to help
12 finance the acquisition and construction of a new public park located at 333 Harrison Street
13 but the City has not yet adopted clear policy parameters to guide the formation and
14 application of IFDs in new Area Plans; therefore, be it

15 RESOLVED, That the Board of Supervisors hereby directs the CPC to establish and
16 appoint a Chair for a new subcommittee called the Area Plan Infrastructure Finance
17 Committee (the "APIF Committee") to (1) manage and oversee a consultant study to inform
18 the formation of an IFD and CFD in the ENAP as recommended by ENIWG; (2) develop a
19 clear statement of policy criteria to guide the use of IFDs in recently adopted Area Plans as
20 recommended by ENIFWG; (3) to review and supervise the formation of the proposed Rincon
21 Hill Pilot IFD based on the proposed IFD policy criteria: and (4) to provide such proposals or
22 recommendations within six (6) months of study initiation; and, be it

23 FURTHER RESOLVED, That the APIF Committee include representatives of relevant
24 City agencies and no more than four (4) members of the public; and, be it

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1 FURTHER RESOLVED, That the representatives of City agencies shall at a minimum
2 include one representative from each of the following City departments or committee,
3 appointed by the head of each such department or committee: the Planning Department, the
4 Office of Economic and Workforce Development, the Mayor's Office of Public Policy and
5 Finance, the Controller's Office and the Capital Planning Committee and other implementing
6 agencies as deemed appropriate by the CPC; and, be it

7 FURTHER RESOLVED, That two of the four (4) members of the public on the APIF
8 Committee shall be "at-large" representatives, one representative from the ENAP CAC and
9 one representative from the Market & Octavia CAC, and be appointed by the President of the
10 Board of Supervisors; and, be it

11 FURTHER RESOLVED, That upon any resignation or vacancy of any position on the
12 APIF Committee, replacements shall be designated in the same manner as the original
13 appointments; and, be it

14 FURTHER RESOLVED, That the Chair of the APIF Committee shall convene the
15 public and private members of the APIF Committee separately or together as frequently as
16 necessary to complete the scope of work identified in this Resolution.

17 FURTHER RESOLVED, That the final consultant study, policy criteria and Rincon Hill
18 Pilot IFD be presented to the CPC for their review and approval prior to initiation of any IFD or
19 submission to the Mayor or Board of Supervisors.

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FILE NO.

RESOLUTION NO.

☒ BF 100871 [Resolution Approving Formation of a Community Facilities District and financing by the ABAG]

1 [Resolution Approving Formation of a Community Facilities District and financing by the ABAG
2 Finance Authority For Nonprofit Corporations in accordance with State law, and approving
3 related agreement]

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4 **Resolution Approving the Formation of a Community Facilities District and the**
5 **issuance of special tax bonds by the ABAG Finance Authority For Nonprofit**
6 **Corporations related to City fees and charges applicable to new development projects;**
7 **making certain findings; approving the form of Joint Community Facilities Agreement;**
8 **and granting general authority to City officials to take actions necessary or desirable to**
9 **implement the purposes of this Resolution**

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11 WHEREAS, The Board of Supervisors (the "Board") of the City and County of San
12 Francisco (the "City") has adopted various ordinances and the Public Utilities Commission has
13 adopted various resolutions to impose certain public improvement impact fees, in-lieu
14 development fees, capacity charges and connection fees (collectively, the "Development
15 Impact Fees and Charges") related to new development projects in the City; and,

16 WHEREAS, In order to improve the financial feasibility of new development in the City,
17 the City would like to make available a program to permit public financing for all or a portion
18 of the Development Impact Fees and Charges through the formation of a community facilities
19 district (a "CFD") under the Mello-Roos Community Facilities Act of 1982, as amended (the
20 "Act"); and,

21 WHEREAS, The program would allow for property owners to annex into the CFD to
22 financed the costs of the Development Impact Fees and Charges, and special tax bonds
23 would be issued by the CFD (the "Bonds") the proceeds of which will be used to pay for the
24 costs of the public facilities for which the Development Impact Fees and Charges were
25 imposed (the "Public Facilities"); and,

1 WHEREAS, The annexing property owners would satisfy their obligation to pay the
2 Development Impact Fees and Charges by means of the Bond proceeds made available to
3 the City to finance the costs of the Public Facilities; and,

4 WHEREAS, The CFD would levy special taxes against the property owners in the
5 CFD, and such special taxes would be used to repay the Bonds; and,

6 WHEREAS, The ABAG Finance Authority for Nonprofit Corporations, a joint exercise of
7 powers agency established under the laws of the State of California (the “Authority”) has been
8 requested to consider the establishment of the CFD and the issuance of the Bonds therefor to
9 finance the Public Facilities; and,

10 WHEREAS, The City is a member of the Authority; and,

11 WHEREAS, The Authority’s “Guidelines for Issuance” require that the member of the
12 Authority in whose jurisdiction the CFD will be located adopt a resolution recommending
13 approval of the financing of the Public Facilities by a CFD created and governed by the Board
14 of Directors of the Authority (acting through its Executive Committee), prior to consideration of
15 the financing and final approval by the Authority; and,

16 WHEREAS, In order to enable the CFD to finance the Public Facilities, Section
17 53316.2 of the California Government Code requires that the City and the Authority enter into
18 a joint community facilities agreement with respect to the Public Facilities, and Section
19 6586.5(a)(2) of the California Government Code (the “Code”) requires that this Board hold a
20 public hearing regarding the proposed CFD financing and make certain findings with respect
21 to the proposed financing; and,

22 WHEREAS, Attached hereto as Exhibit A is a form of joint community facilities
23 agreement by and between the City and the Authority relating to the Public Facilities eligible to
24 be financed by the CFD and provides that such Public Facilities shall be owned or operated
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1 by the City (the “Joint Community Facilities Agreement”), and such agreement is on file with
2 the Clerk of the Board of Supervisors (the “Clerk of the Board”); and,

3 WHEREAS, This Board has on this date held a duly noticed public hearing on the
4 financing of the Public Facilities with the proceeds of the Bonds, as required by the Code;
5 and,

6 WHEREAS, It is in the public interest and for the public benefit, and in furtherance of
7 the desire of the Board to improve the feasibility of new development in the City that this
8 Board recommend approval of the formation by the Authority of the CFD, the issuance of the
9 Bonds by the Authority for the CFD to finance the Public Facilities, and the execution and
10 delivery of the Joint Community Facilities Agreement by the City, and make certain findings in
11 connection with the financing of the Public Facilities with proceeds of the Bonds; and,

12 WHEREAS, The Board now desires to recommend the approval of the financing of the
13 Public Facilities by a CFD governed by the Board of Directors of the Authority, to approve the
14 form of Joint Community Facilities Agreement and to make findings required under the Code
15 with respect to the financing; and,

16 WHEREAS, The City shall have no obligation or liability of any kind whatsoever with
17 respect to the formation or administration of the CFD, or the issuance or repayment of the
18 Bonds, and no City revenues shall be available to repay the Bonds; now, therefore be it

19 RESOLVED, By the Board as follows:

20 Section 1. The Board hereby finds and declares the above recitals are true and
21 correct.

22 Section 2. The Board hereby approves the establishment of a CFD by the Board of
23 Directors of the Authority and the issuance of one or more series of the Bonds by the CFD in
24 an initial aggregate principal amount not to exceed \$75,000,000 to finance the Public
25 Facilities.

1 Section 3. The Joint Community Facilities Agreement, in the form on file with the Clerk
2 of the Board, is hereby approved, and the Mayor or his designee is hereby authorized and
3 directed for and on behalf of the City to execute and deliver said Joint Community Facilities
4 Agreement together with any changes or modifications thereto deemed necessary or
5 convenient, in consultation with the City Attorney, in order to carry out the purposes of this
6 Resolution.

7 Section 4. The Board hereby declares that the Joint Community Facilities Agreement
8 will be beneficial to the residents residing and to reside within the area in which the Public
9 Facilities may be constructed.

10 Section 5. This Board hereby finds that significant public benefits will arise from the
11 financing of the Public Facilities with the proceeds of the Bonds, including employment
12 benefits from the construction of the Public Facilities and otherwise incident to new
13 development occurring in the City, all in accordance with Section 6586 of the Code.

14 Section 6. The Board approves the issuance of the Bonds in one or more series by the
15 Authority for the CFD, and the financing of the Public Facilities with the proceeds of the
16 Bonds; provided however, that such Bond shall be issued in a amount not greater than
17 \$75,000,000, and provided no revenues of the City shall be pledged or made available to
18 repay the Bonds.

19 Section 7. The approval of the formation of a CFD by the Board of Directors of the
20 Authority and the issuance of the Bonds by the Authority for the purposes herein provided is
21 neither an approval of the underlying credit or security of any borrower or proposed financing
22 nor an approval of the financial structure of the Bonds.

23 Section 8. The Mayor or his designee are hereby authorized and directed, for and in
24 the name and on behalf of the City, to do any and all things and take any and all actions and
25 execute and deliver any and all certificates, agreements and other documents, which they, or

☒ BF 100871 [Resolution Approving Formation of a Community Facilities District and financing by the ABAG]

1 any of them, may deem necessary or advisable, in consultation with the City Attorney, in order
2 to consummate the lawful issuance and delivery of the Bonds and to effectuate the purposes
3 thereof and of the documents herein approved in accordance with this Resolution.

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JOINT COMMUNITY FACILITIES AGREEMENT

CITY AND COUNTY OF SAN FRANCISCO DEVELOPMENT IMPACT FEE, IN-LIEU FEE, AND CAPACITY AND CONNECTION CHARGE FINANCING PROGRAM

This Joint Community Facilities Agreement (the "Agreement"), dated for convenience as of _____ 1, 2010, is by and between the ABAG Finance Authority For Nonprofit Corporations (the "Authority") and the City and County of San Francisco, California, a charter city and a municipal corporation (the "City").

R E C I T A L S :

WHEREAS, the Board of Supervisors of the City has adopted various ordinances and the San Francisco Public Utilities Commission has adopted various resolutions which impose certain public improvement impact fees, in-lieu development fees, capacity charges and connection fees, among other fees (collectively referred to herein as the "Development Impact Fees and Charges") related to new development projects to be located in the City as identified in Exhibit A hereto, and the City would like to make available a program to finance all or a portion of the Development Impact Fees and Charges by means of the formation of a community facilities district (a "CFD") under the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"); and

WHEREAS, the property owners desiring to develop their property, and in order to facilitate the payment of the applicable Development Impact Fees and Charges, would enter into an agreement with the City (each, an "Infrastructure Fees Agreement"), under which such property owners agree to include their property in the CFD; and

WHEREAS, it is expected that an annual special tax will be levied on property in the CFD, bonds will be issued in one or more series by the Authority for the CFD to pay the costs of public facilities identified in Exhibit B hereto (the "Public Facilities") and the special taxes will be used to repay the Bonds; and

WHEREAS, it is expected that any Infrastructure Fees Agreement will provide that each property owner's obligation to pay the Development Impact Fees and Charges will be credited in an amount equal to the amount of Bond proceeds that are paid or caused to be paid to the City by the CFD to finance costs of the Public Facilities; and

WHEREAS, the City would like the Authority to undertake proceedings to form the CFD pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), being Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code, and for the Authority to issue the Bonds under the Act in order to finance costs of the Public Facilities; and

WHEREAS, Section 53316.2 of the Act requires that the Authority enter into a joint community facilities agreement with the City in respect of any public facilities that are to be

JOINT COMMUNITY FACILITIES AGREEMENT

financed with the proceeds of the Bonds, and, upon completion, are to be owned and operated by the City; and

WHEREAS the Authority and the City now desire to enter into this Agreement to satisfy the requirements of Section 53316.2 of the Act and to memorialize their understanding with respect to the CFD, the proceeds of the Bonds and the Public Facilities, all as more particularly set forth below.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the mutual covenants set forth below, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. The Authority expects to enter into an Indenture (the "Indenture") with a commercial financial institution acting as trustee (the "Trustee"), which will provide for the issuance of the Bonds in one or more series, and which will establish various funds and accounts with the Trustee into which proceeds of the Bonds will be deposited. Those funds and accounts will include a City and County of San Francisco Community Facilities Account (the "Facilities Account").

Amounts deposited to the Facilities Account, together with any investment earnings thereon, shall be held for the sole and exclusive benefit of the City. Amounts in the Facilities Account shall be disposed of solely as provided in Section 2 below. Neither the the Authority, nor the property owner shall have an interest in any amounts on deposit in the Facilities Account, and such amounts shall in no way be pledged as security for the Bonds.

Section 2. The City agrees to encumber, pursuant to a written agreement or written agreements with one or more entities not related to or under the control of the City or its Board of Supervisors, or to otherwise expend, within six months of the date of issuance of a series of the Bonds, an amount equal to not less than five percent (5%) of the aggregate amount of proceeds of such series of the Bonds deposited to the Facilities Account.

The City agrees to use all amounts, including investment proceeds, on deposit in the Facilities Account for costs of the Public Facilities incurred by the City after the date on which the Authority has adopted a resolution of intention to form the CFD, including any planning, engineering, design, inspection or other expenses of the City incidental to the construction of the Public Facilities. The City hereby represents that each of the Public Facilities will have a useful life of five years or longer, are necessitated, in part, by development occurring within the City, and no nongovernmental person or entity has or will have any special legal entitlements to any of the Public Facilities.

The City shall be entitled to withdraw amounts from the Facilities Account upon submission to the Trustee of a requisition request, substantially in the form of Exhibit C hereto, executed by the Director of the Mayor's Office of Public Finance (the "Director") of the City or the Director's designee. All amounts shall remain on deposit in the Facilities Account until withdrawn by the City, and any investment of such amounts shall be at the sole and absolute

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discretion of the City, and the Director of the Office of Public Finance, or the Director's designee, shall provide written instructions to the Trustee as to such investments.

The City hereby represents that it reasonably expects to be able to expend amounts deposited in the Facilities Account from a series of the Bonds within three years of the date of issuance of such series of the Bonds the proceeds of which were deposited to the Facilities Account.

Section 3. If and only if a deposit of Bond proceeds is made to the Facilities Account as provided in Section 1 above, the City will provide a credit against the Development Impact Fees and Charges which would otherwise be charged against the property included in the CFD, all as further provided in the applicable Infrastructure Fees Agreement. Said credit shall be applied without regard to any investment earnings on amounts in the Facilities Account. The provisions of the preceding paragraph shall in no way relieve any owner or developer of the property in the City from the payment of any fees, other than the Development Impact Fees and Charges, charged by the City, and then only to the extent set forth in the applicable Infrastructure Fees Agreement.

Subject to the provisions of the first paragraph of this Section 3, any deposit to the Facilities Account pursuant to Section 1 above shall in no way fix the amount of the fees or charges due under the City Municipal Code or the City's Public Utilities Commission legislation with respect to the property in the CFD, and any increase in any of the fees or charges imposed by the City or its Public Utilities Commission (including but not limited to the Development Impact Fees and Charges) from and after the date of this Agreement shall be taken into account in determining the amount of the credit to be given pursuant to the applicable Infrastructure Fees Agreement. Subject to the provisions of the first paragraph of this Section 3, if the total Development Impact Fees and Charges due with respect to the property included in the CFD is greater than the amount, if any, deposited to the Facilities Account pursuant to Section 1 above, the excess shall be charged to the owners of the land in the CFD as provided in the applicable Infrastructure Fees Agreement. This Agreement shall in no way be construed as a deferral of any fee or charges otherwise due under the City Municipal Code or the City's Public Utilities Commission legislation with respect to the property to be included in the CFD.

Section 4. All obligations of the Authority under and pursuant to this Agreement shall be limited to the amounts, if any, on deposit in the Facilities Account. No member of the Executive Committee of the Authority, or member, officer or employee of the Authority shall in any event be personally liable hereunder. Following any deposit of Bond proceeds in the Facilities Account as provided in Section 1 above, the Authority shall have no liability with respect to the handling or the investment of such funds by the Trustee, or the disposition of such funds by the City.

All special taxes levied for the CFD shall be disposed of as provided in the proceedings for the establishment of the CFD and the issuance of the Bonds.

Section 5. The City shall have no obligation whatsoever with respect to the payment of the Bonds or any other aspect of the CFD. The only obligation of the City hereunder shall be to encumber and expend the amounts, if any, deposited to the Facilities Account in a manner consistent with Section 2 above, and its indemnity obligations as provided in Section 8 below.

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Section 6. Notwithstanding any other provision of this Agreement, this Agreement shall cease to be effective and shall terminate if the first series of the Bonds is not issued by December 31, 2011. If not earlier terminated pursuant to the preceding sentence, this Agreement shall terminate upon the earlier of December 31, 2020, or the disbursement of all amounts from the Facilities Account to pay costs of the Public Facilities.

Section 7. The provisions of this Agreement shall in no way obligate the Authority to form the CFD. Notwithstanding the foregoing, by their respective approvals of this Agreement, the Authority and the City have each declared and hereby confirm that this Agreement is beneficial to the residents within the jurisdiction of their respective entities in assuring the provision of financing for a portion of the costs of the Public Facilities in furtherance of the purposes of the Act.

Section 8. The City hereby agrees to indemnify, hold harmless and defend the Authority and the CFD, and the members, boardmembers, officers, employees and agents of the Authority, against any and all claims, demands, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys fees) arising from or related to (i) any application by the City of funds drawn from the Facilities Account that is not in compliance with the provisions of this Agreement, (ii) any failure to comply with any law regarding prevailing wages or public bidding with respect to the Public Facilities, (iii) the construction, ownership or operation of the Public Facilities, (iv) any failure of the City to otherwise comply with the obligations on its part under this Agreement, or (v) any failure of the City to comply with its municipal code, Public Utilities Commission legislation or any Infrastructure Fees Agreement. It is hereby acknowledged that the Authority has agreed to form the CFD and issue the Bonds to facilitate the financing of the Public Facilities and the implementation of any Infrastructure Fees Agreement, and is not assuming any responsibility for the implementation by the City of its municipal code, Public Utilities Commission legislation, any actions by the City under any Infrastructure Fees Agreement, or any misapplication of funds by the City drawn from the Improvement Account.

Section 9. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 10. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement is for the sole benefit of the Authority and the City and their successors and assigns, and no other person or entity shall be deemed to be a beneficiary hereof or have an interest herein; provided, however, that the owners of land in the CFD shall be beneficiaries of any credit in respect of the Development Impact Fees and Charges imposed under the City's municipal code and Public Utilities Commission legislation as described in Section 3 above, as determined solely by the City consistent with the provisions of the applicable Infrastructure Fees Agreement.

Section 11. This Agreement may be amended at any time but only in writing signed by each party hereto.

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Section 12. This Agreement contains the entire agreement between the parties hereto with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties hereto with respect to the subject matter of this Agreement. The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign.

Section 13. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and performed in such State.

Section 14. This Agreement may be executed in counterparts, each of which shall be deemed an original.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written alongside their signature below.

ABAG FINANCE AUTHORITY FOR
NONPROFIT CORPORATIONS

Date of Execution: _____, 2010

By: _____
Chief Financial Officer

CITY AND COUNTY OF SAN
FRANCISCO

Date of Execution: _____, 2010

By: _____
Mayor

01009.37;J10554

EXHIBIT A

DEVELOPMENT IMPACT, IN-LIEU FEE OBLIGATIONS
AND CHARGES ELIGIBLE FOR FINANCING

General Description	Statutory Source of Fee Obligation
Child Care Facility Impact Fee	City and County of San Francisco Municipal Code - Planning Code Section 314
Public Utilities Commission Wastewater Capacity Charge	City and County of San Francisco Public Utilities Commission Resolution No. 07-0100
Public Utilities Commission Water Capacity Charge	City and County of San Francisco Public Utilities Commission Resolution No. 07-0099
Public Utilities Commission Sewer Connection Fee	City and County of San Francisco Public Utilities Commission Resolution No. ____
Downtown Park Fee	City and County of San Francisco Municipal Code - Planning Code Section 139
Transit Impact Development Fee	City and County of San Francisco Municipal Code - Administrative Code Section 38.5
Rincon Hill Community Improvements Fee	City and County of San Francisco Municipal Code - Planning Code Section 318
Market and Octavia Community Improvements Fee	City and County of San Francisco Municipal Code - Planning Code Section 326
Eastern Neighborhoods Public Benefit Fee	City and County of San Francisco Municipal Code - Planning Code Section 327
Eastern Neighborhoods On-Site Open Space In-Lieu Fee	City and County of San Francisco Municipal Code - Planning Code Section 135
Visitation Valley Community Facilities Infrastructure Fee	City and County of San Francisco Municipal Code - Planning Code Section 318.10
Balboa Park Impact Fee	City and County of San Francisco Municipal Code - Planning Code Section 331

EXHIBIT B

GENERAL DESCRIPTION OF PUBLIC FACILITIES ELIGIBLE TO BE FINANCED

(all within or serving residents of and businesses located in the City and County of San Francisco or specific areas therein as may be specified below)

- childcare facilities in the C-3 District as described in the Downtown Plan
- wastewater distribution system capital improvements
- water distribution system capital improvements
- [description of improvements which PUC sewer connection fees are used to finance]
- acquisition and/or development of open space in the downtown office districts
- capital improvements to the public transit system, including improvements to increase capacity on existing transit lines
- public parks, streetscapes, community facilities and libraries as described in the Rincon Hill Plan
- public improvements, including parks, libraries, childcare facilities, bicycle facilities, pedestrian amenities, capital improvements to transit and recreation space as described in the Market and Octavia Area Plan and Neighborhood Plan
- public improvements, including parks, libraries, childcare facilities, bicycle facilities, pedestrian amenities, capital improvements to transit and recreation space as described in the Mission, Showplace Square – Potrero Hill, East Soma and Central Waterfront Area Plans of the General Plan
- acquisition and/or development of public open space
- public improvements, including parks, libraries, bicycle facilities, pedestrian amenities, capital improvements to transit and recreation space in the Visitation Valley area
- public improvements, including parks, libraries, childcare facilities, pedestrian amenities, capital improvements to transit and recreation space as described in the Balboa Park Station Area Plan

The public facilities eligible to be financed by the CFD include the acquisition of right-of-way and other necessary land, the costs of design, engineering and planning, the costs of any environmental or other studies, surveys or reports, the cost of any required environmental mitigation and any required landscaping and irrigation, soils testing or engineering, permits, plan check and inspection fees, insurance, construction management, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing.

EXHIBIT C

FORM OF REQUEST FOR WITHDRAWAL FROM FACILITIES ACCOUNT

Request No. _____

Date Submitted: _____, 200__.

The undersigned, being the Director of the Mayor’s Office of Public Finance of the City and County of San Francisco (the “City”), hereby states and certifies as follows:

1. The City hereby requests that \$_____ be disbursed from the Facilities Account held pursuant to the Indenture (as such terms are defined in the Joint Community Facilities Agreement, dated as of _____ 1, ____, between the City and the ABAG Finance Authority For Nonprofit Corporations (the “Agreement”)), and that said amount be remitted to the payee identified in Attachment 1 hereto.

2. The disbursement requested pursuant to 1 above, is for payment of a cost identified in general in Attachment 1 hereto, which cost relates to a Public Facility, as such term is defined in the Agreement.

3. The disbursement requested hereby is in accordance with the provisions of Section 2 of the Agreement, and no portion of the amount requested to be disbursed was set forth in any request for withdrawal from the Facilities Account previously submitted by the City pursuant to the Agreement.

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Director,
Mayor’s Office of Public Finance

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ATTACHMENT 1 TO EXHIBIT B

Purpose of Disbursement

Amount Requested

Payee