

CITY OF HERCULES RESOLUTION NO. 24-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS AND SPECIAL TAXES AND TO FORM ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES DISTRICTS WITHIN THE TERRITORY OF THE CITY OF HERCULES; EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF COMMUNITY FACILITIES DISTRICT FINANCINGS; APPROVING FORM OF ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, lawfully formed and operating within the State pursuant to an agreement (the "Joint Powers Agreement") entered into as of June 1, 1988 under the authority of Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code (the "JPA Law"), the members of which include numerous cities, counties and local agencies in the State of California, including the City of Hercules (the "City"); and

WHEREAS, the Joint Powers Agreement authorizes the Authority to undertake financing programs under any applicable provisions of State law to promote economic development, the stimulation of economic activity, and the increase of the tax base within the jurisdictional boundaries of its members (such members, the "Program Participants"); and

WHEREAS, as one of the Programs under the Joint Powers Agreement, the Authority has established the Statewide Community Infrastructure Program ("SCIP") to allow the financing of certain public capital improvements to be constructed by or on behalf of property owners for acquisition by the City or another public agency (the "Improvements") and improvements eligible for funding from certain development impact fees, capacity fees and/or other development related charges (the "Fees") levied in accordance with the Mitigation Fee Act (California Government Code Sections 66000 and following) and other authority providing for the levy of fees on new development to pay for public capital improvements (collectively, the "Fee Act") through the levy of special assessments pursuant to the Municipal Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following) (the "1913 Act") and the issuance of improvement bonds (the "Improvement Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid special assessments; and

WHEREAS, the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 (beginning with Section 53311) of the Government Code of the State (the "Mello-Roos Act") is an applicable provision of State law available to,

among other things, finance public improvements and public services (“Services”) necessary to meet increased demands placed upon local agencies as a result of development; and

WHEREAS, the Authority also uses SCIP to allow the financing of Fees and Improvements through the levy of special taxes and the issuance of special tax bonds (the “Special Tax Bonds” and, together with the Improvement Bonds, the “Local Obligations”) under the Mello-Roos Act upon the security of the special taxes and to allow the financing of Services through the levy of special taxes under the Mello Roos Act; and

WHEREAS, the City desires to allow the owners of property being developed within its jurisdiction (“Participating Developers”) to participate in SCIP and to allow the Authority to conduct proceedings and to form community facilities districts (“CFDs”) and to issue Local Obligations under the Mello-Roos Act, as well as to conduct assessment proceedings to form assessment districts (“Assessment Districts”) under the 1913 Act and to issue Local Obligations under the 1915 Act, to finance Fees levied on such properties and Improvements, provided that such Participating Developers voluntarily agree to participate and consent to the levy of the assessments or special taxes, as applicable; and

WHEREAS, the City desires to allow the Participating Developers to participate in SCIP and to allow the Authority to conduct proceedings and to form CFDs to levy special taxes to finance Services, provided that such Participating Developers voluntarily agree to participate and consent to the levy of such special taxes and that such CFDs are not pooled together with projects in other jurisdictions; and

WHEREAS, from time to time when eligible property owners within the jurisdiction of the City elect to be Participating Developers, the Authority will conduct proceedings under the 1913 Act and the Mello-Roos Act and issue Local Obligations under the 1915 Act and the Mello-Roos Act to finance Fees and Improvements and, at the conclusion of such proceedings, will levy assessments or special taxes, as applicable on such property within the territory of the City; and

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

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

WHEREAS, the City desires to enter into such an agreement with the Authority to authorize the Authority to form CFDs from time to time within the territorial limits of the City to finance Fees, Improvements and Services necessitated by new development; and

WHEREAS, the City has previously presented Resolution No. 06-134 of the City Council of the City of Hercules, authorizing the City to join the Statewide Community Infrastructure Program; authorizing the California Statewide Communities Development Authority to accept applications from property owners, conduct special assessment proceedings and levy assessments within the territory of the City of Hercules; and authorizing related actions (the “Original Resolution”), and such Original Resolution was adopted on October 24, 2006; and

WHEREAS, the City has previously presented Resolution No. 17-039 of the City Council of the City of Hercules, amending the prior Resolution No. 06-134 authorizing the City to join the Statewide Community Infrastructure Program; authorizing the California Statewide Communities Development Authority to accept applications from property owners, conduct special assessment proceedings and levy assessments within the territory of the City of Hercules; approving a form of acquisition agreement for use when applicable; and authorizing related actions (the “Amended Resolution”), and such Amended Resolution was adopted on June 13th, 2017; and

WHEREAS, the City now wishes to amend and restate the Amended Resolution; and

WHEREAS, the City Council has reviewed a proposed form of Resolution of Intention to be adopted by the Authority in connection with assessment proceedings (the “ROI”), a copy of which is attached hereto as Attachment 1A, and the territory within which assessments may be levied for SCIP (provided that each Participating Developer consents to such assessment) shall be coterminous with the City’s official boundaries of record at the time of adoption of such ROI, and reference is hereby made to such boundaries for the plat or map required to be included in this Amended and Restated Resolution pursuant to Section 10104 of the Streets and Highways Code; and

WHEREAS, the City Council has also reviewed a proposed form of Acquisition Agreement (the “Acquisition Agreement”), a copy of which is attached hereto as Attachment 1B, to be approved as to form for use with respect to any Improvements to be constructed and installed by a Participating Developer and for which the Participating Developer requests acquisition financing as part of its SCIP application; and

WHEREAS, the City will not be responsible for the conduct of any proceedings; the levy or collection of assessments or special taxes or any required remedial action in the case of delinquencies in such assessment or special tax payments; or the issuance, sale or administration of the Local Obligations or any other bonds issued in connection with SCIP; and

WHEREAS, the Authority periodically issues Local Obligations on behalf of the local agency participants in SCIP to provide financing for the Fees and Improvements; and

WHEREAS, where the Authority determines a project is eligible for a SCIP pooled issuance, the Authority issues revenue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985, consisting of Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the California Government Code (the “Marks-Roos Act”) concurrently with the issuance of Local Obligations, the proceeds of which are used to purchase the Local Obligations; and

WHEREAS, pursuant to Government Code Section 6586.5, notice was published at least five days prior to the adoption of this Amended and Restated Resolution at a public hearing, which was duly conducted by this City Council concerning the significant public benefits of SCIP and the financing of the Improvements and the public capital improvements to be paid for with the proceeds of the Fees.

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

Section 1. This Amended and Restated Resolution shall constitute full “local approval,” under Section 9 of the Joint Powers Agreement, for the issuance of bonds by the Authority in accordance herewith.

Section 2. City hereby consents to the conduct of proceedings by the Authority under the Mello Roos Act to form CFDs with boundaries that shall be coterminous with the City’s official boundaries of record at the time of such proceedings or any portion thereof (the “Proposed Boundaries”), and to authorize a special tax and to issue bonds with respect thereto; provided that the Participating Developers, who shall be the legal owners of such property at the time of formation of the CFD, execute a written consent to the levy of special tax in connection with SCIP by the Authority and execute a ballot in favor of the formation of such CFD and the Mello-Roos Act.

Section 3. The City hereby consents to the conduct of special assessment proceedings by the Authority in connection with SCIP pursuant to the 1913 Act and the issuance of Local Obligations under the 1915 Act on any property within the Proposed Boundaries; provided, that:

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI; and

(2) The Participating Developers, who shall be the legal owners of such property at the time of the formation of the Assessment District, execute a written consent to the levy of assessments in connection with SCIP by the Authority and execute an assessment ballot in favor of such assessment in compliance with the requirements of Section 4 of Article XIID of the State Constitution.

Section 4. This Amended and Restated Resolution sets forth the terms of a “joint community facilities agreement” (as defined in Section 53316.2 of the Mello Roos Act) between the City and the Authority. Adoption by the Commission of the Authority

of each Resolution of Intention to form a CFD under the Mello-Roos Act to finance City Improvements, City Fees or City Services shall constitute acceptance of the terms hereof by the Authority with respect to such CFD. This Amended and Restated Resolution and the Authority's Resolution of Intention for the respective CFDs shall together embody a separate and independent joint community facilities agreement, or a joint agreement to fund services, for each CFD formed by the Authority (the "Joint Agreement").

Section 5. The City Council hereby finds and determines that this Amended and Restated Resolution and the Joint Agreement are beneficial to the residents/customers of the City and are in the best interests of the residents of the City, and of the future residents of the area within the proposed CFDs and Assessment Districts. The City hereby finds and declares that the issuance of revenue bonds by the Authority to purchase Local Obligations in connection with SCIP will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs, and the more efficient delivery of local agency services to residential and commercial development within the City.

Section 6. The City Council shall review any complete SCIP application for the SCIP program and shall authorize the City Manager to approve or deny the application.

Section 7. The Authority has adopted Local Goals and Policies as required by Section 53312.7 of the Mello-Roos Act. The City approves the use of those Local Goals and Policies in connection with the formation of CFDs. The City hereby agrees that the Authority may act in lieu of the City under those Local Goals and Policies in forming and administering the CFDs.

Section 8. The Authority has prepared and will update from time to time the "SCIP Manual of Procedures" (the "Manual"), and the City will handle Fee revenues and funds for Improvements for properties participating in SCIP in accordance with the procedures set forth in the Manual.

Section 9. Pursuant to the Mello-Roos Act and this Amended and Restated Resolution, the Authority may conduct proceedings under the Mello-Roos Act to form the CFDs and to have such CFDs authorize the financing of (i) any or all of the facilities and Fees set forth on Attachment 1C, attached hereto and (ii) any or all the Services set forth on Attachment 1D, attached hereto. All of the facilities, whether to be financed directly or through Fees, shall be facilities that have an expected useful life of five years or longer and are facilities that the City or other local public agencies, as the case may be, are authorized by law to construct, own or operate, or to which they may contribute revenue. The appropriate officials and staff of the City are hereby authorized and directed to cooperate with the Authority and the Authority's special tax consultant and other consultants to calculate the appropriate level of the special tax to fund the Services for each CFD in connection with initial formation and in connection with the annual levy. Attachment 1C and Attachment 1D may be modified from time to time by written agreement between an authorized representative of the Authority and of the City. The facilities are referred to herein as the "Improvements," and the Improvements

to be owned by the City are referred to as the "City Improvements." The Fees paid or to be paid to the City are referred to as the "City Fees". The Services funded are referred to as the "City Services". The financing of the City Services shall only be authorized for stand-alone development projects and Local Obligations may not be issued to fund Services.

Section 10. For Improvements, Fees or Services to be owned, used or provided by another local agency (a "Third Party Local Agency"), the Authority will separately identify them in its proceedings and will enter into a joint community facilities agreement with such Third-Party Local Agency as required by the Mello-Roos Act. Each joint community facilities agreement with each Third-Party Local Agency will contain a provision that the Third-Party Local Agency will provide indemnification to the City to the same extent that the City provides indemnification to the Third-Party Local Agency under the terms of this Amended and Restated Resolution.

Section 11. The City acknowledges that Improvements and Fees will be funded through a CFD only if they are necessary to meet increased demands placed upon the City as a result of development occurring or expected to occur within the proposed CFD and Services will be funded through a CFD only if they are in addition to those provided in the territory of the CFD before the CFD was created and will not supplant existing services. In connection with the formation of each CFD, as may be required by the Authority's procedures, the City shall certify that such requirements are satisfied in form and substance satisfactory to the Authority.

Section 12. The Authority shall promptly transfer special tax collections for City Services, after payment of its own reasonable administrative costs incurred in the administration of the CFDs, to the City. The Authority will apply the other special tax collections initially as required by the documents under which any Local Obligations are issued; and thereafter, to the extent not provided in the Local Obligations documents, may pay its own reasonable administrative costs. The Authority will remit any special tax revenues from any particular CFD remaining after the final retirement of all related Local Obligations to the City and to the other local agencies in the proportions specified in the Authority's proceedings. The City will apply any such special tax revenues it receives for authorized City Improvements, City Fees and/or City Services, as applicable, and its own administrative costs only as permitted by respective CFD proceedings and by the Mello-Roos Act. The joint community facilities agreements with each Third-Party Local Agency must require the Third-Party Local Agency to apply the special tax revenues they receive for their authorized Improvements, Fees and/or Services under the CFDs and for their own related administrative costs only as permitted by the Mello-Roos Act.

Section 13. The Authority will administer the CFDs, including employing and paying all consultants, annually levying the special tax and all aspects of paying and administering the Local Obligations, and complying with all State and Federal requirements appertaining to the proceedings, including the requirements of the United States Internal Revenue Code. The City will cooperate fully with the Authority in respect of the requirements of the Internal Revenue Code and to the extent information

is required of the City to enable the Authority to perform its disclosure and continuing disclosure obligations with respect to the Local Obligations and any revenue bonds, although the City will not participate in nor be considered to be a participant in the proceedings respecting the CFDs (other than as a party to the agreement embodied by this Amended and Restated Resolution) nor will the City be or be considered to be an issuer of the Local Obligations nor any revenue bonds. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Third-Party Local Agency.

Section 14. In the event the Authority completes issuance and sale of Local Obligations, and Local Obligation proceeds become available to finance the Improvements, the Authority shall establish and maintain a special fund for each development project (the "Acquisition and Construction Fund"). The portion of Local Obligation proceeds which is intended to be utilized to finance the Improvements and Fees shall be deposited in the Acquisition and Construction Fund. The Acquisition and Construction Fund will be available both for City Improvements and City Fees and for the Improvements and Fees pertaining to each Third-Party Local Agency. Subaccounts shall be created as necessary.

Section 15. As respects the Authority and each Third Party Local Agency, the City agrees to fully administer, and to take full governmental responsibility for, the construction or acquisition of the City Improvements and for the administration and expenditure of the City Fees, as applicable, including but not limited to environmental review, approval of plans and specifications, bid requirements, performance and payment bond requirements, insurance requirements, contract and construction administration, staking, inspection, acquisition of necessary property interests in real or personal property, the holding back and administration of retention payments, punch list administration, and the Authority and each Third Party Local Agency shall have no responsibility in that regard. The City reserves the right, as respects each Participating Developer, to require the Participating Developer to contract with the City to assume any portion or all of this responsibility. The Authority is required to obtain provisions equivalent to this paragraph in the joint community facilities agreement with each Third-Party Local Agency.

Section 16. The City agrees to indemnify and to hold the Authority, its other members, and its other members' officers, agents and employees, and each Third-Party Local Agency and their officers, agents and employees (collectively, the "Indemnified Parties") harmless from any and all claims, suits and damages (including costs and reasonable attorneys' fees) arising out of the design, engineering, construction and installation of the City Improvements and the improvements to be financed or acquired with the City Fees. The City reserves the right, as respects each Participating Developer, to require the Participating Developer to assume by contract with the City any portion or all of this responsibility. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Third-Party Local Agency naming the City and its officers, agents and employees as Indemnified Parties with respect to each Third-Party Local Agency's respective

Improvements and the improvements to be constructed or acquired with each Third-Party Local Agency's Fees.

Section 17. As respects the Authority and each Third Party Local Agency, the City agrees – once the City Improvements are constructed according to the approved plans and specifications, and the City and the Participating Developer have put in place their agreed arrangements for the funding of maintenance of the City Improvements – to accept ownership of the City Improvements, to take maintenance responsibility for the City Improvements, and to indemnify and hold harmless the Indemnified Parties to the extent provided in the preceding paragraph from any and all claims, etc., arising out of the use and maintenance of the City Improvements. The City reserves the right, as respects the Participating Developer, to require the Participating Developer by contract with the City to assume any portion or all of this responsibility. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Third-Party Local Agency naming the City and its officers, agents and employees as Indemnified Parties.

Section 18. The City acknowledges the requirement of the Mello-Roos Act that if the City Improvements are not completed prior to the adoption by the Commission of the Authority of the Resolution of Formation of the CFD for each respective development project, the City Improvements must be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City. The City acknowledges that this means all City Improvements must be constructed under contracts that require the payment of prevailing wages as required by Section 1720 and following of the Labor Code of the State of California. The Authority makes no representation that this requirement is the only applicable legal requirement in this regard. The City reserves the right, as respects the Participating Developer, to assign appropriate responsibility for compliance with this paragraph to the Participating Developer.

Section 19. The form of the Acquisition Agreement attached hereto as Attachment 1B is hereby approved, and the City Manager or such officer's designee (each, an "Authorized Officer") is authorized to execute, and deliver to the Participating Developer, the Acquisition Agreement on behalf of the City in substantially that form, with such changes as shall be approved by the Authorized Officer after consultation with the City Attorney and the Authority's bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 20. After completion of the City Improvements and appropriate arrangements for the maintenance of the City Improvements, or any discrete portion thereof as provided in Section 53313.51 of the Mello-Roos Act and in the Acquisition Agreement, to the satisfaction of the City, and in conjunction with the City's acceptance thereof, acquisition of the City Improvements shall be undertaken as provided in the Acquisition Agreement.

Section 21. The City hereby consents to the formation of the CFDs in accordance with this Amended and Restated Resolution and consents to the

assumption of jurisdiction by the Authority for the proceedings respecting the CFDs with the understanding that the Authority will hereafter take each and every step required for or suitable for consummation of the proceedings, the levy, collection and enforcement of the special tax, and the issuance, sale, delivery and administration of the Local Obligations, all at no cost to the City and without binding or obligating the City's general fund or taxing authority.

Section 22. The terms of the Agreement embodied by this Amended and Restated Resolution may be amended by a writing duly authorized, executed and delivered by the City and the Authority, except that no amendment may be made after the issuance of the Local Obligations by the Authority that would be detrimental to the interests of the bondholders without complying with all of the bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding Local Obligations.

Section 23. Except to the extent of the indemnifications extended to each Third Party Local Agency in the Agreement embodied by this Amended and Restated Resolution, and the City's agreement to take responsibility for and ownership of the City Improvements, no person or entity, including the Participating Developer, shall be deemed to be a third party beneficiary of this Amended and Restated Resolution, and nothing in this Amended and Restated Resolution (either express or implied) is intended to confer upon any person or entity other than the Authority and the City (and their respective successors and assigns) any rights, remedies, obligations or liabilities under or by reason of this Amended and Restated Resolution.

Section 24. The City shall be identified as a third-party beneficiary of all joint community facilities agreements between the Authority and each Third-Party Local Agency to the extent of the indemnification provisions and the provisions whereby each Third-Party Local Agency agrees to take responsibility for and ownership of their Improvements.

Section 25. The appropriate officials and staff of the City are hereby authorized and directed to make SCIP applications available to all property owners who are subject to Fees for new development within the City and/or who are conditioned to install Improvements and/or whose plans for new development within the City necessitate new or increased levels of Services and to inform such owners of their option to participate in SCIP; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The City shall designate appropriate staff who shall be responsible for coordination with the Authority and shall provide the appropriate contact information to the Authority from time to time.

Section 26. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents, including but not limited to such documents as may be required by bond counsel in connection with the participation in SCIP of any districts, authorities or other third-party entities entitled to own Improvements and/or to levy and collect Fees

on new development to pay for public capital improvements within the jurisdiction of the City, as are reasonably required by the Authority in accordance with the Manual to implement SCIP and to evidence compliance with the requirements of federal and state law in connection with the issuance by the Authority of the Local Obligations and any other bonds for SCIP.

Section 27. This Amended and Restated Resolution shall take effect immediately upon its adoption. The City Clerk of the City of Hercules is hereby authorized and directed to transmit a certified copy of this Amended and Restated Resolution to the Secretary of the Authority. This Amended and Restated Resolution shall remain in force with respect to any Assessment District and CFD formed until all Local Obligations have been retired and the authority to levy the special tax conferred by any CFD proceedings and to levy the assessment conferred by any assessment proceedings has ended or is otherwise terminated. The Original Resolution shall remain in force with respect to any SCIP application approved by the City and any Assessment District formed pursuant to its authority until all Local Obligations have been retired and the authority to levy the assessment conferred by any assessment proceedings carried out pursuant to the Original Resolution has ended or is otherwise terminated.

Section 28. The City Council finds that adoption of this Resolution is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 15061(b)(3) – the common sense exemption – because the proposed resolution would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. It can be seen with certainty that there is no possibility that the actions authorized in this resolution will result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. Further, none of the circumstances described in CEQA Guidelines § 15300.2 applies. No unusual circumstances are present. This determination reflects the City of Hercules’ independent judgment and analysis.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 23rd day of July 2024 by the following vote of the Council:

AYES:
NOES:
ABSENT:
ABSTAIN:

Dan Romero, Mayor

ATTEST:

Eibleis Melendez
City Clerk

Attachment 1A: Resolution of Intention (ROI)

Attachment 1B: Acquisition Agreement

Attachment 1C: Eligible Facilities & Fees

Attachment 1D: Eligible Services