



# Folsom City Council Staff Report

<b>MEETING DATE:</b>	9/28/2021
<b>AGENDA SECTION:</b>	Consent Calendar
<b>SUBJECT:</b>	Resolution No. 10704 – A Resolution Authorizing the City Manager to Execute a Joint Community Facilities Agreement with the Sacramento Municipal Utility District (“SMUD”) to allow for the Financing of SMUD Facilities under the Mello-Roos Community Facilities Act of 1982 in Community Facilities District No. 23
<b>FROM:</b>	Finance Department

**RECOMMENDATION / CITY COUNCIL ACTION**

It is recommended that the City Council approve Resolution No. 10704 – A Resolution Authorizing the City Manager to Execute a Joint Community Facilities Agreement with the Sacramento Municipal Utility District (“SMUD”) to allow for the Financing of SMUD Facilities under the Mello-Roos Community Facilities Act of 1982 in Community Facilities District No. 23.

**BACKGROUND / ISSUE**

Community Facilities District No. 23 (“CFD No. 23”) was formed by the City Council by Resolution No. 10435 on May 26, 2020. A list of Authorized Facilities was attached as an exhibit to Resolution No. 10435. This list included facilities designed to meet the needs of development within CFD No. 23, and includes those certain facilities relating to electrical utilities, including joint trenches, underground utilities and undergrounding of existing utilities, and dry utilities and appurtenances, as well as the cost of planning and designing these facilities (collectively, the “SMUD Facilities”) The SMUD Facilities will become the property of and be operated and maintained by SMUD.

The City Council approved Resolution No. 10535 on October 13, 2020, which authorized the issuance of CFD No. 23 Improvement Area 1 (“CFD No. 23 IA1”) Special Tax Bonds, which were subsequently issued in an amount of \$12,925,000 on October 30, 2020. These bonds did

not finance any SMUD Facilities since under the Mello Roos Community Facilities Act, a community facilities district cannot finance improvements belonging to another public agency until there is a joint community facilities agreement relating to those improvements. Currently no such agreement is in place. The City must execute this Joint Community Facilities Financing Agreement with SMUD to have the ability to finance SMUD Facilities with future bond issuances within CFD No. 23.

### **POLICY / RULE**

Chapter 5 of the Folsom Plan Area Public Facilities Financing Plan authorizes the formation of community facilities districts (each a “CFD”) to finance the construction, acquisition, and servicing of FPA backbone infrastructure and public facilities

Section 2.5.3 of the First Amended and Restated Tier 1 Development Agreement authorizes the formation of infrastructure CFDs.

Resolution No. 9282 – A Resolution of the City Council of the City of Folsom Approving Goals and Policies for Community Facilities Districts

Mello-Roos Community Facilities Act of 1982

### **ANALYSIS**

The City Council has determined that electrical utilities are necessary to meet the needs of development within CFD No. 23. Currently, the City is unable to reimburse developers for constructing the SMUD Facilities to provide electrical utilities within CFD No. 23. A joint community facilities agreement must be executed prior to the issuance of bonds in the future to enable the City to use the proceeds from those issuances to reimburse the developers. Once such an agreement is in place, and the City has received confirmation from SMUD that the SMUD Facilities are complete and ready for acceptance by SMUD within an Improvement Area, the costs of those SMUD Facilities will then become an authorized cost within that Improvement Area, and eligible to be reimbursed from bond proceeds issued on behalf of the Improvement Area.

### **FINANCIAL IMPACT**

There is no direct General Fund impact on the City of Folsom. The CFD No. 23 formation, bonded indebtedness, and expenses are solely the responsibility of CFD No. 23.

### **ENVIRONMENTAL REVIEW**

An Initial Study and Mitigated Negative Declaration prepared for the Folsom Plan Area Backbone Infrastructure Project were previously prepared for, and adopted by the City Council on February 24, 2015, in accordance with the requirements of the California Environmental Quality Act.

**ATTACHMENTS**

1. Resolution No. 10704 - A Resolution Authorizing the City Manager to Execute a Joint Community Facilities Agreement with the Sacramento Municipal Utility District ("SMUD") to allow for the Financing of SMUD Facilities under the Mello-Roos Community Facilities Act of 1982 in Community Facilities District No. 23
2. Joint Community Facilities Financing Agreement – City of Folsom Community Facilities District No. 23 (Folsom Ranch)

Submitted,



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Stacey Tamagni  
Finance Director

# ATTACHMENT 1

**RESOLUTION NO. 10704**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A JOINT COMMUNITY FACILITIES AGREEMENT WITH THE SACRAMENTO MUNICIPAL UTILITY DISTRICT (“SMUD”) TO ALLOW FOR THE FINANCING OF SMUD FACILITIES UNDER THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982 IN COMMUNITY FACILITIES DISTRICT NO. 23**

**WHEREAS**, Community Facilities District No. 23 (“CFD No. 23”) and various Improvement areas therein were established by the City Council on May 26, 2020; and

**WHEREAS**, the City proposes to finance the design, construction, and installation of certain capital facilities within CFD No. 23 and its Improvement Areas (the “Authorized Facilities”), including those certain facilities relating to electrical utilities, including joint trenches, underground utilities and undergrounding of existing utilities and dry utilities and appurtenances that will become the property of and will be operated and maintained by the Sacramento Municipal Utility District, excluding substations (collectively, the “SMUD Facilities”); and

**WHEREAS**, the City completed proceedings pursuant to the Act authorizing CFD No. 23 to incur bonded indebtedness to finance the Authorized Facilities as set forth by Resolution No. 10435, the Resolution of Formation; and

**WHEREAS**, the City called and conducted special elections within CFD No. 23 for each Improvement Area and determined that the measures to: authorize the levy of Special Taxes within each Improvement Area; authorize the issuance of special tax bonds or other indebtedness on behalf of CFD No. 23; establish an appropriations limitation for each Improvement area, were passed by the unanimous vote of the qualified landowner-voter electors within each Improvement Area; and

**WHEREAS**, the agreement will be in a form acceptable to the City Attorney;

**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Folsom authorizes the City Manager to execute the Joint Community Facilities Financing Agreement with SMUD to finance the SMUD Facilities through the CFD No. 23 Special Taxes.

**PASSED AND ADOPTED** this 28th day of September, 2021, by the following roll-call vote:

AYES: Councilmember(s):  
NOES: Councilmember(s):  
ABSENT: Councilmember(s):  
ABSTAIN: Councilmember(s):

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Michael D. Kozlowski, MAYOR

ATTEST:

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Christa Freemantle, CITY CLERK

## **ATTACHMENT 2**

## JOINT COMMUNITY FACILITIES FINANCING AGREEMENT

**City of Folsom  
Community Facilities District No. 23  
(Folsom Ranch)**

THIS JOINT COMMUNITY FACILITIES FINANCING AGREEMENT (the “**Agreement**”) is effective as of the \_\_\_ day of \_\_\_\_\_, 2021, between the CITY OF FOLSOM, a municipal corporation of the State of California (the “**City**”), acting for itself and the City of Folsom Community Facilities District No. 23 (Folsom Ranch) (the “**CFD**”), and the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a political subdivision of the State of California (“**SMUD**” and, together with the City, the “**Parties**”).

### RECITALS:

A. The City Council (the “**Council**”) of the City has established the CFD and designated various improvement areas therein pursuant to the Mello-Roos Community Facilities Act of 1982, in California Government Code, Title 5, Division 2, Part 1, Chapter 2.5 (beginning with Section 53311) (the “**Act**”). The City proposes to finance the design, construction and installation of certain capital facilities within the CFD (collectively, the “**Authorized Facilities**”), including those certain facilities relating to electrical utilities, including joint trenches, underground utilities and the undergrounding of existing utilities and dry utilities and appurtenances that will become the property of and will be operated and maintained by SMUD, but excluding substations (the “**SMUD Facilities**”).

B. On May 26, 2020, the Council completed proceedings pursuant to the Act for establishing the CFD, designating various improvement areas within the CFD (each an “**Improvement Area**” and collectively, the “**Improvement Areas**”) and authorizing the CFD to incur bonded indebtedness not exceeding \$76,000,000 for Improvement Area No. 1, \$36,000,000 for Improvement Area No. 2, \$124,000,000 for Improvement Area No. 3, \$64,000,000 for Improvement Area No. 4, \$105,000,000 for Improvement Area No. 5 and \$17,000,000 for Improvement Area No. 6 to finance the Authorized Facilities as set forth in the Resolution of Formation, Resolution No. 10435, including, but not limited to, the SMUD Facilities.

C. On the same date, the Council called and conducted special elections within the CFD for each Improvement Area and determined that the measures to (a) authorize the levy of the special taxes within each Improvement Area (the “**Special Taxes**”), (b) authorize the issuance of special tax bonds or other indebtedness on behalf of the CFD in a principal amount not to exceed \$76,000,000 for Improvement Area No. 1, \$36,000,000 for Improvement Area No. 2, \$124,000,000 for Improvement Area No. 3, \$64,000,000 for Improvement Area No. 4, \$105,000,000 for Improvement Area No. 5

and \$17,000,000 for Improvement Area No. 6 (collectively, the “**Indebtedness**”) and (c) establish an appropriations limitation for each Improvement Area, was passed by the unanimous vote of the qualified landowner-voter electors within each Improvement Area.

D. This Agreement constitutes a joint community facilities financing agreement entered into pursuant to California Government Code Section 53316.2, which authorizes the City to finance the SMUD Facilities through the Special Taxes pursuant to such an agreement.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the Parties agree as follows:

1. Authorized Facilities - The Council has conducted proceedings under the Act to form the CFD, to designate the Improvement Areas within the CFD and to authorize the financing of the Authorized Facilities, including the SMUD Facilities.

2. Administration of CFD - The City shall administer the CFD, including employing and paying all consultants, annually levying the special tax and all aspects of paying and administering the Indebtedness, and complying with all state and federal requirements appertaining to the proceedings establishing the CFD, designating the Improvement Areas and issuing and using the proceeds of the Indebtedness and, if applicable, including the requirements of the United States Internal Revenue Code of 1986, as amended.

3. Issuance of the Bonds - The Council, as the legislative body of the CFD, has authorized the issuance and sale of Indebtedness relating to Improvement Area No. 1 in the original outstanding principal amount of \$12,925,000 to finance certain Authorized Facilities (the “**Prior Indebtedness**”). The Prior Indebtedness did not finance any SMUD Facilities. The Council is expected to authorize, from time to time, the issuance and sale of additional Indebtedness (the “**Bonds**”) to finance Authorized Facilities, including, but not limited, to the SMUD Facilities. The City will issue and sell the Bonds when it determines, in its sole discretion, that the conditions, which must be satisfied to issue and sell the Bonds including, without limitation, the requirements of Government Code Section 53345.8, have been satisfied. In making the determination, the City shall be advised by its bond counsel, disclosure counsel, municipal advisor and bond underwriter.

4. Responsibilities Related to the Bonds - SMUD has no obligation or responsibility whatsoever with respect to the issuance and sale of the Bonds, any disclosure document related to the Bonds, for the payments on the Bonds, or for the levy of the special tax. The City shall assume the defense of, indemnify and save harmless, SMUD, its officers, employees and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from, any act or omission of the City with respect to this Agreement, the issuance of the Bonds, any alleged misstatements of fact or alleged omission of a material fact made by the City in a disclosure document related to the Bonds; provided, however, that the City shall not be



required to indemnify any person or entity as to damages resulting from negligence or willful misconduct of such person or entity or their officers, agents or employees.

5. Allocation of Bond Proceeds - The City shall be responsible for the Bond proceeds including, without limitation, investing and expending the proceeds, and all other matters relating to the Bond proceeds; provided that the Parties acknowledge that the City intends to utilize the services of a corporate trustee pursuant to one or more Indentures for such purposes. The City expects to utilize a portion of the Bond proceeds to finance the cost and expense of the Authorized Facilities to the extent possible.

Solely from Bond proceeds (the “**Available Amount**”), and upon receipt of written confirmation from SMUD that SMUD has determined that the SMUD Facilities are complete and ready for acceptance by SMUD, the City will pay to the developer of such SMUD Facilities (each a “**Developer**”) the lesser of such Developer’s actual construction costs pertaining to the related SMUD Facilities or the Available Amount (in each case, the “**SMUD Facilities Acquisition Price**”). This Agreement does not lessen or modify any Developer’s obligations to SMUD in any way, and if such Developer’s actual construction costs pertaining to the related SMUD Facilities exceed the Available Amount, such Developer shall be obligated to pay the additional cost, subject to any different arrangement entered into between SMUD and such Developer. SMUD shall have the right to enter into a separate acquisition agreement or similar agreement to govern the construction of the SMUD Facilities by a Developer and the conditions for the payment of the SMUD Facilities Acquisition Price.

Solely from the Available Amount, the City will reimburse SMUD for the eligible costs of any SMUD Facilities constructed by SMUD (the “**SMUD Reimbursement Amount**”).

6. Responsibilities Related to the SMUD Facilities – Consistent with SMUD’s procedures for the acceptance of developer-built facilities (described more particularly on SMUD’s website at <https://www.smud.org/construction>, under the heading Electric service requirements) (“**SMUD Acceptance Procedures**”), SMUD is responsible for the following with respect to any SMUD Facilities to be constructed by a Developer: (a) providing to each Developer the design and location of the SMUD Facilities, (b) final inspection and approval of each Developer’s construction, and installation of the SMUD Facilities, and (c) notifying the City in writing when SMUD has determined that the SMUD Facilities are complete and ready for acceptance by SMUD, which will in turn cause the City to pay the SMUD Facilities Acquisition Price to the applicable Developer.

With respect to any SMUD Facilities to be constructed by SMUD, SMUD is responsible for notifying the City in writing when SMUD has determined that such SMUD Facilities are complete, which will in turn cause the City to pay the SMUD Reimbursement Amount to SMUD.

The City’s sole responsibility respecting the SMUD Facilities shall be to pay or direct its bond trustee to pay each SMUD Facilities Acquisition Price to the

applicable Developer or each SMUD Reimbursement Amount to SMUD, as applicable, from the Available Amount upon receipt of the written notification of SMUD specified in the foregoing paragraphs of this Section 6.

7. Rights Related to the SMUD Facilities - The Parties acknowledge and agree that any reimbursement or payment by the City or the CFD to a Developer hereunder for the costs of any SMUD Facilities advanced by such Developer and/or constructed by such Developer and transferred to SMUD, or any payment by the City or the CFD to SMUD hereunder in connection with SMUD's construction or acceptance of any SMUD Facilities, shall not give the City or the CFD any right, title or interest in the SMUD Facilities, including without limitation, any right of ownership, control or use of the SMUD Facilities.

8. Records of Proceedings - The City agrees to have prepared, and keep available to SMUD, records of all proceedings of the CFD, including but not limited to (a) disbursements of special tax and proceeds of the Bonds, if any, and (b) the administration of the various funds and accounts to be established with respect to the CFD for the management of special tax proceeds, bond sale proceeds, and the investment earnings on both.

9. Entire Agreement; Effective Date - This Agreement contains the entire agreement between the Parties respecting the matters provided for herein. It supersedes all prior agreements and negotiations between the Parties respecting the subject matter of this Agreement.

This Agreement shall not be effective until all the following conditions precedent have been satisfied: (a) all parties, by their authorized representatives, approve and sign this Agreement; and (b) the Council authorizes the issuance of Bonds.

10. Amendment - This Agreement may be amended by a writing signed by the Parties, except that no amendment may be made after the issuance of Bonds, if any, that would be detrimental to the interests of the bondholders without complying with all of the bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding bonds.

11. Termination - This Agreement shall terminate upon the earliest occurrence of either of the following events: (a) the dissolution of the CFD pursuant to section 53338.5 of the Act or (b) the written agreement of the Parties to terminate this Agreement. Notwithstanding the foregoing, this Agreement shall remain in full force and effect for as long as any Bonds, if any, are outstanding.

12. Beneficiaries - No person or entity shall be deemed a third party beneficiary of this Agreement. Nothing in this Agreement, express or implied, is intended to confer or impose upon any person or entity, other than the Parties, any rights, remedies, obligations, or liabilities.

13. Counterparts - This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of the effective date stated above.

**CITY OF FOLSOM**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Manager

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_