Information Sheet – 05/09/2023 - Board of Trustees Meeting

TO: Board of Trustees Item: 7.4

FR: Jim Bridges

DATE: May 5, 2023

RE: Resolution 2023-05-02 JCFA Agreement with the City of Tracy

The City of Tracy formed a community facilities district and has taken actions to authorize the levy of special taxes upon land within the boundaries of the CFD and authorization to issue bonds secured by such special taxes for the purpose of providing moneys for the construction and acquisition of authorized improvements for the City in order to provide for the financing of identified public facilities. This agreement authorizes the City to finance the costs of public school facilities of the School District. JSD desires to cooperate with the City in accomplishing the financing, through the CFD, of some or all of the Mitigation Payments paid, or to be paid, by the Developers that JSD will use to finance the Project.

Recommendation:

Approve resolution 2023-05-02 JCFA Agreement with the City of Tracy.

RESOLUTION NO. 2023-05-02

RESOLUTION OF THE BOARD OF EDUCATION OF THE JEFFERSON SCHOOL DISTRICT APPROVING THE FORM OF A JOINT COMMUNITY FACILITIES AGREEMENT RELATING TO COMMUNITY FACILITIES DISTRICT NO. 2016-1 OF THE CITY OF TRACY AND AUTHORIZING EXECUTION AND DELIVERY THEREOF

WHEREAS, the Jefferson School District ("School District") is a public school district organized and operating pursuant to the provisions of the Constitution and the laws of the State of California ("State"); and

WHEREAS, under to the requirements of the Mello-Roos Community Facilities Act of 1982, as amended ("Act"), the City of Tracy ("City") has previously formed a community facilities district, designated as "Community Facilities District No. 2016-1 of the City of Tracy" ("City CFD No. 2016-1"), and has taken actions to authorize the levy of special taxes upon land within the boundaries of City CFD No. 2016-1 and authorization to issue bonds secured by such special taxes for the purpose of providing moneys for the construction and acquisition of authorized improvements for City CFD No. 2016-1 in order to provide for the financing of identified public facilities; and

WHEREAS, City CFD No. 2016-1 was formed to finance various City facilities costs and was authorized to finance the costs of public school facilities of the School District ("School Facilities") pursuant to the provisions of the Act; and

WHEREAS, pursuant to Section 53316.2 of the Act, in order to provide funding for facilities of another public agency, a joint community facilities agreement "(JCFA") must be entered into between the relevant agencies; and

WHEREAS, there has been submitted to the Board of Education of the School District ("Board of Education") a JCFA between the City, the involved developer of property within the boundaries of CFD No. 2016-1 and the School District ("City CFD No. 2016-1 2023 JCFA") providing for the financing of the School Facilities by City CFD No. 2016-1; and

WHEREAS, the form of the City CFD No. 2016-1 2023 JCFA has been reviewed by School District staff, consultants and legal counsel; and

WHEREAS, the Board of Education, upon information presented to it, and based on information on file with the Clerk of the Board of Education ("Clerk"), desires to make certain findings and determinations in connection with the consideration and approval of the form of the City CFD No. 2016-1 2023 JCFA; and

WHEREAS, the Board of Education desires to approve the execution and delivery of, and to enter into, the City CFD No. 2016-1 2023 JCFA, by and on behalf of the School District,

NOW, THEREFORE, THE BOARD OF EDUCATION OF THE JEFFERSON SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. **Recitals.** Each of the above recitals is true and correct and is incorporated herein.

Section 2. **Findings.** The Board of Education hereby finds, determines and directs as follows:

(a) The School Facilities are authorized to be financed by City CFD No. 2016-1 pursuant to the provisions of the Act and the proceedings under which City CFD No. 2016-1 was formed.

(b) As required under California Government Code Section 53316.4, the City CFD No. 2016-1 2023 JCFA contains a description of the School Facilities to be financed, constructed or acquired with the funds of City CFD No. 2016-1 provided thereunder.

(c) Pursuant to California Government Code Section 53316.2(b), the School Board determines that the City CFD No. 2016-1 2023 JCFA will be beneficial to the residents of the territory served by the School District.

Section 3. **Approval of Form of City CFD No. 2016-1 2023 JCFA and Authorization for Execution and Delivery.** Pursuant to Section 53316.2 of the Act, the Board of Education hereby approves the form of the City CFD No. 2016-1 2023 JCFA. The President, Clerk, the Superintendent, the Director of School Operations and the Superintendent's designee(s), as applicable, are authorized to execute and deliver, on behalf of the School District, the City CFD No. 2016-1 2023 JCFA subject to non-substantive changes as may be approved of by the Superintendent and School District legal counsel.

Section 4. **Other Actions.** The President, Clerk, the Superintendent, the Director of School Operations, the Secretary to the Board, and other appropriate officials of the School District, and School District consultants, are hereby authorized and directed to take any actions as are necessary or desirable to accomplish the provisions and directives of this Resolution.

Section 5. **Effective Date.** This Resolution shall be effective upon adoption by the Board.

[Remainder of this page intentionally left blank]

ADOPTED, SIGNED AND APPROVED this 9th day of May, 2023.

THE BOARD OF EDUCATION OF THE JEFFERSON SCHOOL DISTRICT

By:_____
President of the Board of Education of the Jefferson School District

ATTEST:

By:_____
Clerk of the Board of Education of the Jefferson School District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN JOAQUIN)

I, _____, Clerk of the Board of Education of the Jefferson School District, do hereby certify that the foregoing resolution was duly adopted by the Board of Education of said School District, at a meeting thereof duly and regularly held at the regular meeting place thereof on May 9, 2023, of which meeting all of the members of said Board had due notice and at which a majority thereof were present; at which a quorum of such Board was present and acting throughout and for which notice and an agenda was prepared and posted as required by law and that at said meeting said resolution was adopted by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Clerk of the Board of Education of the Jefferson School District

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN JOAQUIN)

I, _____, Clerk of the Board of Education the Jefferson School District, do hereby certify that the foregoing is a full, true and correct copy of Resolution No. _____ of such Board and that the same has not been amended or repealed.

Dated: May 9, 2023

_____
Clerk of the Board of Education of the Jefferson School District

JOINT COMMUNITY FACILITIES AGREEMENT

City of Tracy
Community Facilities District No. 2016-1 (Tracy Hills)

This Joint Community Facilities Agreement (the "**Agreement**"), dated _____, 2023, is made and entered into by and among (i) the CITY OF TRACY, a California municipal corporation (the "**City**"); (ii) the JEFFERSON SCHOOL DISTRICT, a California public-school district (the "**JSD**"); and (iii) TRACY PHASE I, LLC, a Delaware limited liability company; TRACY PHASE IB, LLC, a Delaware limited liability company; TRACY PHASE 2, LLC, a Delaware limited liability company; TRACY PHASE 3, LLC, a Delaware limited liability company; TRACY PHASE 4, LLC, a Delaware limited liability company; and TRACY BPS, LLC, a Delaware limited liability company (the last six entities are referred to herein individually as a "**Developer**" and collectively herein as the "**Developers**").

Background

A. This Agreement is made under the authority of California Government Code section 53316.2, part of the Mello-Roos Community Facilities Act of 1982, as amended (the "**Act**").

B. The City has conducted proceedings under the Act to (1) form the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) (the "**CFD**"), (2) designated two improvement areas within the CFD (each an "**Improvement Area**"), (3) identified property for future annexation into the CFD (the "**Future Annexation Area**") which may be annexed into the CFD in the future as separate improvement areas (each a "**Future Improvement Area**"), and (4) authorized the financing, through the CFD and each Improvement Area, and Future Improvement Area of certain public fees and facilities (collectively, the "**CFD Proceedings**"). The land within the CFD and each Improvement Area is described in the Amended Boundary Map for the CFD recorded on August 27, 2018 with the San Joaquin County Clerk/Recorder as Document No. 2018-095090. The facilities authorized to be financed by the CFD and each Improvement Area and Future Improvement Area are described in Exhibit A to the Resolution of Formation No. 2016-157 adopted by the Tracy City Council on July 19, 2016 (the "**Authorized Improvements**"). The Authorized Improvements include facilities permitted under the Act that are required as conditions of development of the property in the CFD and the Future Annexation Area, and any of the Authorized Improvements may be financed through the payment of fees for such Authorized Improvements.

C. The City, for itself and the CFD, previously entered into (1) an Acquisition Agreement Relating to: City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) Improvement Area No. 1, dated as of July 19, 2016 (the "**Improvement Area No. 1 Acquisition Agreement**"), by and between the City and Tracy Phase I, LLC, relating to territory in Improvement Area No. 1 of the City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**Improvement Area No. 1**") and (2) a Master Acquisition Agreement Relating to: City of Tracy Community Facilities District No. 2016-1 (Tracy Hills), dated as of July 19, 2016 (the

"**Master Acquisition Agreement**"; together with the Improvement Area No. 1 Acquisition Agreement, the "**Acquisition Agreements**"), by and between the City and The Tracy Hills Project Owner, LLC, relating to territory that was initially in the future annexation area for the CFD. The City and the Developers have determined that the Acquisition Agreements shall not govern the financing of the Mitigation Payments (as defined below).

D. The Developers and JSD have notified the City that the property within the CFD, each Improvement Area and the Future Annexation Area (collectively, the "**Project**"), is subject to the terms of the Tracy Hills Project School Impact Mitigation Agreement, dated October 14, 2003, as recorded in Official Records of San Joaquin County as Document #2003-2555476, as amended by the First Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated June 20, 2018, recorded in Official Records of San Joaquin County as Document # 2018-081169, as amended by the Second Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated September 2018, recorded in Official Records of San Joaquin County as Document # 2018-104306, as amended by Third Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated December 2, 2020, recorded in Official Records of San Joaquin County as Document # 2020-023907, as amended by Fourth Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phase 1 (1A & 1B) Development, dated as of August 16, 2022, recorded in Official Records of San Joaquin County as Document #2023-031634 (the Fourth Amendment"), and as amended by Fifth Amendment to Tracy Hills Project School Impact Mitigation Agreement for Project Phases 2-4 Development, dated as of May 9, 2023, recorded in Official Records of San Joaquin County as Document # _____ (as it may be amended in the future, collectively, the "**Mitigation Agreement**").

E. The Developers and JSD have notified the City that JSD expects to acquire and develop school sites and construct, install and/or acquire various school facilities (permanent and interim facilities), including administration facilities, school sites, supporting infrastructure and improvements, and equipment that JSD will own and operate to serve the Project students or that are necessary to mitigate the impacts of Project students pursuant to the Mitigation Agreement (collectively, the "**School Facilities**"). The Developers and JSD have notified the City that the Developers' obligation pursuant to the terms of the Mitigation Agreement is to pay certain contractual mitigation payments ("**Mitigation Payments**"), and that JSD will acquire, develop and construct School Facilities with the proceeds of such Mitigation Payments; the Developers will not acquire, develop or construct the School Facilities.

F. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including the first school to serve the Project students ("**SF1**"), the Mitigation Agreement required, and the Developers paid to JSD, a Mitigation Payment in the amount of approximately $31,300,000 for SF1 Phase 1A

Facilities Costs (herein, the "**Phase 1A SF1 Costs**") and SF1 Phase 2 Facilities Costs (the "**Phase 2 SF1 Costs**" and together with the Phase 1A SF1 Costs, the "**Previously Paid SF1 Costs**"). The Mitigation Payment related to the Previously Paid SF1 Costs is the only Mitigation Payment made by the Developers to JSD prior to the date of this Agreement, and may be financed by the CFD as set forth in this Agreement.

G. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including SF1, the Developers and JSD executed the Fourth Amendment the Mitigation Agreement to, among other things, require the Developers to pay a supplemental Mitigation Payment to JSD that JSD will use to pay for additional Phase 1A SF1 Costs and Phase 2 SF1 Costs to be incurred by JSD after the date of this Agreement (herein, the "**SF1 Supplemental Costs**"), and that the Developers will pay such supplemental Mitigation Payment after the date of this Agreement. The Mitigation Payments paid by the Developers that JSD will use to pay the SF1 Supplemental Costs may be financed by the CFD as set forth in this Agreement.

H. The Developers and JSD have notified the City that to fund the capital costs of acquisition, development or construction of School Facilities, including a second school to serve the Project students ("**SF2**"), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of SF2 (the "**SF2 Costs**"), although the amount and the time for payment of such SF2 Costs and the corresponding Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the SF2 Costs may be financed by the CFD pursuant as set forth in this Agreement.

I. The Developers and JSD have notified the City that to fund acquisition, development or construction of School Facilities, including a third school to serve the Project students ("**SF3**"), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of SF3 (the "**SF3 Costs**"), although the amount and the time for payment of such SF3 Costs and corresponding Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the SF3 Costs may be financed through the CFD as set forth in this Agreement.

J. The Developers and JSD have notified the City that to fund acquisition, development or construction of School Facilities, including additional schools to serve the Project students ("**Future SFs**" and together with SF1, SF2, and SF3, the "**Project SFs**"), the Mitigation Agreement contemplates the payment by the Developers of Mitigation Payments that JSD will use to pay for the capital costs of acquisition, development or construction costs of Future SFs (the "**Future Phase Costs**" and together with the Previously Paid SF1 Costs, the SF1 Supplemental Costs, the SF2 Costs, and the SF3 Costs, the "**Project SFs Costs**"), although the amount and the time for payment of such Future Phase Costs and the corresponding

Mitigation Payments have not yet been determined. The Mitigation Payments paid by the Developers that JSD will use to pay for the Future Phase Costs may be financed through the CFD as set forth in this Agreement.

K. The Developers and JSD have notified the City that the amounts and the time for payment of the Mitigation Payments to be paid by the Developers to JSD that JSD has used, or will use, to pay the Project SFs Costs are governed by the terms of the Mitigation Agreement.

L. The Developers and JSD have represented to the City that the School Facilities are Authorized Improvements under the CFD because they are required as conditions of development of the property within the CFD and the Future Annexation Area.

M. The City may issue and sell bonds for the CFD from time to time with respect to one or more Improvement Areas or Future Improvement Areas of the CFD and may use part of the bond proceeds to finance all or a portion of the Mitigation Payments to be paid by the Developers that JSD will use to finance some or all of the Project SFs Costs as set forth in this Agreement.

N. JSD desires to cooperate with the City in accomplishing the financing, through the CFD, of some or all of the Mitigation Payments paid, or to be paid, by the Developers that JSD will use to finance the Project SFs Costs as set forth herein.

O. Each Improvement Area and Future Improvement Area is, or will be, authorized to finance the Authorized Improvements, including the Mitigation Payments used to fund the Project SFs Costs, and this Agreement applies to all Improvement Areas and Future Improvement Areas.

P. On February 21, 2023, the Council of the City adopted its Resolution No. 2023-032, entitled "Adopt a Resolution Declaring the Intention to Reimburse Expenditures from Proceeds of Tax-Exempt Obligations to be Issued by the City for and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)" (the "**Reimbursement Resolution**"), pursuant to which the City declared its intent to reimburse certain expenditures related to the Facilities with the proceeds of bonded indebtedness and other debt issued by the City for the CFD.

With these background facts in mind, the parties agree as follows:

1. This Agreement constitutes a "joint community facilities agreement", within the meaning of Section 53316.2 of the Act pursuant to which the CFD, including the Improvement Areas thereof, will be authorized to finance the Project SFs Costs as set forth herein.

2. The City has concluded that this Agreement is beneficial to the residents of the City and the future residents within the CFD.

3. JSD has concluded that this Agreement is beneficial to the residents of JSD and the future residents within the CFD.

4. The City shall administer the CFD. For purposes of this Agreement, administration of the CFD includes the following: employing and paying all consultants, levying and collecting the special tax(es), paying debt service on the bonds and otherwise administering the CFD and the bonds, and complying with all California and federal requirements concerning the CFD Proceedings or the bonds, including, but not limited to, those of the United States Internal Revenue Code of 1986, as amended (the "**Code**"). JSD is not, and shall not be, responsible for such administration and will not participate in, or be considered a participant in, the CFD Proceedings other than as a party to this Agreement.

5. If, in its sole discretion, the City issues bonds for the CFD, with respect to an Improvement Area or Future Improvement Area, and if, in the City's sole discretion, the proceeds of such bonds ("**Bond Proceeds**") are made available to finance Mitigation Payments, then JSD shall accept such Bond Proceeds paid to it by the City/CFD as payment, to the extent of the money received, as payment(s) to be credited against Developers' Mitigation Payment obligation for development of property within the CFD, and corresponding Improvement Areas, that JSD will use to fund the Project SFs Costs as set out herein. If less than all of the Mitigation Payments owed by the Developers to JSD under the Mitigation Agreement are paid to JSD from Bond Proceeds, then JSD and the Developer shall agree, in writing, on the application of the payments to specific Project SFs.

6. Bond Proceeds paid to JSD shall be for capital expenditures for School Facilities that JSD has already constructed in accordance with the Act and the Certificate Concerning Use of Bond Proceeds (as defined and discussed below).

7. Before the City issues any bonds, or series of bonds, the Bond Proceeds of which may be made available to finance the Mitigation Payments that JSD will use to pay for the Project SFs Costs, either the City or the Developers shall inform JSD, in writing, of the amount of Bond Proceeds that may be provided to JSD, and provided that JSD can certify that such amount(s) is no greater than the amount(s) expended by JSD for eligible School Facilities already constructed by JSD or School Facilities expenditures previously made by JSD, JSD shall thereafter, sign and deliver to the City a certificate for such series of bonds, in substantially the form set forth in Exhibit A to this Agreement (each a "**Certificate Concerning Use of Bond Proceeds**"). If the City issues bonds of the CFD, and if JSD has delivered the completed and signed Certificate Concerning Use of Bond Proceeds to the City (as provided for herein), then, upon the written request provided by the Developers (which may be made after the bonds are issued), the City shall make Bond Proceeds available to JSD for JSD to utilize in accordance with the Certificate Concerning Use of Bond Proceeds, and JSD shall, following receipt of such bond funds, utilize and account for such Bond Proceeds for School Facilities that it has already constructed as described in the Certificate Concerning Use of Bond Proceeds. In clarification of the foregoing, Bond Proceeds may only

be used to finance the costs of School Facilities that have been constructed by JSD. It shall not be necessary that the school project(s) (for which the School Facilities are a part) must be completed in full, only that the costs of the School Facilities have been expended by JSD prior to receipt of Bond Proceeds. If, after the closing of a series of bonds for which a Certificate Concerning Use of Bond Proceeds was provided, JSD expends additional funds for eligible School Facilities, those additional funds expended may, at the request of the Developers, be financed by the Bond Proceeds of such bonds if JSD provides a new Certificate Concerning Use of Bond Proceeds to account for the subsequent expenditures.

8. In addition to the foregoing, JSD shall provide to the City all documentation the City reasonably requires to comply with its records-retention policy and, if applicable, to monitor arbitrage liability in accordance with the terms applicable to the bonds, as issued, and the City's post-issuance debt procedures. Such documentation may include, but is not limited to, invoices, payment applications, warrants and fiscal reports associated with the School Facilities financed with Bond Proceeds. JSD shall with reasonable diligence, upon request by the City to include a list of requested documents, e-mail all documentation to the following persons:

Finance Director, City of Tracy	finance@cityoftracy.org
City Attorney, City of Tracy	ca@cityoftracy.org

9. JSD and Developers have informed the City that is expected that (a) prior to the time that Bond Proceeds will be used to finance Mitigation Payments, the Developer will pay the Mitigation Payments to JSD, and JSD will spend the Mitigation Payments on costs of the School Facilities and (b) Bond Proceeds will be used to finance Mitigation Payments in an amount that does not exceed the amount of Mitigation Payments previously spent on costs of School Facilities. Upon disbursement of Bond Proceeds to JSD, JSD shall deposit such Bond Proceeds in one or more separate capital accounts (the "**Bond Proceeds Deposit Account**"). Promptly after deposit of such Bond Proceeds into the Bond Proceeds Deposit Account, JSD will pay to the Applicable Developer (as defined below) a corresponding amount of the Mitigation Payments that were previously paid by the Applicable Developer to the District and that were previously expended on the costs of School Facilities within thirty (30) calendar days of the District's receipt of the written instructions from the Applicable Developers containing the applicable disbursement instructions (the "**Disbursement Instructions**") as follows:

a) Each such set of Disbursement Instructions shall specify that the repayment with Bond Proceeds shall be made to each Developer(s) (the "**Applicable Developer**") in proportion to the amount of the Mitigation Payments actually paid by the Applicable Developer for the applicable Project SF. For example, if Tracy Phase IB, LLC paid $6 million in Mitigation Payments for SF3 and Tracy Phase 2, LLC paid $4 million in Mitigation Payments for SF3, then Tracy Phase IB, LLC would be entitled to 60% of the Bond Proceeds

on deposit in the Bond Proceeds Deposit Account, and Tracy Phase 2, LLC would be entitled to 40% of the Bond Proceeds on deposit in the Bond Proceeds Deposit Account. Disbursement Instructions shall include the full name of each Applicable Developer payee and payment directions for a receiving bank or financial institution which may receive funds on behalf of such Applicable Developer payee. Each such set of Disbursement Instructions shall be signed or acknowledged by each Applicable Developer which is a party to this Agreement.

b) JSD shall establish separate accounts and/or subaccounts for the Mitigation Payments and Bond Proceeds to assist in accounting for, and payment of, the Bond Proceeds in accordance with this Agreement.

c) City acknowledges that the within-referenced reimbursement structure for use of Bond Proceeds is acceptable to the City.

10. The City shall indemnify, defend, protect, and hold harmless JSD and JSD's officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of any of the following:

a) the CFD Proceedings;

b) the authorization for, and implementation of, the levy, collection, and enforcement of the CFD's special taxes levied in each Improvement Area and Future Improvement Area;

c) the authorization by the City for, and initial disclosure by the City with respect to, the issuance, sale, and administration of the bonds of the CFD, except to the extent that such disclosure is based on information provided by JSD or the Developers;

d) any continuing disclosure obligations of the City relating to the bonds of the CFD, except to the extent that any such continuing disclosure is based on information provided by JSD or the Developers; or

e) any arbitrage or rebate issues under federal tax law that concern the bonds, except to the extent that such issues relate to actions or omissions of JSD or the Developers or representations made by JSD or the Developers to the City.

11. JSD shall administer and take full governmental responsibility for the following, for which the City shall have no responsibility: the construction or acquisition of any School Facilities which includes conducting environmental review; approving plans and specifications, bid requirements, performance and payment-bond requirements, and insurance requirements; administering construction contracts and construction work; staking and inspection;

acquiring necessary property interests in real or personal property; holding back and administering retention payments; and administering the punch list. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of the design, engineering, construction, or installation of the School Facilities.

12. JSD will have ownership of, and acquisition, construction, development and maintenance responsibility for, all of the School Facilities. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents as well as the CFD and its officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of the use or maintenance of the School Facilities.

13. JSD shall assure that the School Facilities financed by bonds are not used so as to cause the bonds to satisfy the private business tests of section 141(b) of the Code, or the private loan financing test of section 141(c) of the Code, if applicable.

14. To the extent that JSD wishes to lease, sell or convey any School Facilities financed by bonds of the CFD to an entity that is not a state or local government, JSD will seek the advice and approval of bond counsel to the City prior to any such sale. Such approval shall not be unreasonably withheld or delayed.

15. JSD shall indemnify, defend, protect, and hold harmless the City and the City's officers, employees, and agents as well as the CFD and its officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final appeal) that arise out of any representations made by JSD to the City with respect to its use of School Facilities funded by Bond Proceeds.

16. The City may take every step that is required or suitable for completing the CFD Proceedings; the levy, collection and enforcement of the special taxes; and the issuance, sale, delivery and administration of the bonds of the CFD. The City is not liable for its failure to conduct and complete the CFD Proceedings, levy, collect and enforce the special taxes or issue, sell, delivery and administer the bonds, including its decision for any reason not to finance through the CFD all, or any part of, the fees owed by the Developers under the terms of the Mitigation Agreement that JSD will use to pay for Project SFs Costs.

17. This Agreement may be amended by another written agreement signed by the parties, except that an amendment may not be made after issuance of any bonds issued by the City for the CFD if it would be detrimental to the interests of the bondholders without obtaining the consent of the bondholders in accordance with the related CFD bond documents.

18. This Agreement is solely for the benefit of the City, JSD, and the Developer and their successors and assigns. It is not intended to benefit any other third parties.

19. The parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

20. This Agreement will remain in force until all of the bonds have been retired and the authority to levy the special taxes conferred by the CFD Proceedings has ended or is otherwise terminated.

[SIGNATURE PAGES FOLLOW]

CITY OF TRACY

By: _____
_____, _____
Date: _____, 20___

Attest:

By: _____
_____, City Clerk

Approved as to Form
Tracy City Attorney

By: _____

JEFFERSON SCHOOL DISTRICT

By: _____
_____, President
Date: _____, 20___

ATTEST:

By: _____

Reviewed by JSD Legal Counsel

By: _____

Agenda Date: _____, 20___

Item Number: _____

Resolution No. _____

DEVELOPERS:

TRACY PHASE I, LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

TRACY PHASE 3, LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

TRACY PHASE IB, LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

TRACY PHASE 4, LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

TRACY PHASE 2, LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

TRACY BPS, LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

[Form of Certificate Concerning Use of Bond Proceeds]

EXHIBIT A

[BOND SERIES HEADER]

CERTIFICATE CONCERNING USE OF BOND PROCEEDS

I, the undersigned, hereby certify that I am a duly authorized officer of the Jefferson School District ("**School District**") and I am authorized to sign this Certificate Concerning Use of Bond Proceeds ("**Certificate**") on behalf of the School District in connection with the issuance of the above-captioned Series ___ Special Tax Bonds ("**Bonds**"). All capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Joint Community Facilities Agreement by and between the CITY OF TRACY, a California municipal corporation ("**City**"); (ii) the SCHOOL DISTRICT, (iii) TRACY PHASE I, LLC, a Delaware limited liability company; TRACY PHASE IB, LLC, a Delaware limited liability company; TRACY PHASE 2, LLC, a Delaware limited liability company; TRACY PHASE 3, LLC, a Delaware limited liability company; TRACY PHASE 4, LLC, a Delaware limited liability company; and TRACY BPS, LLC, a Delaware limited liability company, dated as of _____, 2023 ("**JCFA**").

I further certify on behalf of the School District that:

1. School District is a public school district formed and operating pursuant to California law.

2. School District provides public education services within its boundaries.

3. Pursuant to the provisions of the JCFA the School District has been informed by the City and City of Tracy Community Facilities District No. 2016-1 (Tracy Hills) ("**CFD**") that the City is in the process of issuing the Bonds on behalf of the CFD.

4. School District is informed that a portion of the net Bond proceeds ("**Bond Proceeds**") are being allocated to the School District in order to finance certain Mitigation Payments that School District has used to pay Project SFs Costs of certain School Facilities, as further described in Attachment "1" attached hereto (the "**Financed Project SFs Costs**"). School District acknowledges that it is obligated under the JCFA to pay the Developer for the Financed Project SFs Costs with the Bond Proceeds, following receipt thereof, and that it must allocate the Bond Proceeds to the Financed Project SFs Costs.

5. The construction and operation of the School Facilities is in satisfaction of contractual requirements of the School District with respect to the provision of public education to the property within the boundaries of the CFD, as further described in the JCFA.

6. The School District will maintain adequate records to show the description of the Financed Project SFs Costs that have been funded with the Mitigation Payments that were financed with the Bond Proceeds. The District shall assure that the School Facilities financed by the Bonds are not used so as to cause the Bonds to satisfy the private business tests of section 141(b) of the Internal Revenue Code of 1986, as amended (the "**Tax Code**"), or the private loan financing test of section 141(c) of the Tax Code, if applicable. All of the School Facilities will be used in the performance of essential governmental functions of the District or another state or local government agency.

7. The School Facilities have all been previously constructed (or payments for such School Facilities have been made by the School District) and have not been the subject of any prior payment or financing from the Bond Proceeds.

8. Developers previously funded the Mitigation Payments that paid for the Financed Project SFs Costs with non-CFD funds.

In addition, as shown in Schedule 1, the District expended the Mitigation Payments that are being financed by the Bond Proceeds to pay for the Project SFs Costs that (i) were paid no earlier than sixty (60) days before the date of the adoption by the City of its Resolution No. 2023-032, entitled "Adopt a Resolution Declaring the Intention to Reimburse Expenditures from Proceeds of Tax-Exempt Obligations to be Issued by the City for and on behalf of City of Tracy Community Facilities District No. 2016-1 (Tracy Hills)," which was adopted on February 21, 2023, and (ii) are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the School Facilities were placed in service (but no later than three (3) years after the expenditure is paid). For federal income tax purposes, the District agrees to allocate $_____ of Bond Proceeds as reimbursement for those Project SFs Costs.

As a result of the Developer financing the Mitigation Payments that funded the Project SFs Costs with Bond Proceeds, the District will return to the Applicable Developer a corresponding amount(s) of the Mitigation Payments that were previously paid by the Developer to the District.

This Certificate may be relied upon by the City, the CFD and bond counsel to the City/CFD in reaching its conclusions for confirmation of the federally tax-exempt status of the Bonds.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date set forth below.

Dated: _____ JEFFERSON SCHOOL DISTRICT

By: _____
[Authorized Official Title]

ATTACHMENT "1"

The following facilities have been constructed by the School District:

"School Facilities" *[input description]*. The averaged expected useful life of the School Facilities is at least ___ years.

Dated: _____, 20__

JEFFERSON SCHOOL DISTRICT

By: _____
James Bridges, Superintendent

Received and accepted by:

CITY OF TRACY

By: _____
_____, _____