

City of Calistoga

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Staff Report

TO: Honorable Mayor and City Council
FROM: Dylan Feik, City Manager
DATE: May 3, 2016
SUBJECT: Consideration of a authorizing certain matters necessary to participate in the Statewide Community Infrastructure Program (SCIP).

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

1
2 **ISSUE:** Consideration of a Resolution making certain finding and authorizing certain
3 matters necessary to participate in the CSCDA Statewide Community Infrastructure
4 Program (SCIP).
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6 **RECOMMENDATION:** After Council discussion and questions, open the public hearing
7 to order and invite any interested members of the public to provide testimony regarding
8 SCIP and the proposed action. Upon the close of the hearing, if the Council wishes to
9 join SCIP and become a participating member agency in this program, it should adopt the
10 proposed resolution.
11

12 **BACKGROUND:** The League of California Cities and the California State Association of
13 Counties entered into a joint powers authority (JPA) to create the California Statewide
14 Communities Development Authority (CSCDA). The member agencies of CSCDA include
15 approximately 377 cities and 56 counties throughout California, including the City of
16 Calistoga (the "City").
17

18 In 2002, CSCDA instituted the SCIP program, also known as the Statewide Community
19 Infrastructure Program to allow owners of property in participating cities and counties to
20 finance the development impact fees that would be payable by property owners upon
21 receiving development entitlements or building permits. The program has since been
22 expanded to include financing of public capital improvements directly. If a property owner
23 chooses to participate, the selected public capital improvements and the development
24 impact fees owed to the City will be financed by the issuance of tax-exempt bonds by
25 CSCDA. CSCDA will impose a special assessment on the owner's property to repay the
26 portion of the bonds issued to finance the fees paid with respect to the property. With

27 respect to impact fees, the property owner will either pay the impact fees at the time of
28 permit issuance, and will be reimbursed from the SCIP bond proceeds when the SCIP
29 bonds are issued; or the fees will be funded directly from the proceeds of the SCIP
30 bonds. In the former case, the City is required to pay the fees over to SCIP, and in the
31 latter case, SCIP holds the bond proceeds representing the fees. In both cases the fees
32 are subject to requisition by the City *at any time* to make authorized fee expenditures.
33 But by holding and investing the money until it is spent, SCIP is able to monitor the
34 investment earnings (which come to the City) for federal tax law arbitrage purposes.
35 SCIP encourages the City to spend those amounts *before* any other fee revenues of the
36 City. If the fees are paid by the property owner and bonds are never issued, the fees are
37 returned to the City by SCIP. In this way, the City is never at risk for the receipt of the
38 impact fees.

39
40 The benefits to the property owner include:

- 41
- 42 • Only property owners who choose to participate in the program will have assessments
43 imposed on their property. There is zero effect on neighboring property owners as
44 they are not participatory.
 - 45 • Instead of paying cash for public capital improvements and/or development impact
46 fees, the property owner receives low-cost, long-term, tax-exempt financing of those
47 fees thereby freeing up capital (\$) for other purposes.
 - 48 • The property owner can choose to pay off the special assessments at any time.
 - 49 • For home buyers, paying for the costs of public infrastructure through a special
50 assessment is superior to having those costs “rolled” into the cost of the home.
51 Although the tax bill is higher, the amount of the mortgage is smaller, making it easier
52 to qualify. Moreover, because the special assessment financing is at tax-exempt
53 rates, it typically comes at lower cost than mortgage rates.
 - 54 • Owners of smaller projects, both residential and commercial, can have access to tax-
55 exempt financing of infrastructure. Before the inception of SCIP, only projects large
56 enough to justify the formation of an assessment or community facilities districts had
57 access to tax-exempt financing.

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59 The benefits to the City include:

- 60
- 61 • As in conventional assessment financing, the City is not liable to repay the bonds
62 issued by CSCDA or the assessments imposed on the participating properties.
 - 63 • CSCDA handles all district formation, district administration, bond issuance and bond
64 administration functions. A participating city can provide tax-exempt financing to
65 property owners through SCIP while committing virtually no staff time to administer
66 the program.
 - 67 • Providing tax-exempt financing helps participating cities and counties cushion the
68 impact of rising public capital improvements costs and development impact fees on
69 property owners.

- 70 • The availability of financing will encourage developers to pull permits and pay fees in
71 larger blocks, giving the participating city immediate access to revenues for public
72 infrastructure, rather than receiving a trickle of revenues stretched out over time. As
73 part of the entitlement negotiation process, the possibility of tax-exempt financing of
74 fees can be used to encourage a developer to pay fees up front.
- 75 • In some cases, the special assessments on successful projects can be refinanced
76 through refunding bonds. Savings achieved through refinancing will be directed back
77 to the participating city for use on public infrastructure, subject to applicable federal
78 tax limitations.

79
80 The proposed resolution authorizes CSCDA to accept applications from owners of
81 property within our planning jurisdiction to apply for tax-exempt financing of public capital
82 improvements and development impact fees through SCIP. It also authorizes CSCDA to
83 form assessment districts within our City's boundaries, conduct assessment proceedings
84 and levy assessments against the property of participating owners. It approves the form
85 of an Acquisition Agreement, attached to the resolution as Exhibit B, to be entered into
86 between the City and the participating property owner/developer, if applicable, to provide
87 the terms and conditions under which financing for public capital improvements will be
88 provided and to establish the procedure for disbursement of bond proceeds to pay for
89 completed facilities. It also authorizes miscellaneous related actions and makes certain
90 findings and determinations required by law.

91
92 Attached to the resolution as Exhibit A is a "Form of Resolution of Intention to be adopted
93 by CSCDA." This is for informational purposes and does not require action by this
94 Council.

95
96
97 **FISCAL IMPACT:** None. Approval of this item does not have a financial impact on the
98 City outside of previously adopted impact fees and costs associated with infrastructure
99 projects.

100
101 **ATTACHMENT:**

- 102 1. SCIP Resolution
- 103 2. SCIP Resolution Transmittal Memo.

RESOLUTION NO. 2016-XXX

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2
3 **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF**
4 **NAPA, STATE OF CALIFORNIA, AUTHORIZING THE CITY TO JOIN THE**
5 **STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM; AUTHORIZING THE**
6 **CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO**
7 **ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL**
8 **ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS WITHIN THE**
9 **TERRITORY OF THE CITY OF CALISTOGA; APPROVING FORM OF ACQUISITION**
10 **AGREEMENT FOR USE WHEN APPLICABLE; AND AUTHORIZING RELATED**
11 **ACTIONS**

12
13 **WHEREAS**, the California Statewide Communities Development Authority (the
14 “Authority”) is a joint exercise of powers authority the members of which include
15 numerous cities and counties in the State of California, including the City of Calistoga
16 (the “City”); and

17
18 **WHEREAS**, the Authority has established the Statewide Community
19 Infrastructure Program (“SCIP”) to allow the financing of certain development impact
20 fees (the “Fees”) levied in accordance with the Mitigation Fee Act (California
21 Government Code Sections 66000 and following) and other authority providing for the
22 levy of fees on new development to pay for public capital improvements (collectively,
23 the “Fee Act”) through the levy of special assessments pursuant to the Municipal
24 Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following)
25 (the “1913 Act”) and the issuance of improvement bonds (the “Local Obligations”) under
26 the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and
27 following) (the “1915 Act”) upon the security of the unpaid special assessments; and

28
29 **WHEREAS**, SCIP will also allow the financing of certain public capital
30 improvements to be constructed by or on behalf of property owners for acquisition by
31 the City or another public agency (the “Improvements”); and

32
33 **WHEREAS**, the City desires to allow the owners of property being developed
34 within its jurisdiction (“Participating Developers”) to participate in SCIP and to allow the
35 Authority to conduct assessment proceedings under the 1913 Act and to issue Local
36 Obligations under the 1915 Act to finance Fees levied on such properties and
37 Improvements, provided that such Participating Developers voluntarily agree to
38 participate and consent to the levy of such assessments; and

39
40 **WHEREAS**, in each year in which eligible property owners within the jurisdiction
41 of the City elect to be Participating Developers, the Authority will conduct assessment
42 proceedings under the 1913 Act and issue Local Obligations under the 1915 Act to
43 finance Fees payable by such property owners and Improvements and, at the
44 conclusion of such proceedings, will levy special assessments on such property within
45 the territory of the City;

46

47 **WHEREAS**, there has been presented to this meeting a proposed form of
48 Resolution of Intention to be adopted by the Authority in connection with such
49 assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A,
50 and the territory within which assessments may be levied for SCIP (provided that each
51 Participating Developer consents to such assessment) shall be coterminous with the
52 City's official boundaries of record at the time of adoption of each such ROI (the
53 "Proposed Boundaries"), and reference is hereby made to such boundaries for the plat
54 or map required to be included in this Resolution pursuant to Section 10104 of the
55 Streets and Highways Code; and

56
57 **WHEREAS**, there has also been presented to this meeting a proposed form of
58 Acquisition Agreement (the "Acquisition Agreement"), a copy of which is attached hereto
59 as Exhibit B, to be approved as to form for use with respect to any Improvements to be
60 constructed and installed by a Participating Developer and for which the Participating
61 Developer requests acquisition financing as part of its SCIP application; and

62
63 **WHEREAS**, the City will not be responsible for the conduct of any assessment
64 proceedings; the levy or collection of assessments or any required remedial action in
65 the case of delinquencies in such assessment payments; or the issuance, sale or
66 administration of the Local Obligations or any other bonds issued in connection with
67 SCIP; and

68
69 **WHEREAS**, pursuant to Government Code Section 6586.5, notice was published
70 at least five days prior to the adoption of this resolution at a public hearing, which was
71 duly conducted by this Council concerning the significant public benefits of SCIP and
72 the financing of the Improvements and the public capital improvements to be paid for
73 with the proceeds of the Fees;

74
75 **NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of
76 Calistoga as follows:

77
78 Section 1. The City hereby consents to the conduct of special assessment
79 proceedings by the Authority in connection with SCIP pursuant to the 1913 Act and the
80 issuance of Local Obligations under the 1915 Act on any property within the Proposed
81 Boundaries; provided, that

82
83 (1) Such proceedings are conducted pursuant to one or more Resolutions of
84 Intention in substantially the form of the ROI; and

85
86 (2) The Participating Developers, who shall be the legal owners of such property,
87 execute a written consent to the levy of assessment in connection with SCIP by the
88 Authority and execute an assessment ballot in favor of such assessment in compliance
89 with the requirements of Section 4 of Article XIID of the State Constitution.

90
91 Section 2. The City hereby finds and declares that the issuance of bonds by the
92 Authority in connection with SCIP will provide significant public benefits, including

93 without limitation, savings in effective interest rate, bond preparation, bond underwriting
94 and bond issuance costs and the more efficient delivery of local agency services to
95 residential and commercial development within the City.

96
97 Section 3. The Authority has prepared and will update from time to time the
98 “SCIP Manual of Procedures” (the “Manual”), and the City will handle Fee revenues and
99 funds for Improvements for properties participating in SCIP in accordance with the
100 procedures set forth in the Manual.

101
102 Section 4. The form of Acquisition Agreement presented to this meeting is
103 hereby approved, and the [Mayor] is authorized to execute and the City Clerk is
104 authorized to attest the execution of a completed Acquisition Agreement in substantially
105 said form and pertaining to the Improvements being financed on behalf of the applicable
106 Participating Developer.

107
108 Section 5. The appropriate officials and staff of the City are hereby authorized
109 and directed to make SCIP applications available to all property owners who are subject
110 to Fees for new development within the City and/or who are conditioned to install
111 Improvements and to inform such owners of their option to participate in SCIP;
112 provided, that the Authority shall be responsible for providing such applications and
113 related materials at its own expense. The staff persons listed on the attached Exhibit C,
114 together with any other staff persons chosen by the City Manager from time to time, are
115 hereby designated as the contact persons for the Authority in connection with the SCIP
116 program.

117
118 Section 6. The appropriate officials and staff of the City are hereby authorized
119 and directed to execute and deliver such closing certificates, requisitions, agreements
120 and related documents, including but not limited to such documents as may be required
121 by Bond Counsel in connection with the participation in SCIP of any districts, authorities
122 or other third-party entities entitled to own Improvements and/or to levy and collect fees
123 on new development to pay for public capital improvements within the jurisdiction of the
124 City, as are reasonably required by the Authority in accordance with the Manual to
125 implement SCIP for Participating Developers and to evidence compliance with the
126 requirements of federal and state law in connection with the issuance by the Authority of
127 the Local Obligations and any other bonds for SCIP. To that end, and pursuant to
128 Treasury Regulations Section 1.150-2, the staff persons listed on Exhibit C, or other
129 staff person acting in the same capacity for the City with respect to SCIP, are hereby
130 authorized and designated to declare the official intent of the City with respect to the
131 public capital improvements to be paid or reimbursed through participation in SCIP.

132
133 Section 7. This Resolution shall take effect immediately upon its adoption. The
134 City Clerk is hereby authorized and directed to transmit a certified copy of this resolution
135 to the Secretary of the Authority.

138 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of
139 **Calistoga** at a regular meeting held this 3rd day of May, 2016, by the following
140 **vote:**

141
142 **AYES:**
143 **NOES:**
144 **ABSTAIN:**
145 **ABSENT:**

146
147
148 _____
149 **CHRIS CANNING, Mayor**

150
151 **ATTEST:**
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153
154 _____
155 **KATHY FLAMSON, City Clerk**

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EXHIBIT A TO THE RESOLUTION

FORM OF RESOLUTION OF INTENTION
TO BE ADOPTED BY CSCDA

RESOLUTION OF INTENTION OF THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO FINANCE IMPROVEMENTS AND/OR THE PAYMENT OF DEVELOPMENT IMPACT FEES FOR PUBLIC CAPITAL IMPROVEMENTS IN THE PROPOSED ASSESSMENT DISTRICT NO. _____ (COUNTY OF _____, CALIFORNIA), APPROVING A PROPOSED BOUNDARY MAP, MAKING CERTAIN DECLARATIONS, FINDINGS AND DETERMINATIONS CONCERNING RELATED MATTERS, AND AUTHORIZING RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, under the authority of the Municipal Improvement Act of 1913 (the "1913 Act"), being Division 12 (commencing with Sections 10000 and following) of the California Streets and Highways Code, the Commission (the "Commission") of the California Statewide Communities Development Authority (the "Authority") intends to finance, through its Statewide Community Infrastructure Program, the payment of certain development impact fees for public capital improvements as described in Exhibit A attached hereto and by this reference incorporated herein (the "Fees") and to finance certain public capital improvements to be constructed by or on behalf of the property owner(s) and to be acquired by the City or another local agency (the "Improvements"), all of which are of benefit to the property within the proposed Assessment District No. _____ (County of _____, California) (the "Assessment District"); and

WHEREAS, the Commission finds that the land specially benefited by the Fees and the Improvements is shown within the boundaries of the map entitled "Proposed Boundaries of Assessment District No. _____ (County of _____, California)," a copy of which map is on file with the Secretary and presented to this Commission meeting, and determines that the land within the exterior boundaries shown on the map shall be designated "Assessment District No. _____ (County of _____, California)";

NOW, THEREFORE, BE IT RESOLVED that the Commission of the California Statewide Communities Development Authority hereby finds, determines and resolves as follows:

1. The above recitals are true and correct, and the Commission so finds and determines.
2. Pursuant to Section 2961 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (the "1931 Act"), being Division 4 (commencing with Section 2800) of the California Streets and Highways Code, the Commission hereby declares its intent to comply with the requirements of the 1931 Act by complying with Part 7.5 thereof.

197 3. The Commission has or will designate a registered, professional engineer
198 as Engineer of Work for this project, and hereby directs said firm to prepare the report
199 containing the matters required by Sections 2961(b) and 10204 of the Streets and
200 Highways Code, as supplemented by Section 4 of Article XIID of the California
201 Constitution.

202 4. The proposed boundary map of the Assessment District is hereby
203 approved and adopted. Pursuant to Section 3111 of the California Streets and
204 Highways Code, the Secretary of the Authority is directed to file a copy of the map in the
205 office of the County Recorder of the County of _____ within fifteen (15) days of
206 the adoption of this resolution.

207 5. The Commission determines that the cost of the Fees and Improvements
208 shall be specially assessed against the lots, pieces or parcels of land within the
209 Assessment District benefiting from the payment of the Fees and the provision of the
210 Improvements. The Commission intends to levy a special assessment upon such lots,
211 pieces or parcels in accordance with the special benefit to be received by each such lot,
212 piece or parcel of land, respectively, from the payment of the Fees and the provision of
213 the Improvements.

214 6. The Commission intends, pursuant to subparagraph (f) of Section 10204
215 of the California Streets and Highways Code, to provide for an annual assessment upon
216 each of the parcels of land in the proposed assessment district to pay various costs and
217 expenses incurred from time to time by the Authority and not otherwise reimbursed to
218 the Authority which result from the administration and collection of assessment
219 installments or from the administration or registration of the improvement bonds and the
220 various funds and accounts pertaining thereto.

221 7. Bonds representing unpaid assessments, and bearing interest at a rate
222 not to exceed twelve percent (12%) per annum, will be issued in the manner provided
223 by the Improvement Bond Act of 1915 (Division 10, Streets and Highways Code), and
224 the last installment of the bonds shall mature not to exceed thirty (30) years from the
225 second day of September next succeeding twelve (12) months from their date.

226 8. The procedure for the collection of assessments and advance retirement
227 of bonds under the Improvement Bond Act of 1915 shall be as provided in Part 11.1,
228 Division 10, of the Streets and Highways Code of the State of California.

229 9. Neither the Authority nor any member agency thereof will obligate itself to
230 advance available funds from its or their own funds or otherwise to cure any deficiency
231 which may occur in the bond redemption fund. A determination not to obligate itself shall
232 not prevent the Authority or any such member agency from, in its sole discretion, so
233 advancing funds.

234 10. The amount of any surplus remaining in the improvement fund after
235 payment of the Fees, acquisition of the Improvements and payment of all claims shall

236 be distributed in accordance with the provisions of Section 10427.1 of the Streets and
237 Highways Code.

238 11. To the extent any Fees are paid to the Authority in cash with respect to
239 property within the proposed Assessment District prior to the date of issuance of the
240 bonds, the amounts so paid shall be reimbursed from the proceeds of the bonds to the
241 property owner or developer that made the payment.

242 [End of Form of Resolution of Intention]

EXHIBIT B TO THE RESOLUTION
FORM OF ACQUISITION AGREEMENT

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM

ACQUISITION AGREEMENT

BY AND BETWEEN
CITY OF CALISTOGA
AND
[DEVELOPER]

Dated as of _____, 20__

ACQUISITION AGREEMENT

Recitals

A. The parties to this Acquisition Agreement (the “Agreement”) are the CITY OF CALISTOGA, (the “Local Agency”), and [DEVELOPER], a [here indicate type of legal entity] (the “Developer”).

B. The effective date of this Agreement is _____, 20__.

C. The Developer has applied for financing of certain public capital improvements (the “Acquisition Improvements”) and capital facilities fees through the Statewide Community Infrastructure Program (“SCIP”) administered by the California Statewide Communities Development Authority (the “Authority”) and such application has been approved by the Local Agency.

D. Under SCIP, the Authority intends to issue bonds to fund, among other things, all or a portion of the costs of the Acquisition Improvements, and the portion of the proceeds of such bonds allocable to the cost of the Acquisition Improvements to be constructed and installed by the Developer, together with interest earned thereon prior to such acquisition, is referred to herein as the “Available Amount”.

E. SCIP will provide financing for the acquisition by the Local Agency of the Acquisition Improvements and the payment of the Acquisition Price (as defined herein) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A are descriptions of the Acquisition Improvements, which descriptions are subject to modification by written amendment of this Agreement, subject to the approval of the Authority.

F. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement, the Local Agency will acquire such completed Acquisition Improvements with the Available Amount.

G. Any and all monetary obligations of the Local Agency arising out of this Agreement are the special and limited obligations of the Local Agency payable only from the Available Amount, and no other funds whatsoever of the Local Agency shall be obligated therefor.

H. In consideration of Recitals A through G, inclusive, and the mutual covenants, undertakings and obligations set forth below, the Local Agency and the Developer agree as stated below.

Agreement

ARTICLE I

DEFINITIONS; ASSESSMENT DISTRICT FORMATION AND
FINANCING PLAN

Section 1.01. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

“Acceptable Title” means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the Local Agency Engineer in his sole discretion not to interfere with the intended use and therefore are not required to be cleared from the title.

“Acquisition Improvements” shall have the meaning assigned to such term in Recital C and are described in Exhibit A.

“Acquisition Price” means the amount paid to the Developer upon acquisition of all of the Acquisition Improvements as provided in Section 2.03.

“Actual Cost” means the cost of construction of all of the Acquisition Improvements, as documented by the Developer to the satisfaction of the Local Agency, as certified by the Local Agency Engineer in an Actual Cost Certificate.

“Actual Cost Certificate” shall mean a certificate prepared by the Developer detailing the Actual Cost of all of the Acquisition Improvement to be acquired hereunder, as revised by the Local Agency Engineer pursuant to Section 2.03.

“Agreement” means this Acquisition Agreement, dated as of _____, 20__.

“Assessment District” means the assessment district established by the Authority pursuant to SCIP which includes the Developer's property for which the Acquisition Improvements are being funded.

“Authority” means the California Statewide Communities Development Authority.

“Available Amount” means the amount of funds deposited in the Developer Acquisition Account by the Authority pursuant to SCIP, together with any interest earnings thereon.

“Code” means the Streets and Highways Code of the State of California.

“Developer” means [Developer], a [here indicate type of legal entity].

“[Developer] Acquisition Account” means the account by that name established

by the Authority pursuant to SCIP for the purpose of paying the Acquisition Price of the Acquisition Improvements.

“Local Agency” means the City of Calistoga.

“Local Agency Engineer” means the Director of Public Works of the Local Agency (the “Director”) or the designee of the Director, who will be responsible for administering the acquisition of the Acquisition Improvements hereunder.

“Project” means the land development program of the Developer pertaining to the Developer’s property in the Assessment District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within or adjacent to the Assessment District.

“SCIP” means the Statewide Community Infrastructure Program of the Authority.

“SCIP Requisition” means a requisition for payment of funds from the [Developer] Acquisition Account in substantially the form attached hereto as Exhibit B.

“SCIP Trust Agreement” means the Trust Agreement entered into by the Authority and the SCIP Trustee in connection with the financing for the Acquisition Improvements.

“SCIP Trustee” means Wells Fargo Bank, National Association, as trustee under the SCIP Trust Agreement.

“Title Documents” means, for each Acquisition Improvement acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements) necessary or convenient to the operation, maintenance, rehabilitation and improvement by the Local Agency of that Acquisition Improvement (including, if necessary, easements for ingress and egress) and a Bill of Sale or similar instrument evidencing transfer of title to that Acquisition Improvement (other than said real property interests) to the Local Agency, where applicable.

Section 1.02. Participation in SCIP. Developer has applied for financing thorough SCIP of the Acquisition Improvements, and such application has been approved by the Local Agency. Developer and Local Agency agree that until and unless such financing is completed by the Authority and the Available Amount is deposited in the Developer Acquisition Account, neither the Developer nor the Local Agency shall have any obligations under this agreement. Developer agrees to cooperate with the Local Agency and the Authority in the completion of SCIP financing for the Acquisition Improvements.

Section 1.03. Deposit and Use of Available Amount .

(a) Upon completion of the SCIP financing, the Available Amount will be deposited by the Authority in the [Developer] Acquisition Account.

(b) The Authority will cause the SCIP Trustee to establish and maintain the [Developer] Acquisition Account for the purpose of holding all funds for the Acquisition Improvements. All earnings on amounts in the [Developer] Acquisition Account shall remain in the [Developer] Acquisition Account for use as provided herein and pursuant to SCIP. The amounts in the [Developer] Acquisition Account shall be withdrawn by the Local Agency in accordance with SCIP procedures upon completion of the Acquisition Improvements within 30 days (or as soon thereafter as reasonably practicable) of receipt by the Local Agency of the certification of the Local Agency Engineer required by Section 2.03 of this Agreement, and subject to satisfaction of all other conditions precedent to such acquisition pursuant to Section 2.04 of this Agreement, to pay the Acquisition Price of such completed Acquisition Improvements, as specified in Article II hereof. Upon completion of all of the Acquisition Improvements and the payment of all costs thereof, any remaining funds in the [Developer] Acquisition Account (less any amount determined by the Local Agency as necessary to reserve for claims against such account) (i) shall be applied to pay the costs of any additional improvements eligible for acquisition with respect to the Project as approved by the Authority and, to the extent not so used, (ii) shall be applied by the Authority as provided in Section 10427.1 of the Code to pay a portion of the assessments levied on the Project property in the Assessment District.

Section 1.04. No Local Agency Liability; Local Agency Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the Local Agency or any actual or alleged omission or failure to act by the Local Agency with respect to SCIP subject the Local Agency to monetary liability therefor. Further, nothing in this Agreement shall be construed as affecting the Developer's or the Local Agency's duty to perform their respective obligations under any other agreements, public improvement standards, land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the Local Agency's rights and obligations under this Agreement.

ARTICLE II

DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Section 2.01. Letting and Administering Design Contracts. The parties presently anticipate that the Developer has awarded and administered or will award and administer engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the Local Agency or directly to the design consultant) shall be reimbursed at the time of acquisition of such Acquisition Improvements,. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of or prior to the acquisition of Acquisition Improvements.

Section 2.02. Letting and Administration of Construction Contracts. State law requires that all Acquisition Improvements shall be constructed as if they were constructed under the direction and supervision of the Local Agency. In order to assure compliance with those provisions, except for any contracts entered into prior to the date hereof, Developer agrees to comply with the guidelines of the Local Agency for letting and administering said contracts. The Developer agrees that all such contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the Local Agency the Acquisition Improvements to be constructed by Developer (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvements, to the extent not already publicly owned) when such Acquisition Improvements are completed to the satisfaction of the Local Agency for an amount not to exceed the lesser of (i) the Available Amount or (ii) the Actual Cost of the Acquisition Improvements. Exhibit A, attached hereto and incorporated herein, contains a list of each Acquisition Improvement. At the time of completion of each Acquisition Improvement, the Developer shall deliver to the Local Agency Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Acquisition Improvement, where necessary. In the event that the Local Agency Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and the related Acquisition Improvement, the Local Agency Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If such further documentation is still not adequate, the Local Agency Engineer may revise the Actual Cost Certificate to delete any disallowed items, and such determination shall be final and conclusive.

In the event that the Actual Cost is in excess of the Available Amount, the Local Agency shall withdraw the Available Amount from the [Developer] Acquisition Account and transfer said amount to the Developer. In the event that the Actual Cost is less than the Available Amount, the Local Agency shall withdraw an amount from the [Developer] Acquisition Account equal to the Actual Cost, and shall transfer said amount to the Developer. Any amounts then remaining in the [Developer] Acquisition Account shall be applied as provided in Section 1.03.

In no event shall the Local Agency be required to pay the Developer more than the amount on deposit in the [Developer] Acquisition Account at the time such payment is requested.

Section 2.04. Conditions Precedent to Payment of Acquisition Price. Payment by the Local Agency to the Developer from the [Developer] Acquisition Account of the Acquisition Price for an Acquisition Improvement shall be conditioned first upon the determination of the Local Agency Engineer, pursuant to Section 2.03, that such Acquisition Improvement is all complete and ready for acceptance by the

Local Agency, and shall be further conditioned upon prior satisfaction of the following additional conditions precedent:

(a) The Developer shall have provided the Local Agency with lien releases or other similar documentation satisfactory to the Local Agency as evidence that the property which is subject to the special assessment liens of the Assessment District is not subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

(b) The Developer shall be current in the payment of all due and payable property taxes and installments for the special assessments of the Assessment District on property owned by the Developer or under option to the Developer.

(c) The Developer shall certify that it is not in default with respect to any loan secured by any interest in the Project.

(d) The Developer shall have provided the Local Agency with Title Documents needed to provide the Local Agency with title to the site, right-of-way, or easement upon which the subject Acquisition Improvements are situated. All such Title Documents shall be in a form acceptable to the Local Agency (or applicable governmental agency) and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the Local Agency Engineer insuring the Local Agency as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the Local Agency and the Developer. Each title insurance policy required hereunder shall be in the amount equal to or greater than the Acquisition Price.

Section 2.05. SCIP Requisition. Upon a determination by the Local Agency Engineer to pay the Acquisition Price of the Acquisition Improvements pursuant to Section 2.04, the Local Agency Engineer shall cause a SCIP Requisition to be submitted to the SCIP Trustee and the SCIP Trustee shall make payment directly to the Developer of such amount pursuant to the SCIP Trust Agreement. The Local Agency and the Developer acknowledge and agree that the SCIP Trustee shall make payment strictly in accordance with the SCIP Requisition and shall not be required to determine whether or not the Acquisition Improvements have been completed or what the Actual Costs may be with respect to such Acquisition Improvements. The SCIP Trustee shall be entitled to rely on the SCIP Requisition on its face without any further duty of investigation.

ARTICLE III

MISCELLANEOUS

Section 3.01. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the Local Agency, the Authority, and each of its respective officers, directors, employees and agents, 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 or alleged to have resulted from the acts or omissions of the Developer or its agents and employees in the performance of this Agreement, or arising out of any contract for the design, engineering and construction of the Acquisition Improvements or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the Authority's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the SCIP financing (provided that the Developer shall have been furnished a copy of such official statement and shall not have objected thereto); and provided, further, that nothing in this Section 3.01 shall limit in any manner the Local Agency's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 3.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 3.01 shall be understood or construed to mean that the Developer agrees to indemnify the Local Agency, the Authority or any of its respective officers, directors, employees or agents, for any negligent or wrongful acts or omissions to act of the Local Agency, Authority its officers, employees, agents or any consultants or contractors.

Section 3.02. Audit. The Local Agency shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement) in constructing the Acquisition Improvements.

Section 3.03. Cooperation. The Local Agency and the Developer agree to cooperate with respect to the completion of the SCIP financing for the Acquisition Improvements. The Local Agency and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

Section 3.04. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 3.05. Third Party Beneficiaries. The Authority and its officers, employees, agents or any consultants or contractors are expressly deemed third party beneficiaries of this Agreement with respect to the provisions of Section 3.01. It is expressly agreed that, except for the Authority with respect to the provisions of Section 3.01, there are no third party beneficiaries of this Agreement, including without limitation

any owners of bonds, any of the Local Agency's or the Developer's contractors for the Acquisition Improvements and any of the Local Agency's, the Authority's or the Developer's agents and employees.

Section 3.06. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the Local Agency from any condition of development or requirement imposed by any other agreement between the Local Agency and the Developer, and, in the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by the Local Agency and the Developer.

Section 3.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the Local Agency:

City of Calistoga
[Address to Come]

If to the Developer:

[Developer]
[Address to Come]

Either party may change its address by giving notice in writing to the other party.

Section 3.08. Severability. 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 3.09. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 3.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

Section 3.11. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 3.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 3.13. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the Local Agency.

Section 3.14. Remedies in General. It is acknowledged by the parties that the Local Agency would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Developer of any (i) moneys owing to the Developer hereunder, or (ii) moneys paid by the Developer pursuant to the provisions hereof which are misappropriated or improperly obtained, withheld or applied by the Local Agency.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the Local Agency shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer other than for the payments to the Developer specified in the preceding paragraph. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

CITY OF CALISTOGA

By _____

—

[Mayor]

ATTEST:
City Clerk

By _____

[DEVELOPER],
a [here indicate type of legal entity]

By _____
(Signature)

(Print Name)

EXHIBIT A TO THE ACQUISITION AGREEMENT

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND BUDGETED AMOUNTS

<u>ACQUISITION IMPROVEMENTS</u>	<u>BUDGETED AMOUNTS</u>
1.	\$
2.	
3.	
4.	

EXHIBIT B TO THE ACQUISITION AGREEMENT

FORM OF SCIP REQUISITION

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

Re: Statewide Community Infrastructure Program

The undersigned, a duly authorized officer of the CITY OF CALISTOGA hereby requests a withdrawal from the [DEVELOPER] ACQUISITION ACCOUNT, as follows:

Request Date: [Insert Date of Request]

Name of Developer: [Developer]

Withdrawal Amount: [Insert Acquisition Price]

Acquisition Improvements: [Insert Description of Acquisition Improvement(s) from Ex. A]

Payment Instructions: [Insert Wire Instructions or Payment Address for Developer]

The undersigned hereby certifies as follows:

1. The Withdrawal is being made in accordance with a permitted use of such monies pursuant to the Acquisition Agreement, and the Withdrawal is not being made for the purpose of reinvestment.
2. None of the items for which payment is requested have been reimbursed previously from other sources of funds.
3. If the Withdrawal Amount is greater than the funds held in the [Developer] Acquisition Account, the SCIP Program Administrator is authorized to amend the amount requested to be equal to the amount of such funds.
4. To the extent the Withdrawal is being made prior to the date bonds have been issued on behalf of SCIP, this withdrawal form serves as the declaration of official intent of the CITY OF CALISTOGA, pursuant to Treasury Regulations 1.150-2, to reimburse with respect expenditures made from the Developer Acquisition Account listed above in the amount listed above.

CITY OF CALISTOGA

By : _____

Title: _____

EXHIBIT C TO THE RESOLUTION

CITY OF CALISTOGA CONTACTS FOR SCIP PROGRAM

Primary Contact

Name: Dylan Feik

Title: City Manager

Mailing Address: 1232 Washington Street, Calistoga, CA 94515

Delivery Address (if different):

E-mail: DFeik@ci.calistoga.ca.us

Telephone: (707) 942-2806

Fax: (707) 942-0732

Secondary Contact

Name:

Title:

Mailing Address:

Delivery Address (if different):

E-mail:

Telephone:

Fax:

[Add additional contacts as needed]

CERTIFICATION OF RESOLUTION

I, the undersigned, the duly appointed and qualified City Clerk of the City of Calistoga, do hereby certify that the foregoing Resolution No. _____ was duly adopted at a regular meeting of the City Council of the City of Calistoga duly and regularly held at the regular meeting place thereof on the _____ day of _____, 20__, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present.

An agenda of said meeting was posted at least 72 hours before said meeting at _____, a location freely accessible to members of the public, and a brief description of said resolution appeared on said agenda.

I have carefully compared the foregoing with the original minutes of said meeting on file and of record in my office, and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

Dated: _____, 20__

City Clerk
City of Calistoga

By:

[Seal]



ORRICK, HERRINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-2669
tel 415-773-5700
fax 415-773-5759
WWW.ORRICK.COM

MEMORANDUM

To: Dylan Feik, City Manager, City of Calistoga
From: Patricia Eichar, Attorney, Public Finance
Date: April 18, 2016
Re: Resolution and Related Materials for Joining SCIP

At the request of James Hamill at the California Statewide Communities Development Authority, we are pleased to enclose the following:

- a. form of resolution by which the City of Calistoga becomes a participant in SCIP;
- b. suggested language for staff report to accompany the resolution to your City Council; and
- c. form of notice of public hearing for publication.

Please note the following respecting the three enclosures:

1. Resolution. Exhibit A to the resolution is itself a form of resolution of intention (ROI) to be adopted by the joint powers authority (CSCDA) in connection with any assessment district which will include any participants within the City. It is attached for purely legal and informational purposes, and it is NOT for adoption by your Council.

Exhibit B is the form of Acquisition Agreement which is being approved as to form only. It will be utilized ONLY upon receipt of an application from a participant requesting financing for public capital facilities as distinguished from (or in addition to) development impact fees. The purpose of having it approved as to form now is to avoid the need to return to the Council in the future for approval of project-specific Acquisition Agreements.

Exhibit C is important and DOES need to be completed by you or another staff member prior to submission of the resolution to the Council.

Following adoption of the resolution, please have the attached Certification of Resolution completed by the City Clerk and a certified copy of the resolution sent to SCIP, c/o Christina King at the above address.



O R R I C K

- 2. Suggested Staff Report. As indicated at the top of page one of this enclosure, it is provided only for your convenience and as an aid in preparing a staff report, assuming you follow such a practice. Feedback from other local agencies who have joined SCIP confirms that it is well-received as a useful tool, and it is provided to you in that spirit.

Please note that, as pointed out in this enclosure, consideration of the Resolution must take place at a noticed public hearing and cannot be included in a consent calendar.

- 3. Notice of Public Hearing. Please note the directions in italics at the top of the enclosed form of notice of hearing, which confirm that the notice must be completed by filling in the blanks and bracketed inserts and further confirms that the notice is to be published one time at least five calendar days prior to the hearing.

Please also provide a copy of the affidavit or proof of publication to SCIP, c/o Christina King at the above address.

In conclusion, we appreciate the City’s interest in SCIP, and we look forward to working with you and other City staff to enroll applicants from the City in the program. In the event you have any questions about the enclosures or the process, don’t hesitate to contact any of the program facilitators listed below.

<u>Name</u>	<u>Telephone</u>	<u>E-Mail Address</u>
Patricia Eichar	(503) 943-4860	peichar@orrick.com
Erin Pham	(415) 773-5841	epham@orrick.com
Meagan Singer	(415) 773-5940	msinger@orrick.com
Bob Williams	(415) 445-8674	bob.williams@rbccm.com

encl: SCIP Resolution
Suggested Staff Report
Form of Notice of Public Hearing