

SCHOOL IMPACT MITIGATION AGREEMENT

This Agreement is made this 15th day of November, 1994, by and between the City of Modesto ("City"), the Building Industry Association of Central California ("BIA"), and the Sylvan Union School District and the Modesto High School District ("Districts").

RECITALS

A. On October 16, 1990, the City of Modesto adopted a Specific Plan for the Village One Plan Area ("The Plan"). Village One consists of 1,780 acres of land. At the time of the Village One Specific Plan adoption, this land was located within Modesto's Sphere of Influence in the unincorporated area of Stanislaus County, California. In April, 1991, Village One was annexed to the City of Modesto.

B. The Plan provides for the development of up to 8,000 residential units in Village One. To serve the students generated by those residences, the Plan calls for the development of three (3) elementary schools, one (1) middle school, and one (1) high school (the "Village One School Facilities").

C. The Plan provides that developers within the Village One Plan Area will be required to mitigate school impacts. The Plan contemplates that school impacts will be mitigated through a combination of AB 2926 development fees, local general obligation bonds, state school building program, and one or more Mello-Roos

Community Facilities Districts. The details of school impact mitigation were deferred to a future date when a Public Services and Facilities Financing Plan (the "Financing Plan") is adopted. The Financing Plan was adopted by the City on September 6, 1994 for the Village One Plan Area.

D. The Plan further provides that a pedestrian overcrossing ("POC") be constructed across Sylvan Avenue in order to provide safe pedestrian access from Village One residences to the high school and community park site north of Sylvan Avenue.

E. School impact fees have been the subject of a great deal of legislation and litigation in recent years. Subsequent to January 1, 1987, school impact fee law limited the mitigation measures which could be imposed as conditions of approval for development projects to those measures specifically enumerated by statute. However, the courts interpreted the post-January 1, 1987 law to allow cities and counties to impose mitigation measures above and beyond those contained in the statutes as long as they were acting in a legislative capacity.

F. City, BIA and some potential developers in the Village One Plan Area contend there is a dispute about the extent to which school impacts can be mitigated under the statutory scheme. The BIA and the developers contend that current law sets forth a statutory maximum of one and 72/100ths (\$.72) dollars per square foot of new residential construction. Districts contend that this limitation does not apply to residential development in Village One.

G. The purpose of this Agreement is to completely and finally resolve all school impact fee issues for Village One without litigation by establishing the method for calculation and collection of fees and taxes from construction in Village One which will finance construction of the Village One School Facilities.

NOW, THEREFORE, in consideration of this Agreement, and the mutual promises, covenants, and stipulations hereinafter contained, the parties agree as follows:

1. School Financing Plan. By execution of this Agreement, City hereby adopts the following as the School Facilities Financing Element of the Financing Plan. The contents of this paragraph shall hereinafter be referred to as the "School Facilities Financing Element of the Financing Plan." The provisions of this Agreement shall govern in the event of a conflict between any provision of the Village One Financing Plan and this Agreement.

A. Section 53080 and Resolution 92-556 Not Applicable. Except as expressly set forth in this School Facilities Element of the Financing Plan, Government Code Section 53080, Chapter 4.7 of Division 1 of Title 7 of the Government Code and Modesto City Council Resolution No. 92-556 shall not apply to any development in Village One. Instead, financing construction of the Village One School Facilities will be accomplished in the manner hereinafter set forth in this School Facilities Element of the Financing Plan.

B. Formation of Mello-Roos Community Facilities Financing District. The Districts shall take whatever steps they deem necessary to form a Mello-Roos Community Facilities Financing District (the "CFD") consistent with the terms and provisions of this School Facilities Element of the Financing Plan, to finance construction of the Village One School Facilities. This CFD shall include the following components:

(1) One-Time Special Tax. The CFD shall levy a one-time special tax (the "One-Time Special Tax") on all new construction in Village One. The One-Time Special Tax for each residential unit shall be \$3.65 per square foot of "assessable space," as that term is defined in Government Code Section 65995 (b) (1) and shall be payable to the CFD at the earlier of close of escrow for that residential unit or the 365th day following issuance of the building permit for such unit. The One-Time Special Tax for senior housing projects, within the meaning of California Civil Code Section 51.3, or commercial or industrial projects, shall be \$.28 per square foot of "chargeable covered and enclosed space," as that term is defined in Government Code Section 65995 (b) (2) and shall be payable to the CFD at the earlier of issuance of the Certificate of Occupancy or final City inspection. Beginning in January 1996, the One-Time Special Tax referred to in this subparagraph shall be adjusted annually to reflect the effect of inflation as indicated in the construction cost index for the prior twelve (12) month period published in the Northern California edition of the Engineering News Record. Districts shall be

responsible for calculating such adjustments in the One-Time Special Tax and shall notify the parties to this Agreement and the entity administering the CFD, in writing of the appropriate annual adjustment. Each annual adjustment of the One-Time Special Taxes shall become effective on the subsequent July 1.

(2) Annual Special Tax. In addition to the One-Time Special Tax described in subparagraph 1.B.(1) above, the CFD shall levy an annual special tax (the "Annual Special Tax") on all residential units, other than senior housing. The precise amounts and distribution of the Annual Special Tax have not yet been determined but the total amount of Village One School Facilities funded will not exceed \$52,735,600.00 (1994 dollars). The Annual Special Tax may escalate at the rate of two percent (2%) per year. There shall be no Annual Special Tax on senior housing, commercial and/or industrial developments in Village One unless otherwise agreed upon in writing between the Districts, the City and the property owner of the property to be subject to the levy.

C. Freezing Ad Valorem Property Tax Revenues. Concurrent with formation of the CFD, the total annual amount of ad valorem property tax revenues due from parcels within Village One, for purposes of repayment of the existing general obligation bonds for Districts, shall be frozen pursuant to Government Code Sections 53313.6 and 53313.7 as of the date on which the resolution of formation is adopted.

D. CFD Formation. This School Facilities Financing Element of the Financing Plan provides the framework upon

which the CFD will be formed. While all parties acknowledge that numerous technical details regarding formation have not yet been finalized, the parties agree to cooperate in defining and determining all matters necessary to formation, provided, however, the CFD shall not materially differ from the provisions outlined herein. A Mello-Roos Community Facilities District may also be formed by the City in Village One to finance construction of certain public infrastructures and facilities other than schools. The parties agree to explore joint formation and administration of the CFD to finance non-school and school facilities. However, neither the City nor the Districts shall be obligated to jointly form or administer the CFD.

2. City Covenants.

A. City agrees to cooperate in the formation of the CFD.

B. In order to mitigate the impacts on school facilities identified in the Plan, and in order to implement the provisions of this Agreement, City agrees to include a successful election to participate in the CFD as a requirement in all development agreements and as a prerequisite for the approval of all projects within the Village One Specific Plan Area. City acknowledges that any project not conditioned in such a manner or any project not successfully included within the boundaries of the CFD shall not have mitigated its impacts as identified in the Plan. The failure of any project to be included in the CFD shall not be grounds for Districts to terminate this Agreement. The City shall

(1) deem any project not included within the boundaries of the CFD to not be in compliance with the provisions of the Plan or this Agreement, and in breach of the provisions of any development agreement between the City and the property owner of such project, and (2) shall grant no further legislative or administrative approvals for the project until the project is included in the boundaries of the CFD.

C. City shall be responsible for funding 50% of the cost of the POC. City also agrees to advance funds on additional 25% of the cost of the POC to be reimbursed by Modesto High School District as provided in paragraph 3.D. of this Agreement.

3. Districts' Covenants.

A. Districts agree to accept the School Facilities Financing Element of the Financing Plan as set forth in paragraph 1 of this Agreement in lieu of fees which could be collected by the District pursuant to Government Code Sections 53080, 65995 and 65996 as mitigation of the impacts on school facilities caused by development of the Village One project. Districts further agree not to object to any development projects within Village One including initiating litigation challenging any actions, administrative or legislative approving a development project in Village One on the basis of school impacts, except that Districts may in the normal course of project review on a project by project basis inform the City of any concerns Districts may have related to non-enrollment school impacts such as traffic or safety. City

shall consider all of District's comments in good faith. Districts' covenants in this paragraph shall not apply as to any project in which the number of residential units contemplated in that project are proposed to be substantially greater than the number of residential units intended for that project in the Plan as it exists in the form of Specific Plan Amendment No. 6.

B. Concurrent with formation of the CFD, Districts further agree to make the findings required by Government Code Section 53313.6 in order to implement paragraph 1.C. above.

C. Districts further agree to use their best efforts to secure funding from the State of California school building program, and any other programs which may hereafter make funds available to local school districts for facilities construction to reduce the Annual Special Tax for properties in Village One. Should funds be received from the State for school facilities construction in Village One, the Annual Special Tax obligation of properties in Village One shall be reduced in proportion to the ratio of the State contributions to the total school facilities construction budget on which the Annual Special Tax was based. Certain schools to be funded by the CFD are intended to serve students from areas outside Village One. The parties understand and agree that the school facilities construction budget on which the Annual Special Tax is based includes only 70% of the costs of the third elementary school and 50% of the costs of the high school. Should the Districts receive State funds (the "Replacement Funds") for construction of either or

both of those particular schools, the Annual Special Tax obligation for properties in Village One shall be proportionately reduced based on the ratio of the amount of Replacement Funds received times the Village One share of that school to the total school facilities construction budget on which the Annual Special Tax was based.

D. The Modesto High School District ("MHSD") shall be responsible for funding 50% of the cost of the POC. MHSD shall fund 25% of the cost of the POC at the time of construction and shall reimburse the City for the 25% advanced by the City pursuant to paragraph 3C of this Agreement. Interest on the funds advanced by the City shall accrue at the same rate as interest earnings on MHSD deposits with the State's Local Agency Investment Fund ("LAIF"). At the end of each calendar year, the MHSD shall compute the amount of interest earned on MHSD deposits in LAIF and such rate of return shall be the interest rate assigned to the funds advanced by the City for that year. Unless the City and the MHSD subsequently agree in writing, the sole source of revenue for repayment of the costs advanced by the City shall be revenue provided to the MHSD from the development of Village Three. The amount of the interest component of the revenue derived from Village Three shall not be deducted from the overall school facility funding to be provided by Village Three.

4. BIA's Covenant. BIA is a trade association comprised of builders and developers some of whom either own land in Village One or plan to develop residential projects in Village One. All

parties to this Agreement acknowledge that BIA cannot require its members to participate in the CFD referred to in the School Facilities Financing Element of the Financing Plan set forth in paragraph 1 of this Agreement. Nevertheless, BIA agrees to adopt a resolution approving of this Agreement and endorsing participation in the CFD.

5. Agreement to Remain in Effect. The provisions of this Agreement shall remain in effect and be binding upon the parties regardless of the provisions of existing and future state law regarding the mitigation of school impacts. Notwithstanding any other provision of existing and future state law, the obligations as set forth in paragraph 1 of this Agreement shall be the only exaction or dedication relating to the mitigation of school impacts which will be required of Developers in the Village One Plan Area.

6. Miscellaneous Provisions.

A. The Parties hereto acknowledge that the breach of the provisions of this Agreement cannot be remedied by damages and therefore agree that the provisions hereof may be remedied by an action for specific performance in addition to any other remedy available at law or in equity.

B. If any suit, action, or proceeding in law or equity is brought to enforce the provisions of this Agreement the prevailing party shall be entitled to reasonable costs and attorneys fees.

C. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties.

D. Time is of the essence in this Agreement.

E. This Agreement constitutes the entire understanding of the parties regarding the subject matter hereof. This Agreement may be amended only by a writing executed by the parties hereto.

F. The waiver or failure to enforce any breach hereof shall not be construed as a waiver of or bar to enforcement of subsequent breaches.

G. Any notice from one party to another under this Agreement shall be given in writing and delivered either personally or by first class mail postage prepaid addressed as follows:

1. Sylvan Union School District
Michael Sibitz, Superintendent
605 Sylvan Avenue
Modesto, CA 95350
2. Modesto High School District
Debbe Bailey, Director of Planning and Research
426 Locust Street
Modesto, CA 95351
3. City of Modesto
Michael D. Milich, Esq.
City Attorney's Office
P.O. Box 642
Modesto, CA 95353
4. Building Industry Association
of Central California
Edward P. Taczanowsky
1401 "F" Street
Modesto, CA 95354

with copy to: Russell A. Newman, Esq.
 Normoyle & Newman
 1700 Standiford Ave., Suite A-340
 Modesto, CA 95350

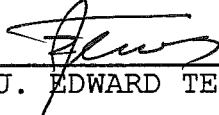
Delivery by facsimile shall be deemed personal delivery on the day sent if the original of the document is mailed by first class mail postage prepaid the same date as the facsimile is transmitted. A party may change its address or the designation of the person to whom the notices are to be sent by giving prior written notice of the name change to the other parties.

H. The laws of the State of California shall apply to this Agreement. Venue for any suit, action, or proceeding to enforce the terms of this Agreement shall be in the Superior Court, County of Stanislaus.

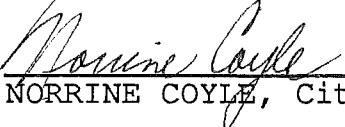
IN WITNESS WHEREOF, this Agreement is executed in Modesto, Stanislaus County, California as of the date first above written.

Res. 94-656

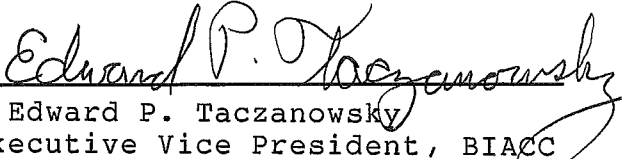
CITY OF MODESTO

By: 
J. EDWARD TEWES, City Manager

ATTEST:

By: 
MORRINE COYLE, City Clerk

BUILDING INDUSTRY ASSOCIATION
OF CENTRAL CALIFORNIA

By: 
Edward P. Taczanowsky
Executive Vice President, BIACC

SYLVAN UNION SCHOOL
DISTRICT

By: Michael H. Sibitz
MICHAEL SIBITZ, SUPERINTENDENT

MODESTO HIGH SCHOOL
DISTRICT

By: James P. Dunlap

APPROVED AS TO FORM:

By: Michael D. Milich
MICHAEL D. MILICH, City Attorney

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