

RESOLUTION NO. 6050

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDLANDS APPROVING A DEPOSIT AND REIMBURSEMENT AGREEMENT WITH BIXBY LAND COMPANY AND MAKING CERTAIN APPOINTMENTS

WHEREAS, the City Council (the "City Council") of the City of Redlands (the "City") has received from Bixby Land Company (the "Owner") a request to institute proceedings for the establishment of a community facilities district (the "District");

WHEREAS, under the Mello-Roos Community Facilities Act of 1982 (the "Act"), the City Council is authorized to establish the District;

WHEREAS, the City intends to proceed with the formation of the District, provided that the Owner advance certain funds to the City to pay for costs incurred in connection with the District; and

WHEREAS, the City must appoint a special tax consultant and an appraiser in connection with the formation of the District;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDLANDS DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The foregoing recitals are accurate.

Section 2. The officers and employees of the City are authorized on behalf of the City to incur certain expenses in connection with the formation of the District; provided that such expenses are paid for from amount deposited by the Owner pursuant to a Deposit and Reimbursement Agreement, dated as of July 2, 2002 (the "Deposit Agreement"), by and between the City and the Owner. The Deposit Agreement, in substantially the form submitted to this meeting, be and the same is hereby approved. The Mayor of the City, and such other members of the City Council as the Mayor may designate, the City Manager of the City and the Finance Director of the City, and such other officers of the City as the City Manager may designate, (the "Authorized Officers") are, and each of them is, hereby authorized and directed, for and in the name of the City, to execute and deliver the Deposit Agreement in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Deposit Agreement by such Authorized Officer.

Section 3. David Taussig & Associates, Inc is appointed as the Special Tax Consultant for the District and Bruce W. Hull & Associates, Inc. is appointed as the Appraiser for the District. The Mayor of the City is authorized to execute agreements with such firms in substantially the respective forms presented to this City Council.

DEPOSIT AND REIMBURSEMENT AGREEMENT

by and between

CITY OF REDLANDS

and

BIXBY LAND COMPANY

Dated as of July 2, 2002

**CITY OF REDLANDS
COMMUNITY FACILITIES DISTRICT NO. 2002-1
(Redlands Business Center)**

DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (this "Deposit Agreement") is made and entered into as of July 2, 2002 by and between the CITY OF REDLANDS (the "City") and BIXBY LAND COMPANY (the "Owner").

WITNESSETH:

WHEREAS, the Owner has requested the City institute proceedings for the establishment of a community facilities district to be designated "City of Redlands Community Facilities District No. 2002-1 (Redlands Business Center)" (the "Community Facilities District") under the Mello-Roos Community Facilities Act of 1982 (the "Act");

WHEREAS, in accordance with the City's policy regarding use of the Act, the Owner is required to compensate the City for all costs incurred in formation of the Community Facilities District;

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district;

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest, under all of the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 533521 of the Act and in the resolution of formation to establish the community facilities district pursuant to Section 53325.1 of the Act, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds;

WHEREAS, the City and the Owner desire to enter into this Deposit Agreement in accordance with Section 53314.9 of the Act in order to provide for the advancement of funds by the Owner to be used to pay costs incurred in connection with the creation of the Community Facilities District and the issuance of special tax bonds (the "Bonds") thereby, and to provide for the reimbursement to the Owner of such funds advanced, without interest, from the proceeds of any Bonds issued by the Community Facilities District; and

WHEREAS, the Owner acknowledges that the Owner alone is required to pay all costs incurred in connection with the formation of the Community Facilities District, and the City shall be entitled to reimbursement or advancement of funds for such purposes from the Owner alone,

notwithstanding the fact that there are other property owners within the proposed Community Facilities District,

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. The Deposits and Application Thereof. (a) The Owner has previously deposited with the City the amount of \$25,000 (the "Initial Deposit"). The City, by its execution hereof, acknowledges receipt of, and accepts, the Initial Deposit.

(b) The Initial Deposit, together with any subsequent deposit required to be made by the Owner pursuant to the terms hereof (collectively, the "Deposits"), are to be used to pay for any costs incurred for any authorized purpose in connection with the creation of the Community Facilities District and the issuance of Bonds thereby, including, without limitation, (a) the fees and expenses of any consultants to the City employed in connection with the creation of the Community Facilities District and the issuance of Bonds thereby, including an engineer, special tax consultant, financial advisor, bond counsel and any other consultant deemed necessary or advisable by the City, (b) the costs of appraisals, market absorption and feasibility studies and other reports deemed necessary or advisable by the City in connection with the creation of the Community Facilities District and the issuance of Bonds thereby, (c) the costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other action or proceeding undertaken in connection with the creation of the Community Facilities District and the issuance of Bonds thereby, (d) reasonable charges for City staff time incurred in connection with the creation of the Community Facilities District and the issuance of Bonds thereby, including a reasonable allocation of City overhead expense related thereto, and (e) any and all other actual costs and expenses incurred by the City in connection with the creation of the Community Facilities District and the issuance of Bonds thereby (collectively, the "Initial Costs"). The City may draw upon the Deposits from time to time to pay the Initial Costs.

(c) If, at any time, the unexpended and unencumbered balance of the Deposits is less than \$10,000, the City may request, in writing, that the Owner make an additional deposit in an amount estimated to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. The Owner shall make such additional deposit with the City within two weeks of the receipt by the Owner of the City's written request therefor. If the Owner fails to make any such additional deposit within such two week period, the City may cease all work related to the creation of the Community Facilities District and the issuance of Bonds thereby.

(d) The Deposits may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the Deposits.

(e) The City shall provide the Owner with a periodic summary of expenditures made from the Deposits, and the unexpended balance thereof, within ten business days of receipt by the City of a written request therefor submitted by the Owner. The cost of providing any such summary shall be charged to the Deposits.

Section 2. Return of Deposits; Reimbursement. (a) As provided in Section 53314.9 of the Act, the approval by the qualified electors of the Community Facilities District of the proposed special tax to be levied therein is a condition to the repayment to the Owner of the funds advanced by the Owner pursuant hereto. Therefore, if the qualified electors of the Community Facilities District do not approve the proposed special tax to be levied therein, the City shall have no obligation to repay the Owner any portion of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the Community Facilities District do not approve the proposed special tax to be levied therein, the City shall return to the Owner any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed special tax.

(b) If proceedings for the creation of the Community Facilities District or the issuance of Bonds thereby are terminated, the City shall, within ten business days after official action by the City or the Community Facilities District to terminate said proceedings, return the then unexpended and unencumbered portion of the Deposits to the Owner, without interest.

(c) If Bonds are issued by the Community Facilities District, the City shall reimburse the Owner, without interest, for the portion of the Deposits that has been expended or encumbered, said reimbursement to be made within ten business days after the issuance of such Bonds, solely from the proceeds of such Bonds and only to the extent otherwise permitted under the Act. The City shall, within ten business days after the issuance of such Bonds, return the then unexpended and unencumbered portion of the Deposits to the Owner, without interest.

Section 3. Abandonment of Proceedings. The Owner acknowledges and agrees that the creation of the Community Facilities District shall be in the sole discretion of the City. No provision of this Deposit Agreement shall be construed as an agreement, promise or warranty of the City to create the Community Facilities District or of the Community Facilities District to issue the Bonds. The City shall have no liability to the Owner for any decision not to create the Community Facilities District and neither the City nor the Community Facilities District shall have any liability to the Owner for any decision not to issue the Bonds.

Section 4. Deposit Agreement Not Debt or Liability of City. As provided in Section 53314.9(b) of the Act, this Deposit Agreement does not constitute a debt or liability of the City. The City shall not be obligated to advance any of its own funds to pay Initial Costs or any other costs incurred in connection with the creation of the Community Facilities District and the issuance of Bonds thereby. No member of the City Council of the City and no officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. Indemnification and Hold Harmless. The Owner hereby agrees to assume the defense of, indemnify and hold harmless the City, and each of its members, officers, employees and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of the Owner or any of its members, officers, employees, contractors or agents in connection with the creation of the Community Facilities District and the issuance of Bonds thereby. The City shall promptly notify the Owner of any such claim, action or proceeding, and the City shall cooperate in the defense thereof. The obligations of the Owner

under this Section shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City, its members, officers or employees.

Section 6. Notices. All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:

City of Redlands
PO BOX 3005
35 Cajon Street
Redlands, California 92373
Attention: Finance Director

If to the Owner

BIXBY LAND COMPANY
4525 Atherton Street
Long Beach, California 90815
Attention: A. Terrence Bixby

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram or telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 7. California Law. This Deposit Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 8. Severability. If any part of this Deposit Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Deposit Agreement shall be given effect to the fullest extent reasonably possible.

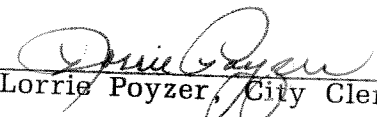
Section 9. Successors and Assigns. This Deposit Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 10. Counterparts. This Deposit Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Deposit Agreement as of the date first written above.

CITY OF REDLANDS

ATTEST:


Lorrie Poyzer, City Clerk

By: 
Karl N. Haws, Mayor

BIXBY LAND COMPANY

By: 
Name: A. Terrance Dickens
Title: President and Chief Executive Officer

By: 
Name: Mark L. Bixby
Title: Vice President and Secretary