City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.	9:30 a.m.
COUNCIL MEETING	03/03/09
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

DATE: March 3, 2009

FROM: CRAIG SCHARTON, Director
Downtown and Community Revitalization

BY: ELIZABETH JONASSON, Revitalization Funding Coordinator
Downtown and Community Revitalization

SUBJECT: DOCUMENTS PERTAINING TO DOWNTOWN PBID/ASSESSMENT DISTRICT

1. PRESENT PROGRESS UPDATE TO COUNCIL ON THE DOWNTOWN PBID / ASSESSMENT DISTRICT

2. APPROVE AMENDMENT NO. ONE TO DOWNTOWN PROPERTY BASED IMPROVEMENT DISTRICT (PBID) GRANT FUNDING AGREEMENT TO INCREASE CITY FUNDING ASSISTANCE BY $56,264 TO A TOTAL OF $96,264, OF WHICH THE CURRENTLY UNEXPENDED AMOUNT OF $84,309 SHALL BE A NO-INTEREST, NO-MATCH LOAN REPAYABLE FROM PBID ASSESSMENTS, TO FINANCE CONSULTING SERVICES AND OTHER COSTS INCURRED IN THE FORMATION OF THE DOWNTOWN PROPERTY BASED IMPROVEMENT DISTRICT, AND AUTHORIZE THE EXECUTION OF DOCUMENTS;

KEY RESULT AREAS

Economic Development

RECOMMENDATION

Staff recommends that the City Council approve the modification of the existing Grant Funding Agreement to fund the next steps in the formation of a Downtown PBID/Assessment District with an additional $56,264, to a total City funding of $96,264. These City monies will fund consulting services and other costs incurred in the formation of the Downtown Property Based Improvement District (PBID). The City loan will be repaid if the assessment is approved by the property owners.

EXECUTIVE SUMMARY

On December 18, 2007, City Staff presented to Council a concept to restore the Fulton Mall by implementing an infrastructure restoration project. Council directed staff to proceed with the study and formation of a Downtown PBID. The City entered a Grant Funding Agreement with a nonprofit, One by One Leadership, regarding Fulton Mall Restoration Consultant Deliverables including grant match requirements. As part of the FY2008 – FY2009 budget, City's funding assistance was increased to a total $40,000 as a matching fund reserve for the continued development of a Downtown PBID. On February 10, 2009, the City Council approved transfer of the Grant Funding Agreement and fiscal agent obligations thereunder from One by One

to another nonprofit, the Fresno Revitalization Corporation. The City of Fresno has spent to date under the Agreement $11,955, leaving a balance of $28,045 in the fund.

The Downtown PBID Partnership has received $15,691 in private gift donations to proceed with the next step, to contract the services of Progressive Urban Management Associates, Inc. (PUMA) by the Fresno Revitalization Corporation. The cost of PUMA's contract and associated expenses is estimated not to exceed $100,000. Eliminating the matching funds requirement, increasing the amount of available funding by $56,264 and allowing the PBID to repay $84,309 as an interest free loan with PBID Assessment District Funds will permit the next step in the PBID process.

Estimated Expenses to complete DT PBID	$100,000
Current Available City Funding	$28,045
Current Available Funding Through Private Donations	$15,691
Additional Funding Needed to Fully Finance PBID	$56,264
	$100,000

BACKGROUND

PBID's are a standard tool used to improve downtowns throughout the country. The PBID consists of a majority of property owners in a geographic area making the decision to assess them in order to pool money together to improve the area. It is a public-private partnership to revitalize downtown Fresno. The money is collected through property taxes and a board composed primarily of property owners oversees the spending. Other cities also include other stakeholders such as residents, small business owners, representatives of the arts, property developers and City or RDA representation.

The stakeholders are surveyed to determine what services the community is in need of, above and beyond those which the City provides. For this and other details regarding PBID formation, the Downtown Association of Fresno has hired a consultant. The consultants will deliver a work plan, budget, and an assessment methodology, set the form of governance and establish the boundaries of the PBID. The initial term for a PBID is 5 years and can afterward be renewed by a vote of property owners for an additional 10 years.

In order to pay for the consultant services and other costs incurred in the formation of PBIDs, all of the Cities and/or Redevelopment Agencies front the costs. No examples of matching funds requirements or of loans not being forgiven were found. Services and economic activity has improved in those areas as a result of the PBID. Where PBIDS have been formed they have been successful and renewed with higher approval rates than when started.

FISCAL IMPACT

Funds are available in the Municipal Restoration Zone Fund, Downtown and Community Revitalization Department's FY2009 budget. It is noted for Council's information that if the PBID is not formed there is no mechanism to collect on the loan.

Attachments

Exhibit A- Proposed Amendment No. One to Grant Funding Agreement
Exhibit B- Chart (Comparison of Cities)

AMENDMENT NO. ONE TO
GRANT FUNDING AGREEMENT

Between

FRESNO REVITALIZATION CORPORATION, a California non-profit public benefit corporation

And

CITY OF FRESNO, a California municipal corporation

Regarding

DOWNTOWN PROPERTY BASED IMPROVEMENT DISTRICT ("PBID") AND RELATED DELIVERABLES

This Amendment No. One to Grant Funding Agreement Regarding Downtown PBID and Related Deliverables ("Amendment") effective as of March 3rd, 2009 is entered between FRESNO REVITALIZATION CORPORATION, a California non-profit public benefit corporation ("FRC"), and the CITY OF FRESNO, a California municipal corporation ("City").

Recitals

A. City and FRC are parties to a certain March 4, 2008 Grant Funding Agreement Regarding Downtown PBID Consultant Deliverables as assigned, assumed and amended ("Agreement"), incorporated herein by this reference; and

B. City and FRC desire to modify the Agreement in certain regards, upon the terms and conditions herein; and

C. On March 3rd, 2009, the Fresno City Council considered and approved this Amendment No. One.

AMENDMENT

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree to the following:

1. The Revised Project Consultant Deliverables, Performance and Payment Schedule attached as Exhibit A hereto and incorporated herein shall control and take precedence.

2. City shall provide additional funding of $56,264, for a total City funding of $96,264, of which the currently unexpended amount of $84,309 shall be a no-interest, no-match loan repayable by the FRC and/or any other entity acting as the PBID owner's association, solely from PBID assessments/other lawfully available funds and pursuant to the PBID management plan, substantially consistent with the assumable Promissory Note attached as Exhibit B hereto and incorporated herein.

3. In the event of any conflict between the body of this Amendment No. One and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment No. One shall control and take precedence over the Exhibit or Attachment.

4. All capitalized terms used in this Amendment No. One, unless otherwise defined herein, shall have the meanings assigned to such terms in the Agreement.

5. The City Manager / designee thereof shall be authorized to sign all documents / instruments necessary in pursuit hereof.

6. Except as expressly modified and amended hereby, the Agreement shall remain in full force and effect. From and after the effective date of this Amendment No. One,

references in the Agreement to "this Agreement" shall mean the Agreement as hereby amended.

The parties have executed this Assignment as of the date first above written.

FRESNO REVITALIZATION CORPORATION
a California nonprofit corporation
By:

_____

Name: Bryn Forhan
Title: President
Address: _____
Ph. No. _____
Date: _____

CITY OF FRESNO
a California municipal corporation

By: _____

Name: Andrew T. Souza
Title: City Manager

Date: _____, 2009

APPROVED AS TO FORM:
James Sanchez
City Attorney

By: _____
Robert Coyle, Deputy

Date: _____, 2009

ATTEST:
Rebecca E. Klisch
City Clerk

By: _____
Deputy

Date: _____, 2009

Attachments:

Exhibit A – Revised Project Consultant Deliverables, Performance and Payment Schedule will be provided by consultants on March 3, 2009.

Exhibit B - Promissory Not

CAO DRAFT OF 2/24/09
EXHIBIT B

Promissory Note

DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for Cancellation.

Loan Amount: $84,309 Date: _____, 2009

Fresno, California

For value received, the undersigned, _____, a California [_____] ("Borrower"), promises to pay to the order of the City of Fresno, a California municipal corporation, ("Lender"), the sum of Seventy Seven Thousand Eight Hundred Nine Dollars $84,309), to the extent that such funds are loaned to Borrower, without interest, and in accordance with the Grant Funding Agreement Regarding Downtown PBID and Related Deliverables, dated March 3rd, 2009, entered into between the Fresno Revitalization Corporation as fiscal agent thereunder and Lender, as amended, (collectively "Agreement"), with all principal due and payable on or before [____, 20__] ("Maturity Date"), on which date the unpaid balance of principal thereon shall be due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisement laws.

This Note is payable by Borrower and/or any other entity acting as the PBID owner's association assuming this Note, solely from PBID assessments/other lawfully available funds and pursuant to the PBID management plan and in the amounts/at the times provided therein, and said payments continue each successive year until the Maturity Date, upon which all principal shall be due and payable. Any failure to make a payment required hereunder within ten (10) days after such payments are due shall constitute a default under the Agreement and this Note. It shall not be a default hereunder if no payment was made because PBID assessments/other lawfully available funds did not exist for any particular year, provided that any such shortfall(s) shall be added to succeeding loan payment(s) as/when due. Additionally any failure to timely submit to Lender PBID financial statements within one hundred eighty (180) days after Lender's reasonable request shall constitute a default under the Agreement and this Note.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement.

Time is of the essence. It will be a default under this Note if Borrower defaults under the Agreement, or this Note and such default continues beyond a 30 days notice and cure period. In the event of a default by Borrower with respect to any sum payable under this Note and the failure to cure such default within 30 days, the Borrower shall

pay a late charge equal to the lesser of 2% of any outstanding payment or the maximum amount allowed by law. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note and then to principal balance. On the occurrence of an uncured default then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note and then to the principal balance.

All Loan payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate.

Borrower agrees to pay all costs including, without limitation, reasonable attorney fees, incurred by the holder of this Note in the successful enforcement of payment, whether or not suit is filed, and including, without limitation, all costs, reasonable attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the Borrower that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

Lender may transfer this Note and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter.

If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or

impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Borrower and Lender agree that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender and Borrower may consent to in a writing duly signed by Borrower or Lender or its authorized agents.

This Note shall be nonrecourse to Borrower and all its constituent members. The sole recourse of the Lender under the Note shall be the PBID assessments/other lawfully available funds and Lender shall have no right to seek or recover any deficiency amount from Borrower or any partner of Borrower.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced by [___], dated as of _____, in the original principal amount of $_____, executed by the Borrower and payable to _____ ("Issuer"), as assigned to _____ ("Trustee"), to the extent and in the manner provided in that certain [___] Agreement, dated as of _____, among the Lender, the Trustee and the Borrower (the "Subordination Agreement"). The rights and remedies of the payee and each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the "Junior Lender" under the Subordination Agreement.

In witness whereof, Borrower has caused this Promissory Note to be executed as of the date and year first above written.

a California [___]

By:

_____

	Funded By	Year Created	Repayed	Matching Funds	PBID Funds	% in Favor	Renewed	Renewal %	2nd Renewal%
Long Beach	DLBA*	1998	No	No	1.5 million	55	yes twice	60	
San Jose	RDA	2007	No	No	1.6 million	90	up in 2012		
Stockton	RDA and Banks	1997	No	No	1 million	60	yes twice	82	84.6
Visalia	City of Visalia	2000	No	No	750,000**		yes		
Sacramento	RDA	1996	No	No	1.8 million		yes twice		91

*Funded by the previous Tenant Based Improvement District
** reduced to 355,000 now due to new Lighting District assessment