

AGENDA ITEM NO. IE
COUNCIL MEETING 04/10/14
APPROVED BY

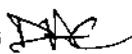

DEPARTMENT DIRECTOR

CITY MANAGER 

April 10, 2014

FROM: SCOTT L. MOZIER, PE, Director
Public Works Department

BY: SCOTT TYLER, PE, City Traffic Engineer/Interim Assistant Director
Public Works Department, Traffic and Engineering Services Division 

DAVID A. CISNEROS, Manager, Special Projects 
Public Works Department, Traffic and Engineering Services Division

SUBJECT: Documents Related to Measure "C" Transit Oriented Development Projects
in the Cultural Arts District (Council District 3)

1. Approve a Reimbursement Agreement with Granville Homes for \$88,180 for constructing Storm Drain Improvements in "L" Street from Calaveras Street to San Joaquin Street under the Measure "C" Transit Oriented Development Program
2. A Resolution of the Council of the City of Fresno adopting the 39th Amendment to the Annual Appropriation Resolution No. 2013-98 to appropriate \$90,000 for the Measure "C" Transit Oriented Development Program reimbursement agreement for the "L" Street project from Calaveras to San Joaquin Streets

RECOMMENDATIONS

It is recommended that the Council take the following action:

1. Approve a reimbursement Agreement with Granville Homes for \$88,180 for constructing Storm Drain Improvements in "L" Street from Calaveras Street to San Joaquin Street under the Measure "C" Transit Oriented Development Program (TOD) Program.
2. Adopt the 39th Amendment to the Annual Appropriation Resolution No. 2013-98 to appropriate \$90,000 for the Measure "C" Transit Oriented Development Program reimbursement agreement for the "L" Street project from Calaveras to San Joaquin in FY 2014.

EXECUTIVE SUMMARY

On April 11, 2013, the Council adopted Resolution No. 2013-46, authorizing submission of an application for grant funds under the Transit Oriented Development (TOD) Program. This resolution included the Storm Drain Improvements in "L" Street from Calaveras Street to San Joaquin Street,

included the Storm Drain Improvements in "L" Street from Calaveras Street to San Joaquin Street, in the amount of \$89,680. The project scope will reimburse the developer for the installation of a storm drain pipeline and drain inlet to improve drainage in the immediate vicinity of the project. The Fresno County Transportation Authority (FCTA) Board has approved allocation of TOD funds for the project. On January 30, 2014 the Council approved a Cooperative Agreement which will allow the City to be reimbursed for eligible project costs. The FCTA Board approved the Cooperative Agreement for the project on February 12, 2014. The attached Reimbursement Agreement will allow for the City to reimburse Granville Homes for eligible project costs. Council approval of the Reimbursement Agreement is necessary at this time in order to avoid any delays with the project. Approximately \$1,500 of the original reimbursement funds will be withheld to cover City of Fresno administrative costs.

BACKGROUND

The Measure "C" Extension (2007-2027) approved by the voters of Fresno County includes a number of subprograms including regional street and highway projects, airport funding, transit, flexible funding, street maintenance, bicycle lanes, trails and environmental enhancements, as well as several others. Under the Environmental Enhancement Allocation Program, the Measure "C" Expenditure Plan includes the TOD Program, the purpose of which was to provide funding to support planning, incentives and infrastructure related to infill, higher-density TOD types of development.

On April 11, 2013, the Council adopted Resolution No. 2013-46, authorizing submission of application for grant funds under the TOD program. This resolution included the installation of Storm Drain Improvements in "L" Street from Calaveras Street to San Joaquin Street in the amount of \$89,680. The project scope will include the installation of a storm drain pipeline and drain inlet to improve drainage in the immediate vicinity of the project. On August 7, 2013, the FCTA Board approved the TOD application for funding.

In order to complete the project and allow for reimbursement of project costs from the Measure "C" TOD funds, the City and FCTA entered into a Cooperative Agreement and now the City desires to enter into a Reimbursement Agreement with Granville Homes. Staff recommends the Council approve the Reimbursement Agreement in substantially the form attached subject to approval as to form by the City Attorney's Office prior to execution. Upon approval by the Council and City Attorney's Office, the agreement will be executed on behalf of the City by the Public Works Director or his designee, in accordance with the City Manager's delegation of the signing authority.

In addition, the Department's FY 2014 budget should be increased to fund this project. Staff recommends that the City Council adopt the 39th Amendment to the Annual Appropriation Resolution No. 2013-98 appropriating \$90,000 for expenditure on activities related to the reimbursement agreement.

ENVIRONMENTAL FINDINGS

An initial study and Mitigated Negative Declaration was prepared and adopted on November 3, 2011, and affirmed on December 7, 2011 for C-11-014/VTTM 5994. Conditional Use Permit Application C-11-014 and Vesting Tentative Tract Map 5994 pertain to approximately 1.29 net acres

of property located on the northerly corner of the intersection of "L" and San Joaquin Streets. The Conditional Use Permit Application and Vesting Tentative Tract Map collectively propose a single family gated planned development. The project includes vacating portions of existing public street rights-of-way and installation and construction of both public and private facilities and infrastructure in accordance with the standards, specifications and policies of the City of Fresno. Approval of this Reimbursement Agreement will facilitate implementation of a portion of that project.

An analysis has been performed pursuant CEQA Guidelines § 15162 to determine whether subsequent environmental review is required for the Reimbursement Agreement. Based upon this analysis the following findings are made to support the determination that no subsequent environmental review is required:

1. No substantial changes are proposed in the project which will require major revisions of the previous Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, there are no changes to the project.
2. No substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. In this case, there have been no changes in circumstances.
3. There is no new information, which was not known and could not have been known at the time of the previous Mitigated Negative Declaration that the project will have significant effect not discussed in the Mitigated Negative Declaration.

LOCAL PREFERENCE

N/A - Local preference does not affect the outcome of this Council item.

FISCAL IMPACT

The \$91,480 project to install storm drain improvements in "L" Street from Calaveras Street to San Joaquin Street, located in Council District 3, is being funded with \$89,680 in Measure "C" TOD dollars. An additional \$1,800 in Measure "C" Flexible funding is for expenditures not eligible for the Measure "C" TOD funds. Approximately \$1,500 of the \$89,680 in TOD funds will be applied to cover City of Fresno administrative costs. There will be no impact to the General Fund. The attached Amendment to the Annual Appropriation Resolution No. 2013-98 will provide the appropriations necessary to fund the reimbursement agreement in FY 2014.

Attachments:

- Reimbursement Agreement
- Resolution

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**MEASURE “C” TRANSIT-ORIENTED DEVELOPMENT PROGRAM
INFRASTRUCTURE PROJECT REIMBURSEMENT AGREEMENT
(STORM DRAIN FACILITIES IN L STREET BETWEEN CALAVERAS AND SAN
JOAQUIN STREETS)**

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2014, between the City of Fresno, a California municipal corporation (“City”) and Granville Homes, Inc. (“Developer”).

RECITALS

WHEREAS, on April 11, 2013, the Fresno City Council (“Council”) adopted a resolution authorizing staff to apply for Measure “C” Transit-Oriented Development (TOD) funding for the construction of storm drain facilities in L Street between Calaveras and San Joaquin Street (“Project”); and

WHEREAS, the application was approved for funding through the TOD program procedures established by the Fresno Council of Governments (“COG”) and Fresno County Transportation Authority (“FCTA”); and

WHEREAS, the City and FCTA have entered into a cooperative agreement for the Project, as executed on February 12, 2014; and

WHEREAS, the City conditioned approval of Conditional Use Permit Application No. C-11-014, on developer construction of storm drain facilities on L Street between Calaveras and San Joaquin Streets; and

WHEREAS, City applied the same condition of approval on Vesting Tentative Tract Map No. 5994 Condition of Approval “General Conditions” 38, and Specific Condition 4 (a) of the April 24, 2011, letter from the Fresno Metropolitan Flood Control District (as incorporated); and

WHEREAS, the costs of constructing the improvements required by Condition of Approval for Conditional Use Permit No. C-11-014, and Condition of Approval for Vesting Tentative Tract Map No. 5994, Condition 38 and Specific Condition 4 (a) which required the developer to construct storm drain facilities in L Street from Calaveras to San Joaquin Streets (“Improvements”), will be reimbursed in accordance with this Agreement; and

WHEREAS, prior to execution of this Agreement, the Developer has installed the Improvements; and

WHEREAS, City and Developer now wish to set forth the obligations of the Developer associated with the Improvements and the conditions for reimbursement of the Developer for such work.

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AGREEMENT

In consideration of the foregoing recitals and the obligations undertaken by the parties as hereinafter set forth, the parties agree as follows:

1. **Obligations of the Developer**

1.1 Developer shall construct the Improvements, which will be installed and accepted by the City upon completion.

1.2 This Agreement is intended to define the City's obligation to reimburse the Developer for the cost of constructing the Improvements, subject to the terms and limitations set forth in this Agreement. Nothing in this Agreement shall alter or waive any obligations or duties of the Developer to comply with existing City ordinances, policies, procedures, plans and specifications related to the construction of the Improvements, including any requirements to obtain approval of construction plans or obtain necessary building, street-work, encroachment or other permits or to comply with any requirements or conditions placed on the issuance of those permits (e.g. insurance, improvement security, etc.). Nothing in this Agreement shall alter or waive any Condition of Approval or requirement for Conditional Use Permit No. C-11-014 and Vesting Tentative Tract Map No. 5994.

1.3 As City is reimbursing Developer for the Eligible Costs of Actual Construction (ECAC), the Improvement is a "Public Work" as defined by California Labor Code, Section 1720(a). Developer agrees and warrants that, to the extent required by law, it will (a) pay, and will cause its contractors and subcontractors to pay, prevailing wages for the construction of the Improvement and (b) comply with the other applicable provisions of Labor Code, section 1720 et seq., and implement regulations of the Department of Industrial Relations, necessary to determine that prevailing wages have been paid as required by law. During the construction of the Improvement, Developer will, or will cause its contractor, to post at the Project area the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with legal counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code sections 1720 et seq., and/or the implementing regulations of the Department of Industrial Relations in connection with construction of the Improvement.

1.4 Developer shall maintain written documentation evidencing the ECAC Costs the Developer incurred in constructing the Improvement for submittal to the City at the time Developer seeks reimbursement for the eligible costs of constructing the Improvement. Developer's failure to provide the necessary documentation evidencing certain eligible construction costs will result in the City not reimbursing the Developer for those otherwise eligible construction costs. Acceptable documentation of ECAC includes invoices for construction materials used to construct the Improvement and invoices from contractors and subcontractors clearly identifying the labor and materials expended to construct the Improvement.

1.5 Developer shall submit to City's Department of Public Works – Construction Management Division all documentation evidencing the eligible costs of constructing the Improvements. If the Developer fails to submit the documentation evidencing the eligible construction costs, City shall have the option of refusing to reimburse Developer for any of the otherwise eligible costs of construction.

1.6 Developer shall not assert or be entitled to a fee credit or offset toward a UGM or development impact fee from City for any portion of the Improvements for which reimbursement was paid under this Agreement.

1.7 To the furthest extent allowed by law, including California Civil Code section 2782, Developer shall indemnify, hold harmless and defend (with legal counsel reasonably acceptable to the City) City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the performance or installation of the work or Improvements by Developer and Developer's employees, officers, agents, contractors or subcontractors; (iv) the design, installation, operation, removal or maintenance of the work and Improvements; or (v) City's granting, issuing or approving use of this Agreement. Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers. The obligations in this section are in addition to, and shall not otherwise reduce or limit, any other contract or obligation Developer may have to indemnify, hold harmless and defend City. This section shall survive any expiration or termination of the project or this Agreement.

2. City's Obligations

2.1 The Engineer's Estimate of the ECAC (including an allocation for Eligible Professional Services) of constructing the Improvement is \$88,180.00. An itemization of the individual Eligible Construction Costs is attached hereto as Exhibit "A." Upon Developer's compliance with Section 1.5 to the reasonable satisfaction of the Director of the Department of Public Works ("Director"), and upon confirmation of the ECAC, the City shall reimburse the Developer for ECAC up to, but not more than, the amount of the Engineer's Estimate.

2.2 Subject to staffing limitations, City shall use its best efforts to review the documentation of eligible construction costs and, if the documentation is determined to be sufficient, issue the reimbursement within 30 days of receiving from Developer all of the documentation of eligible construction costs required by City. If Developer has submitted documentation prior to the execution of this Agreement, no obligation to issue a reimbursement shall arise prior to 30 days from the date of the last Party to execute this Agreement.

3. Additional Terms

3.1 **Binding upon Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their predecessors; successors; assigns; past, present, or future affiliated and related entities; officers; members; agents; employees; and representatives.

3.2 **Integration.** This Agreement constitutes the complete and final agreement of the parties with respect to the subject matters referred to in this Agreement. This Agreement supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, and

representations of every nature whatsoever with respect to the subject matters referred to in this Agreement, all of which have become merged and finally integrated into this Agreement.

3.3 **Incorporation of Attachments.** All recitals and attachments to this Agreement, including all Exhibit(s) referenced herein, and all subparts thereto, are incorporated herein by this reference.

3.4 **Modification.** Any modification of this Agreement must be in writing and signed by all parties. No oral modifications shall be effective to vary or alter the terms of this Agreement.

3.5 **No Assignment.** No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by Developer without the written consent of City.

3.6 **Ambiguities or Uncertainties.** Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this Agreement, on the express understanding and agreement the Parties participated equally in the negotiation and preparation of the Agreement, or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

3.7 **Severability.** If any provision or any part of any provision of this Agreement shall, for any reason, be held invalid, unenforceable, or contrary to public policy or law, the remainder of this Agreement shall not be affected thereby, and shall continue to be value and enforceable.

3.8 **Counterparts.** This Agreement may be executed in counterparts, including true and accurate copies of the original, all of which, when taken together, shall be deemed one original agreement. Any executed copy shall not be binding upon any party until all parties have duly executed a copy of this Agreement.

3.9 **Attorneys Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

3.10 **Waiver of Terms.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

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The parties have executed this Agreement on the day and year first above written.

CITY OF FRESNO,
a Municipal Corporation

Public Works Department
Scott L. Mozier, Director

By: _____
Scott L. Mozier, Director

Date: _____

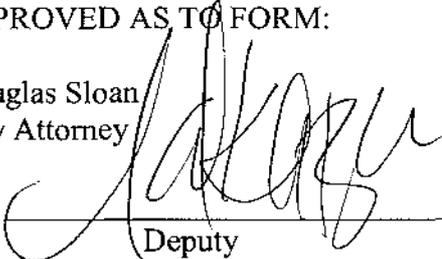
ATTEST:

Yvonne Spence, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:

Douglas Sloan
City Attorney

By:  _____
Deputy

Date: 3/21/14

DEVELOPER

GRANVILLE HOMES, INC.

By: _____

Print Name: _____

Title: _____

(Attach Notary Acknowledgment(s))

APPROVED AS TO FORM:

DEVELOPER ATTORNEY

By: _____

Print Name: _____

Title: _____

Exhibit A: Construction Costs

EXHIBIT A

Construction Costs

COST ESTIMATE

CONSTRUCTION OF STORM DRAIN FACILITIES IN L STREET
BETWEEN CALAVERAS AND SAN JOAQUIN STREETS

<u>ITEM DESCRIPTION</u>	<u>QUANTITY</u>	<u>\$ UNIT COST</u>	<u>\$ EXTENSION</u>
<u>CONSTRUCTION COSTS</u>			
1. Mobilization		LUMP SUM	\$ 2,500.00
2. Type 'A', Case I Manhole	2 Ea	\$ 2,800.00	5,600.00
3. 18" RCP	504 LF	70.00	35,280.00
4. Type 'D' Inlet	2 Ea	4,000.00	8,000.00
5. Pavement Restoration		LUMP SUM	12,600.00
6. Traffic Control		LUMP SUM	4,000.00

TOTAL CONSTRUCTION COSTS \$ 67,980.00

MISCELLANEOUS

1. Engineering			\$ 5,500.00
2. Plan Check and Inspection			9,400.00
3. Contract Administration and Supervision			6,800.00

TOTAL MISCELLANEOUS \$ 21,700.00

CITY OF FRESNO ADMINISTRATIVE COSTS \$ (1,500.00)

SUMMARY

STREET CONSTRUCTION		\$ 67,980.00
MISCELLANEOUS		21,700.00
CITY OF FRESNO ADMINISTRATIVE COSTS		(1,500.00)
TOTAL ESTIMATED COSTS		\$ 88,180.00

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RESOLUTION NO. _____

A Resolution of the Council of the City of Fresno adopting the 39th Amendment to the Annual Appropriation Resolution No. 2013-98 to appropriate \$90,000 for the Measure C TOD reimbursement agreement for the "L" Street project from Calaveras to San Joaquin

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FRESNO:

THAT PART III of the Annual Appropriation Resolution No. 2013-98 be and is hereby amended as follows:

	<u>Increase/(Decrease)</u>
TO: PUBLIC WORKS DEPARTMENT	
Meas C-PW Alloc Flexible Fund	\$ 1,800
Meas C-Transit (TOD) Programs	88,200

THAT account titles and numbers requiring adjustment by this Resolution are as follows:

Meas C-PW Alloc Flexible Fund

Revenues:

Account: 31309 Meas C Flexible Program	\$ <u>1,800</u>
Fund: 22508	
Org Unit: 189901	

Total Revenues	\$ <u>1,800</u>
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Appropriations:

Account: 57507 Contract Construction	\$ <u>1,800</u>
Fund: 22508	
Org Unit: 189901	
Project: PW00703	

Total Appropriations	\$ <u>1,800</u>
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Date Adopted:
Date Approved:
Effective Date:

CLERK'S CERTIFICATION

STATE OF CALIFORNIA }
COUNTY OF FRESNO } ss.
CITY OF FRESNO }

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the _____ Day of _____, 2014

AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

Mayor Approval: _____, 2014
Mayor Approval/No Return: _____, 2014
Mayor Veto: _____, 2014
Council Override Veto: _____, 2014

YVONNE SPENCE, CMC
City Clerk

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