

2:30pm #1

2/26/08

Attachment "1"

**PROPERTY TAX SHARING AGREEMENT
BETWEEN THE COUNTY OF FRESNO
AND
THE CITY OF FRESNO
FOR THE ANNEXATION OF CERTAIN PROPERTY
(NEW URBAN STRATEGIES)**

This Agreement is made and executed this 20th day of **May**, 2008, by and between the County of Fresno, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and the City of Fresno, a municipal corporation formed and existing under the laws of the State of California (hereinafter referred to as "CITY").

RECITALS

WHEREAS, Revenue and Taxation Code provides that in the case of a jurisdictional change, as defined in Revenue and Taxation Code Section 99, the governmental bodies of all agencies whose service area or service responsibilities will be altered by the change must agree to a negotiated exchange of property tax revenues; and,

WHEREAS, on January 6, 2003 the County and the City entered into an Amended and Restated Memorandum of Understanding ("City/County MOU") to establish the allocation of property, sales and use taxes upon annexation of territory to the City; and,

WHEREAS, City has approved development applications (Tentative Tract Map Nos. 5632 and 5633) for a 126-acre area of land (hereinafter referred to as "NUS Territory" and identified as "Proposed McKinley Hayes No.3" on Exhibit "A" to this Agreement) located within a portion of the City's Sphere of Influence generally bounded by McKinley, Grantland, Olive and Hayes Avenues (see Exhibit "A"); and,

WHEREAS, for the NUS Territory to be developed, it must be annexed to the City; and,

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1 WHEREAS, if the NUS Territory is annexed without annexing any other adjacent
2 territory, it would extend an existing peninsula of the City westward and would bypass
3 an approximately 800-acre area of by-passed unincorporated territory (hereinafter
4 referred to as "By-Passed Territory" and shown on Exhibit "A") and therefore, would not
5 be consistent with the standard of annexation set forth in Exhibit 1 of the City/County
6 MOU; and,

7 WHEREAS, CITY desires to annex the the NUS Territory and both the County
8 and the City desire the NUS Territory to be developed in the City; and,

9 WHEREAS, annexation and development of the NUS Territory furthers the
10 County's General Plan policies that direct urban growth to existing cities and
11 communities where infrastructure is available to serve such development; and,

12 WHEREAS, Article II, Section 2.1 of the City/County MOU provides that
13 annexations that do not comply with the terms of that MOU shall be handled individually
14 through separate negotiations between CITY and COUNTY; and,

15 WHEREAS, representatives of the County and City have met and discussed the
16 exchange of property tax revenue with respect to the NUS Territory; and,

17 WHEREAS, the annexation of the NUS Territory to the City will not decrease the
18 County's legal responsibility to continue to provide county wide services mandated by
19 State law in the areas of criminal justice, social services, library and health; and,

20 WHEREAS, the County and City desire to establish a property tax exchange and
21 allocation formula for property taxes that will be generated from the NUS Territory
22 following the annexation of that area to the City; and,

23 WHEREAS, the parties desire to work together to maintain logical boundaries for
24 cities to encourage provision of necessary governmental services; and,
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1 WHEREAS, the above referenced facts represent a unique set of circumstances;
2 and,

3 WHEREAS, the COUNTY is supportive of the CITY's efforts to implement its
4 General Plan and acknowledges that the provisions in this Agreement are appropriate
5 under these circumstances'; and

6 WHEREAS, the COUNTY further acknowledges that it is not their intent to unduly
7 overburden the City with requests for Traffic Enforcement and Debris Removal efforts,
8 nor cause a significant impact on the CITY's financial and human resources.

9 NOW, THEREFORE, in consideration of the recitals set forth above, which are
10 incorporated by this reference, and the mutual covenants and undertakings set forth
11 herein, the mutual receipt and sufficiency of which is hereby acknowledged, the Parties
12 agree as follows:
13

14 **SECTION 1**

15 **DEFINITIONS**

16 Unless the particular provision or context otherwise requires, the definitions
17 contained in this section and in the Revenue and Taxation Code shall govern the
18 construction, meaning and application of the words used in this Agreement. For the
19 purpose of this Agreement, the following capitalized terms shall have the meaning set
20 forth as follows:

21 **1.1 "NUS Territory"** means that territory in the County of Fresno,
22 California more particularly identified in Exhibit "A" as the area labeled "Proposed
23 McKinley-Hayes No. 3."

24 **1.2 "By-Passed Territory"** means that territory in the County of
25 Fresno, California shown in Exhibit "A" and includes the areas labeled
26 "Substantially Surrounded Islands" and "Developer Assisted Phases."
27

1 Section 97 of the Revenue and Taxation Code by the gross assessed value of
2 the agency for the prior fiscal year.

3 **1.10 "Upon annexation"** means the effective date of the change of
4 organization or reorganization as provided by Government Code section 57202,
5 as it may be amended from time to time.

6 SECTION 2

7 ANNEXATION OF TERRITORY

8 The City and County agree to the following in relation to annexation of the NUS
9 Territory:

10 **2.1 City and County Support of Annexation of NUS Territory.** The County
11 and the City agree that development of the NUS Territory would best be served by
12 being annexed to the City, and the County and the City each agree to support
13 annexation of the area and will express such support to LAFCo at the appropriate time.

14 **2.2 Annexation of By-Passed Territory.** Upon annexation of the NUS
15 Territory to the City, City and County agree to the following in relation to the annexation
16 of the By-Passed Territory.

17 **2.2.1 Conformity to MOU.** For purposes of the City/County MOU, upon
18 annexation of the NUS Territory, annexations within the By-passed Territory shall
19 be deemed to reduce County islands and minimize creation of peninsulas and
20 corridors or other distortions in boundaries.

21 **2.2.2 Initiation of Annexation of By-Passed Territory.** City agrees to
22 initiate annexation of the By-Passed Territory with LAFCo as provided in this
23 subsection 2.2.2. The City agrees to apply to LAFCo for annexation of the
24 Substantially Surrounded Islands (as identified in Exhibit "A") within 9 months
25 following the NUS annexation. The City agrees to apply to LAFCo for annexation
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1 of the Developer Assisted Annexation Territory (as identified as "Developer
2 Assisted Phases" in Exhibit "A") in four parts, filing the first application with
3 LAFCo within six months of the Substantially Surrounded Island annexations,
4 and thereafter, each of the subsequent annexation application being filed within
5 six months of the previous application. The City agrees to hold at least one
6 noticed public meetings with affected residents and property owners prior to the
7 filing of any application with LAFCo in order to exchange information regarding
8 annexation and neighborhood concerns. The County agrees to provide staff to
9 assist with annexation related information at such meetings, including information
10 regarding the tax consequence of annexation for property upon which
11 development is not proposed. The City shall pay any required fees and costs for
12 the annexation of the Substantially Surrounded Islands and the Developer
13 Assisted Annexation Territory. Nothing herein is intended to prevent the City
14 from pursuing its costs from any developer or other third party. The County shall
15 not object to any effort by the City to request LAFCo to waive any of its fees on
16 the basis that the annexation of the By-Passed Territory is in the public's interest.

17
18 **2.2.3 "ANX" Overlay Zone District.** To facilitate annexation of the By-
19 Passed Territory, City agrees to conduct its first public hearing for the adoption of
20 its "Annexation Overlay Zone District" within six months of the annexation of the
21 NUS Territory. The intent of this new overlay zone district will allow people
22 residing in rural residential unincorporated neighborhoods to be annexed into the
23 City but will preserve some rural residential benefits such as the right to continue
24 farm operations, to construct barns and related structures with reasonable set
25 backs, and to keep a limited number farm animals until such time that the
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1 property owner decides to subdivide the property or otherwise "intensify" the use
2 of their property.

3 **2.3 City/County Obligations.**

4 **2.3.1 Code Enforcement.** Upon annexation of the NUS Territory, the
5 City shall accept responsibility for any existing code enforcement issues for
6 annexed properties.

7 **2.3.2 Construction of County Roads.** When development of the NUS
8 Territory requires the construction of municipal utilities in county road rights-of-
9 way, the City shall require reconstruction of affected sections of such roads to
10 City standard cross-section specifications.

11 **2.3.3 Traffic Enforcement by City on Designated County Roads.**
12 Upon annexation of the NUS Territory, the City shall conduct specific traffic
13 enforcement activities within the area depicted in Exhibit "B" upon reasonable
14 requests from the Fresno County Director of Public Works and Planning. Traffic
15 enforcement activities shall not be unreasonably withheld by the City and City
16 shall notify County within 5 business days of all traffic enforcement activity
17 requests withheld.

18 **2.3.4 City Pick-Up of Debris on Designated County Roads.** The City
19 shall provide for the pick-up and removal of illicitly dumped trash and debris on
20 not less than a bi-weekly basis, within the public road rights-of-way as depicted in
21 Exhibit "B."
22

23 **2.3.5 County Encroachment Permits.** As part of the its development
24 entitlement process, City shall require developers to obtain a County
25 encroachment permit prior to constructing municipal utilities in county roads
26 associated with the development of the NUS Territory.
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SECTION 3

EXCHANGE OF PROPERTY TAX REVENUES.

3.1 The property tax revenues collected in relation to annexations covered by the terms of this agreement shall be apportioned between CITY and COUNTY as set forth in Sections 3.2 and 3.3 below. The parties acknowledge that, pursuant to Sections 54902, 54902.1 and 54903 of the Government Code and Sections 97 and 99 of the Revenue and Taxation Code, the distribution of such property tax revenues will not be effective until the revenues are collected in the tax year following the calendar year in which the statement of boundary changes and the map or plat is filed with the County Assessor and the State Board of Equalization.

3.2 In regards to the Annexation Area, COUNTY will retain all of its base property tax revenue upon annexation. The amount of the property tax increment for special districts whose services are assumed by the CITY shall be combined with the property tax increment of the County, the sum of which shall be allocated between CITY and COUNTY pursuant to the following ratio:

COUNTY: 62% CITY: 38%

3.3 The parties acknowledge that the Fresno County Free Library is an independent special district and that the amount of property tax revenue continued to be allocated to the Library district shall not be reduced by this Agreement as provided under Section 97.37 of the Revenue and Taxation Code.

SECTION 4

SALES AND USE TAX SHARING

City and County agree that the parties shall share sales and use tax generated within the annexation area according to the terms of Article V of the City/County MOU.

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SECTION 5

ERAF CONTRIBUTIONS

The City and County acknowledge and agree that the County and special district percentage shares of property taxes generated from the Annexation Area that are used in the calculations described in Section 3, above are the relevant percentage shares after reduction for contributions by the County and special districts to the Educational Revenue Augmentation Fund pursuant to Revenue and Taxation Code Sections 97.1 through 97.78, as applicable.

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SECTION 6

CHANGES IN STATE LAW

The City and County understand and agree that the percentage share of property taxes each is to receive as set forth in this Agreement may be modified in the future as a result of future legislation. The enactment of such legislation shall not, however, be grounds for termination of this Agreement or modification of the percentage shares determined pursuant to this Agreement except as is required by such new legislation.

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SECTION 7

MISCELLANEOUS

7.1 Governed by State Law. This Agreement shall be governed by the laws of the State of California.

7.2 Term. This Agreement, as it relates to Sales Tax Sharing, shall run concurrent with the City/County MOU and shall only be effective for as long as the term

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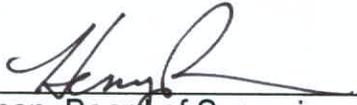
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1 of the City/County MOU unless the City/County MOU is terminated earlier, in which
2 case this Agreement shall terminate on the same date as the City/County MOU.

3 IN WITNESS WHEREOF, the parties hereto have executed this
4 Agreement in the County of Fresno, State of California, on the date set forth above.

5 COUNTY OF FRESNO, a Political
6 Subdivision of the State of California

APPROVED AS TO LEGAL FORM:
James C. Sanchez

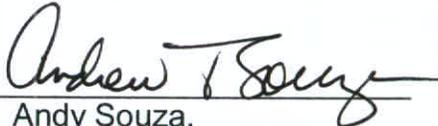
7 By: 
8 Chairman, Board of Supervisors

By: 
Kathryn Phelan, Deputy

9 APPROVED AS TO ACCOUNTING
10 FORM

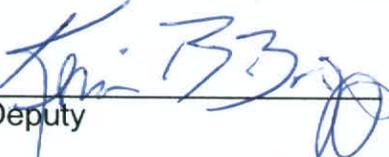
CITY OF FRESNO, a Municipal
Corporation of the State of California

11 By: 
12 Vicki Crow, Auditor-
13 Controller/Treasurer-Tax
14 Collector

By: 
Andy Souza,
City Manager

14 APPROVED AS TO LEGAL FORM
15 Dennis Marshall, County Counsel

ATTEST:

16 By: 
17 Deputy

By:  2/29/08
City Clerk, Deputy

18 REVIEWED AND RECOMMENED
19 FOR APPROVAL

20 By: 
21 Bart Bohn,
22 County Administrative Officer

23 ATTEST:
24 Bernice E. Seidel, Clerk
25 Board of Supervisors

By: 

26 ATTACHED EXHIBITS
27 Exhibit "A" By-Passed Territory Map
28 Exhibit "B" Right of Way Debris Removal and Traffic Enforcement Area Map

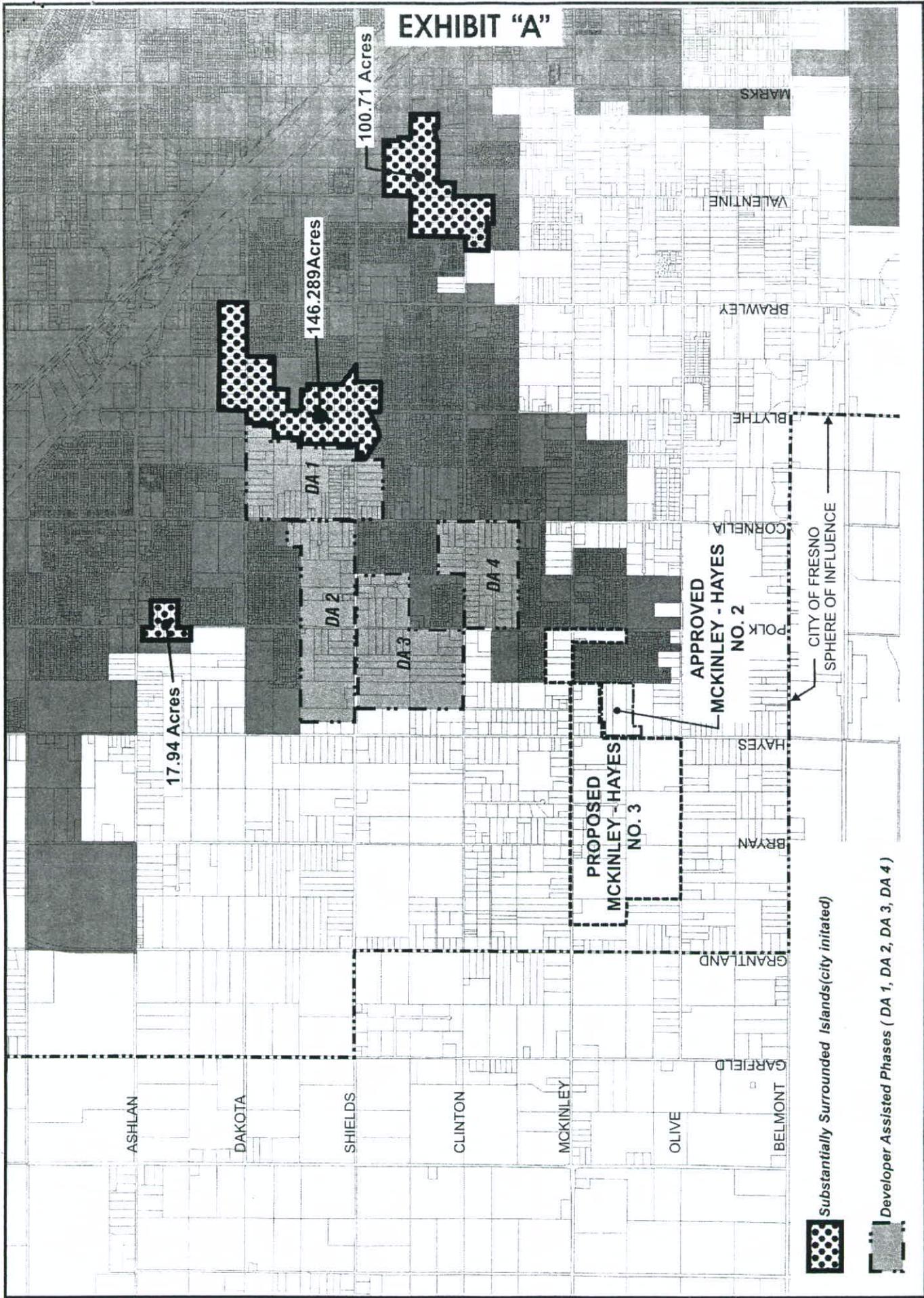


EXHIBIT "A"

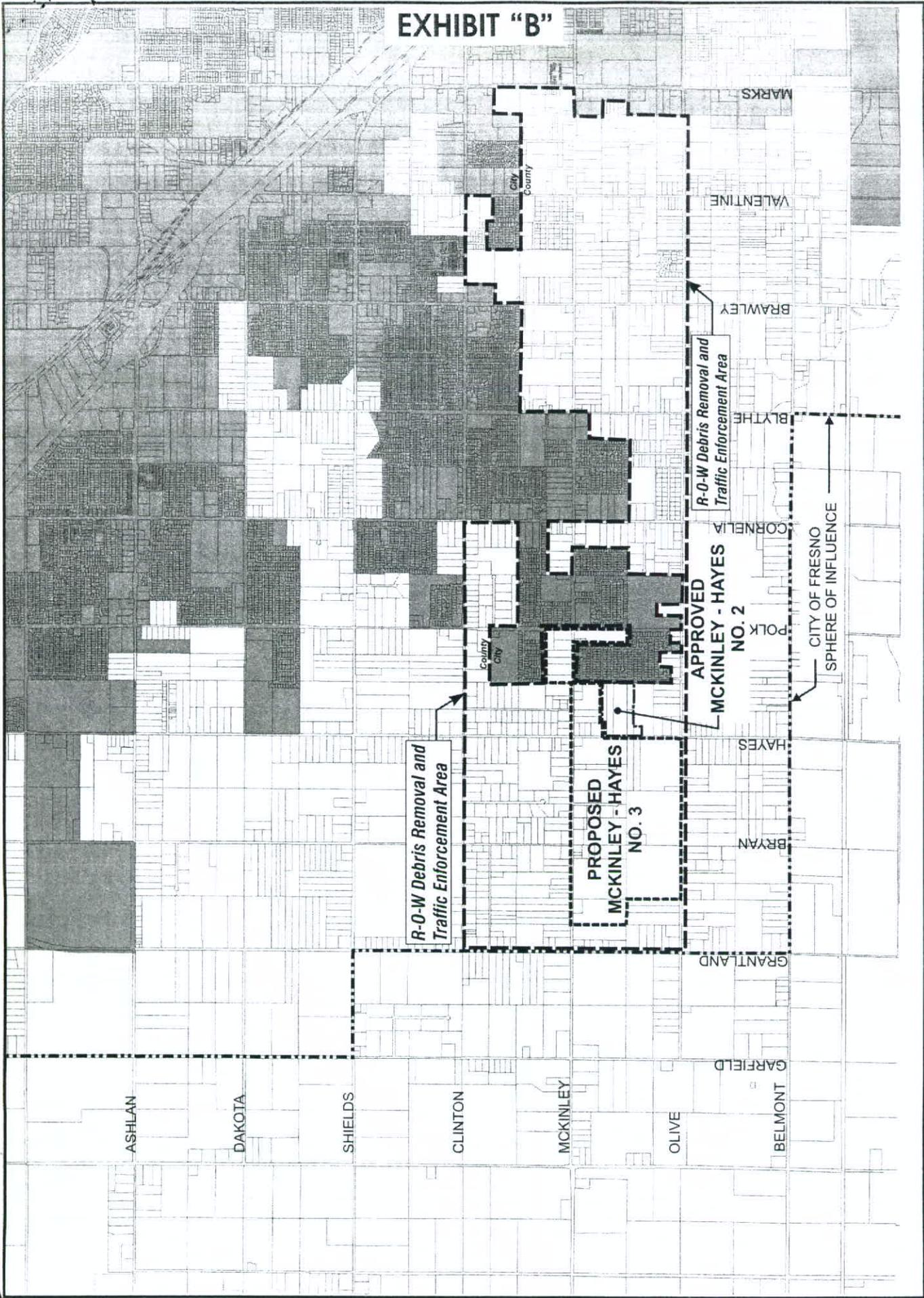


By-Passed Territory

City of Fresno - Planning & Development Department

-  Substantially Surrounded Islands (city initiated)
-  Developer Assisted Phases (DA 1, DA 2, DA 3, DA 4)

EXHIBIT "B"



Right-Of-Way Debris Removal and Traffic Enforcement Area

City of Fresno - Planning & Development Department



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 2:30 PM Item # 1
COUNCIL MEETING: 2/26/08

February 26, 2008

APPROVED BY

FROM: NICK P. YOVINO, Director
Planning and Development Department

DEPARTMENT DIRECTOR

BY: BRUCE BARNES, Project Manager *BB*
Planning Division

CITY MANAGER

SUBJECT: CONSIDER APPROVAL OF STAND-ALONE TAX SHARING AGREEMENT BETWEEN THE COUNTY OF FRESNO AND THE CITY OF FRESNO FOR ANNEXATION OF CERTAIN TERRITORY KNOWN AS THE MCKINLEY-HAYES NO. 3 REORGANIZATION (NEW URBAN STRATEGIES PROPERTY AND ADJACENT PARCELS)

KEY RESULT AREA

One Fresno

Presented to City Council

Date 2/26/08

Disposition Rec approved

RECOMMENDATION

Staff recommends the City Council take the following action:

1. Approve a Stand-Alone Tax Sharing Agreement for the territory identified as the "Proposed McKinley-Hayes No. 3 Reorganization" (see Exhibit A of Attachment 1) in accordance with Article 2.1 of the "Amended and Restated Memorandum of Understanding (MOU) between the County of Fresno and the City of Fresno."
2. Authorize City Manager to execute the attached Stand-Alone Tax Sharing Agreement on behalf of the City Council.

EXECUTIVE SUMMARY

This matter was originally scheduled to be heard by the City Council on January 15, 2008. This matter has been continued twice and is now scheduled to be heard on February 26, 2008. These continuances gave the City staff an opportunity to meet again with the County officials. On January 31, 2008 both staffs met and further refined the details of the Stand-Alone Tax Sharing Agreement and reached an agreement on the final language. While two changes were made to the Agreement, it still has the basic requirement that the City perform Traffic Enforcement and Debris Removal activities and pursue the annexation of the By-Passed Territory. City staff added two paragraphs to the end of the "Recitals" section of the Agreement. These paragraphs clearly state that the County supports the City's efforts to implement its 2025 General Plan and that the County does not intend to unduly overburden the City with requests for Traffic Enforcement and Debris Removal nor cause a significant impact on the City's financial and human resources.

Another change was the removal of the "mutual indemnity" language, which required the City to indemnify, hold harmless and defend County from any and all claims, demands and actions in law or equity arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of City and, likewise, required the County to indemnify, hold harmless and defend City from any and all claims, demands and actions in law or equity arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions of County. The "mutual indemnity" language was removed at the County's insistence. The City's Risk Management has

REPORT TO THE CITY COUNCIL

Stand-Alone Tax Sharing Agreement (New Urban Strategies)

February 26, 2008

Page 2

approved the removal of the "mutual indemnity" language, noting that the absence of the "mutual indemnity" language enures to the City's benefit, especially considering that any liability and financial risk arising out of this Agreement would more likely occur out of the City's responsibilities and not the County's responsibilities under this Agreement.

Previously, on December 18, 2007, the City Council authorized the staff to continue to pursue a Stand Alone Tax Sharing Agreement with the County of Fresno, which will ultimately allow for the annexation of the territory identified as the McKinley-Hayes No 3 Reorganization, located within a portion of the City's Sphere of Influence generally bounded by McKinley, Grantland, Olive and Hayes Avenues (see Exhibit "A"). Within the 295 acres of territory proposed for annexation, New Urban Strategies proposes the construction of a 549-unit single family residential subdivision on 126 acres. The territory will need to be annexed into the city of Fresno prior to approval of the final tract map for the subdivision proposed by New Urban Strategies.

Since the proposed annexation will extend an existing City peninsula, the County has determined that the annexation does not meet the Standards for Annexation contained in the City-County Memorandum of Understanding (MOU). Therefore, in order to annex the territory to the City the attached Stand-Alone Tax Sharing Agreement is necessary. The attached Stand Alone Agreement represents the most recently agreed upon position between the City and the County on this matter. The City Attorney's office has reviewed and approved the attached Agreement as to form and the County staff supports the attached Agreement. Therefore, staff requests that the City Council authorize the City Manager to approve the attached agreement. We anticipate that the County will schedule this agreement for approval by the Board of Supervisors in late February or early March.

KEY OBJECTIVE BALANCE

Council action regarding this proposed land use application optimizes the three Key Objectives of Customer Satisfaction, Employee Satisfaction, and Financial Management. Affirmative action by the Council will result in timely deliverance of the review and processing of the application as is reasonably expected by the applicant/customer. Prudent financial management is demonstrated by the expeditious completion of this land use application inasmuch as the applicant/customer has paid to the city a fee for the processing of this application and that fee is, in turn, funding the operations of the Planning and Development Department. Employee satisfaction is derived from the fact that the professional and technical staff, who have reviewed and made a recommendation on this land use application, have done so in a thorough and professional manner, thereby enhancing the sense of accomplishment in the completion of the application process.

BACKGROUND

The attached Agreement provides reasonable efforts by the City to "square off" the City's urban boundaries while implementing the City's 2025 General Plan. The precedent being set relates primarily to the provision of Traffic Enforcement and Debris Removal activities in the unincorporated county area (see Exhibit B). The County contends that there will be an increase in traffic violations caused by city motorists who reside within the area of the proposed annexation. Therefore, the County would like the City to respond to county residents complaints regarding traffic enforcement matters and wants the ability to make traffic enforcement requests directly to the City's Police Department to mitigate the effects of this annexation. The agreement contains a provision that traffic enforcement services will not be "unreasonably" withheld by the City. Traffic Enforcement will not include road or traffic signal or signage improvements. The hourly rate for a traffic enforcement officer is approximately \$50.21.

In addition, the County has observed that near the urban fringe a lot of illegal dumping occurs within the rights-of-way of County's roads. The County has indicated that in the area identified in Exhibit B that they currently spend approximately 1-3 hours a month in removing illegally dumped trash. The County anticipates that illegal dumping will increase as a result of this annexation and subsequent development. Therefore, it is proposed that trash removal would be provided by the City on a twice monthly basis. It is estimated that the cost to perform monthly clean-up would be approximately \$1,000.

The Agreement contains the same property and sales tax terms as the existing MOU, but does add the "precedent-setting" provisions requiring the City to provide Traffic Enforcement and Debris Removal services in the area shown in Exhibit B. The requested services will only be provided upon the actual recordation of the McKinley-Hayes No. 3 Reorganization, which staff believes will not occur for several years due to current and foreseeable market conditions. There will be some costs to the City in future to provide these services, however there will also be increased property tax revenue to the City once the New Urban Strategies project is completed which should more than offset the City's costs to provide services. The New Urban Strategies project will extend city infrastructure significantly which will allow other properties to develop and will also encourage the development of the By-Passed Territory.

In addition, the City will be required to pursue the annexation of the "By-passed Territory" (Exhibit B) which will be included in the City Proactive Annexation Program. Staff believes these efforts are reasonable to "mitigate" the impacts on the County of an otherwise non-conforming annexation. While some changes have been made to the Agreement the basic requirements for Traffic Enforcement, Debris Removal and annexation of By-passed Territory remain intact. Finally, while this Tax Sharing Agreement is precedent-setting, it should be noted that there are proposed projects in the area that will also effectively "by-pass" several hundred acres of rural residential development in the County. County staff has already indicated a similar Stand-Alone Tax Sharing Agreement will be necessary for these projects in the future.

CONCLUSION

Staff recommends that the City Council authorize the City Manager to approve the attached Stand Alone Tax Sharing Agreement for the New Urban Strategies project.

Attachments: Attachment 1: Stand-Alone Tax Sharing Agreement (New Urban Strategies)
Exhibit A: By-Passed Territory Map
Exhibit B: Right-of-Way Debris Removal and Traffic Enforcement Area Map