CITY OF FRESNO
City Clerk's Office (Original)

FIRE DISTRICT — TRANSITION FEE AGREEMENT BETWEEN DENKEN FARMS AND CITY OF FRESNO

THIS AGREEMENT is entered into on July 7, 2009, by and between DENKEN FARMS, L.P., a California limited partnership ("**Owners**") and the CITY OF FRESNO ("**City**") and affects that real property subject to the Central-Orange No. 4 annexation filed with the Fresno Local Agency Formation Commission (hereinafter referred to as the "**Subject Property**").

RECITALS

A. On or about September 7, 2007, Council approved rezone ordinance number R-07-34 (Subject Rezone).

B. The Subject Rezone was required as a prerequisite to the Owners annexation application filed with Fresno Local Agency Formation Commission (LAFCo) under the annexation identified as Central-Orange No. 4 (Subject Annexation).

C. The Subject Rezone required that the Owner pay the Fresno County Fire Protection District Fire Transition Fees (Subject Fees) before the Subject Rezone would become effective. A true and correct copy of the Subject Rezone ordinance bill is attached as Exhibit "A" and is incorporated herein.

D. The Subject Annexation unless recorded will terminate on July 9, 2009. The Subject Annexation cannot be recorded without the Subject Rezone becoming effective.

E. City and the Fresno County Fire Protection District (District) have an agreement (City-District Agreement) that provides for the obligation of the City to pay fire transition fees to the District for a period of time after property detached from the District is annexed to the City. The amount of the fee is established in the City-District Agreement.

F. On or about, June 10, 2009, the Owner paid the City approximately $10,000 to satisfy its Subject Fee obligations on the City's representation of the appropriate amount under the City-District Agreement.

G. On or about, July 2, 2009, the City notified the Owner that the City had miscalculated the Owner's obligations under the City-District Agreement.

H. City and the Owner currently are in negotiations to resolve the difference in the City's original estimate of the Owner's Subject Fee obligation and the Owner's actual obligation under the City-District Agreement and the Subject Rezone.

I. The City has a strong interest in the Subject Annexation being approved on the basis that, as it is planned and zoned for industrial use and meets the City's goals for industrial growth and its consistency with the 2003 City-County Memorandum of Understanding for industrial annexations.

J. The City and the Owner desire that the Subject Annexation be finaled before it terminates on July 9, 2009.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein below, the parties agree as follows:

1. **The City agrees to the following:**

   a. Final the Subject Rezone and make it effective.

   b. By the end of business day on July 7, 2009, deliver all necessary documents to LAFCo to allow LAFCo to record the Subject Annexations.

   c. Work in good faith with the owner to amicably resolve the dispute related to the Subject Fee obligations.

2. **Owners agree to the following:**

   a. That the City's agreement to final the Subject Rezone under paragraph 1.a. does not relieve the Owner of its obligation to pay the Subject Fees under the Subject Rezone bill.

   b. Work in good faith with the City to amicably resolve the dispute related to the Subject Fee obligations.

   c. Satisfy its agreed to obligations by the end of business day on January 9, ~~2009~~. 2010 (CA)

3. **The City and Owners agree to the following:**

a. Timelines. Time is of the essence with respect to this Agreement. Failure to meet a timeline is considered a material breach of this Agreement unless accepted in writing by the non-breaching party.

b. Waiver. 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.

c. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any

conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

d. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

e. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

f. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

g. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant 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.

h. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

i. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

j. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

k. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Owners.

l. Counterparts. This Agreement may be executed in any number of copies by the parties to this Agreement on separate counterparts and will become effective upon signature by all parties upon one or more of such counterparts.

/////

/////

/////

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written and the signatories provide that they have authority to represent their respective parties in this matter.

CITY OF FRESNO, a Municipal Corporation

By: _____
for KEITH BERGTHOLD
Its: Interim Director of Planning and Development

Approved as to form:

_____
Kathryn C. Phelan,
Senior Deputy City Attorney

KCP:bfs|KCP_bfs| 012309

ATTEST:
REBECCA E. KLISCH
CITY CLERK
By _____
Deputy 7/7/09

OWNERS:
DENKEN FARMS, L.P., a California Limited Partnership

By: _____
Dennis Parnagian

By: _____
Randy Parnagian

Exhibit "A"

Recording Requested by:
City Clerk, Fresno, California
No Fee-Govt. Code 6103

Return to City Clerk, Fresno

Space above this line reserved for Fresno County Recorder's Office

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____
MOVED BY Sterling SECONDED BY Dages

BILL NO. B-62

ORDINANCE NO. 2007-61

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING THE OFFICIAL ZONE MAP OF THE CITY OF FRESNO HERETOFORE ADOPTED BY ARTICLES 1 TO 4.5 INCLUSIVE, CHAPTER 12, OF THE FRESNO MUNICIPAL CODE, BEING THE ZONING ORDINANCE OF THE CITY OF FRESNO

WHEREAS, Rezone Application No. R-07-34 has been filed by the Leland Parnagian on behalf of Denken Farms, LP, property owner, with the City of Fresno to rezone property as described hereinbelow; and,

WHEREAS, pursuant to the provisions of Article 4, Chapter 12, of the Fresno Municipal Code (FMC) the Planning Commission of the City of Fresno held a public hearing on the 11th day of July 2007, to consider Rezone Application No. R-07-34 and related Environmental Assessment No. R-07-34, during which the Commission recommended to the Council of the City of Fresno approval of the subject environmental assessment and rezone application amending the City's Zoning Ordinance on real property described hereinbelow from the AE-20 *(Exclusive Twenty Acre Agricultural, Fresno County)* and the AL-20 *(Limited Twenty Acre Agricultural, Fresno County)* zone districts to the M-3/UGM *(Heavy Industrial/Urban Growth Management)* zone district for 158 acres and O/UGM *(Open Space/Urban Growth Management)* zone district for 9 acres; and,

Adopted 7-31-07
Approved 7-31-07
Effective 8-31-07 - SEE SEC. 4

2007 - 61

WHEREAS, the Council of the City of Fresno, on the 31st day of July 2007, received the recommendation of the Fresno City Planning Commission.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, the adoption of the proposed rezoning is in the best interest of the City of Fresno. The Council finds in accordance with its own independent judgment that there is no substantial evidence in the record that the rezoning may have a significant effect on the environment as identified by the Finding of Conformity to the 2025 Fresno General Plan Master Environmental Impact Report (MEIR) No. 10130 dated May 31, 2007, prepared for Environmental Assessment No. R-07-34. Accordingly, Environmental Assessment No. R-07-34 is hereby approved.

SECTION 2. The Council finds the requested M-3/UGM and O/UGM zone districts are consistent with the existing heavy industrial and open space/ponding basin planned land use designation of the Roosevelt Community Plan and the 2025 Fresno General Plan, as specified in Section 12-403 of the Fresno Municipal Code.

SECTION 3. The Council finds that the zone district of the real property described hereinbelow, located in the City of Fresno and shown on the Official Zone Map of the City of Fresno, is reclassified from the AE-20 *(Exclusive Twenty Acre Agricultural, Fresno County)* and the AL-20 *(Limited Twenty Acre Agricultural, Fresno County)* zone districts to the M-3/UGM *(Heavy Industrial/Urban Growth Management)* zone district for 158 acres and O/UGM *(Open Space/Urban Growth Management)* zone district for 9 acres.

<u>From AE-20 to M-3/UGM</u>

The land referred to herein is situated in the State of California, County of Fresno and is described as follows:

APN: 330-020-03
The South half of the North half of the Southwest Quarter less the East 2042.90 feet thereof, and the North half of the South half of the Southwest Quarter, less the East 2043.90 feet thereof of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian.

APN: 330-020-08
The East 2042.90 feet of the south two-thirds of the North three-quarters of the Southwest Quarter of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, in the unincorporated area, County of Fresno, State of California, as per the Official Plat thereof.

Together with the East half of the Southeast Quarter of the Southwest Quarter of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, in the unincorporated area, County of Fresno, State of California, as per the Official Plat thereof.

Excepting therefrom that portion thereof conveyed to the County of Fresno, by deed recorded March 22, 1973, in Book 6143, Page 304, of Official Records, Instrument No. 27433.

APN: 330-020-23S
Parcel B as shown on Lot Line Adjustment No. 1999-25 as evidenced by Document recorded April 25, 2000, as Instrument No. 00-48776 of Official Records, being more particularly described as follows:

A portion of the East 1755.04 feet of the Northwest Quarter and of the North Quarter of the Southwest Quarter of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, described as follows:

Commencing at the northeast corner of said Northwest Quarter, then southerly, along the east line of said Northwest Quarter, a distance of 1924 feet, more or less, to a point on the Centerline of North Central Canal No. 26, said point being the true point of beginning; thence westerly along said Centerline a distance of 1755.16 feet, to a point on the west line of the East 1755.04 feet of said Northwest Quarter which lies 1933.27 feet southerly of the northwest corner thereof; thence southerly, along said west line and the west line of said North Quarter of the Southwest Quarter, a distance of 1361.55 feet, to a point on the south line of said North Quarter; thence easterly, along said south line, a distance of 1755.07 feet, to a point on the east line of said Southwest Quarter; thence northerly, along the east line of said Southwest Quarter and the east line of said Northwest Quarter, a distance of 1372.06 feet, to the true point of beginning.

APN: 330-020-31
The South half of the Southwest Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of the Southwest Quarter of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats.

Excepting the easterly 179.10 feet thereof.

From AE-20 to O/UGM (approximately 9 acres)

The land referred to herein is situated in the State of California, County of Fresno and is described as follows:

APN: 330-020-32T
The Southwest Quarter of the Southeast Quarter of the Southwest Quarter of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, Together with the easterly 179.10 feet of the south half of the Southwest Quarter of the Southwest Quarter of said Section 26.

Excepting therefrom the southerly 68.00 feet thereof.

SECTION 4. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage and upon annexation of the subject property into the city of Fresno and upon payment of required fire district transition fees.

///

///

///

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 31st day of July, 2007, by the following vote:

Ayes: Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong, Perea
Noes: None
Absent: None
Abstain: None

REBECCA E. KLISCH
City Clerk

By Rebecca E. Klisch

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By John W. Fox
John W. Fox
Deputy City Attorney

Date: 7/25/2007

Rezone Application No. R-07-34
Filed by Leland Parnagian
Assessor Parcel Nos. 330-020-03, 08, 23S, 31, 32T

K:\Master Files - 2007\Rezone\R-07-034, Orange & North, AL-20 to M-1, JZ\R-07-34 City Council Ordinance Bill 7-31-07.doc