

GA-A
8/23/2012

RECEIVED

MEASURE "C"
AGREEMENT TO ESTABLISH PROGRAM ELIGIBILITY
AND FUNDING REQUIREMENTS
Environmental Enhancement Program
Transit Oriented Development (TOD) Subprogram
("Impact Fee Forgiveness for Downtown Housing" Program)

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CITY CLERK, FRESNO CA

CITY OF FRESNO
City Clerk's Office (Original)

This Program Eligibility and Funding Agreement ("**Agreement**") is made and entered into on **December 5, 2012**, by and between the City of Fresno ([hereinafter alternatively referenced as "**Grantee**" [or "**Responsible Agency**"]]) and the Fresno County Transportation Authority ("**Authority**").

RECITALS

WHEREAS, passage of the Measure C Extension created within the Environmental Enhancement Funding Allocation Program a subprogram entitled "Transit Oriented Infrastructure for In-fill" ("TOD"), the purpose of which was to provide funding to support planning and incentives generally intended to support increased demand for transit facilities; and

WHEREAS, in accordance with the Measure C Extension Expenditure Plan ("Expenditure Plan") and most notably Appendix F thereto, the details regarding the funding and implementation of the TOD subprogram are set forth in the "Fresno County Measure C Transit Oriented Development Program Policies and Guidelines" (the "TOD Guidelines," attached as Appendix 1 hereto); and

WHEREAS, as recommended in the Expenditure Plan and as described in the Measure C Local Agency Handbook, the TOD Guidelines specify three (3) categories of projects/programs for which the TOD is available to provide competitively-based funding, which are generally characterized in the TOD Guidelines under the following respective headings: (1) Capital Improvement Program; (2) Planning Program; and (3) Housing In-Fill Incentive Program; and

WHEREAS, Grantee submitted for approval, under the Housing In-Fill Incentive Program category of the TOD, a "Project Application" requesting reservation of \$700,000 in funding for the development, adoption and implementation by Grantee of a Program therein entitled "Impact Fee Forgiveness for Downtown Housing," designed to provide incentives for in-fill development through the utilization of such

APPROVED BY CITY COUNCIL
August 23, 2012
By Sherrin J. Badutcher
DEPUTY

eligible Measure C Extension funds to subsidize or offset development impact fees for future development of high density housing within targeted areas as specifically identified in the TOD Guidelines; and

WHEREAS, Authority is authorized to approve funding for payment to Grantee in accordance with this Agreement, the TOD Guidelines and the Expenditure Plan regarding Grantee's proposed "Impact Fee Forgiveness" Program; and

WHEREAS, on June 6, 2012, based in part on the consistency of Grantee's proposed Program (as described in its "Project Application") with the purposes of the Housing In-Fill Incentive Program as described in the TOD Guidelines, the Authority's Board approved the reservation of \$700,000 in TOD funding and further directed Authority staff to draft this Agreement, for the purpose of establishing program implementation requirements and the terms and conditions governing the rights and obligations of the respective parties hereto with regard to the Grantee's proposed Program; and

WHEREAS, Authority and Grantee now desire to enter into this Agreement, which serves to establish requirements both for the implementation of Grantee's proposed "Impact Fee Forgiveness for Downtown Housing" Program, and for maintaining project eligibility for Grantee's receipt of funding hereunder, as well as delineating the respective rights and obligations of the parties regarding that Program, including but not limited to conditions and limitations on Grantee's right to receipt of payment hereunder.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

AGREEMENT

ARTICLE I

Covenants of Grantee/Responsible Agency

Grantee agrees to abide by the terms and conditions of this Agreement and the TOD Guidelines for the receipt of Measure "C" funds available under the TOD subprogram, and to comply with the Expenditure Plan, the TOD Guidelines, and all adopted Policies and Procedures as applicable, as well as any subsequent amendments, updates, or other applicable plans.

1.1 **Development, Management and Implementation of Grantee's Impact Fee Forgiveness Program.** Grantee shall be responsible for the development, implementation and management of the Program, and in its performance of those responsibilities, Grantee shall do all of the following:

1.1.1 Comply with all requirements set forth in the TOD Guidelines (a true and correct copy of which is attached as Appendix 1 hereto and incorporated by this reference as though fully set forth herein).

1.1.2 Perform its obligations in a manner consistent with all material representations concerning its proposed Impact Fee Forgiveness Program as contained in its original "Project Application" (excerpted pages of which are attached as Appendix 2 hereto) .

1.1.3 In its administration and management of the Program, Grantee shall retain discretion to determine the allocation of the fee forgiveness incentives (up to the approved maximum amount of \$700,000 available for all projects cumulatively) among projects eligible to receive TOD funding under the provisions of this Agreement and the TOD Guidelines. As such, the impact fees for which Grantee may choose to forego payment initially by a developer may be one, several, or all five (5) of the types of fees (parks, traffic signals, major streets, fire and police) for which developers are charged under the Fresno Municipal Code for development projects that include housing, based on their impacts on those capital facilities.

1.2 **Eligibility for Funding.** In order to be eligible for TOD funding hereunder, a proposed development project must meet all of the following requirements as more thoroughly set forth in the in the TOD Guidelines, Appendix 1 hereto:

1.2.1 **Density.** The project must have a density of no less than eighteen (18) units per acre.

1.2.2 **Location.** The project must be located within the Downtown Fresno Area defined in the TOD Guidelines (Appendix 1 hereto) and identified in the map attached as Exhibit A thereto.

1.2.3 **Future Development.** Because the purpose of the Program is to provide incentives to future transit-oriented downtown development projects, including housing, it is understood and acknowledged that any TOD funding provided

hereunder shall not be available and shall not be used by Grantee, for any retroactive subsidy to developers for fees paid on prior development projects.

1.2.3.1 No project shall be eligible for funding hereunder as to which either of the following occurs prior to the date of Grantee's initial approval of that project for participation in Grantee's **impact** fee forgiveness program:

(i) any development impact fees which have been triggered by the subject project have already been paid by the Developer; or

(ii) commencement of any construction activity for which impact fee forgiveness is being sought, or is a type of construction activity for which Grantee generally charges a development impact fee. For purposes of this Section 1.2 "construction activity" shall not include incidental site preparation improvements that have no financial involvement with the subject project (i.e., clearing and grubbing).

1.2.3.2 It is understood and acknowledged that if Grantee enters into any agreements with Developer prior to demonstrating to the Authority that a project Grantee has conditionally approved meets the criteria for TOD funding, Grantee does so at its own risk.

1.2.3.3 In accordance with the intent of the TOD Guidelines, Grantee shall require, as a condition of eligibility of any project for receipt of TOD funding hereunder (and shall be responsible for informing the Developer of such requirement at the outset), that building permits shall be pulled by the Developer within twenty-four (24) months following determination of award (i.e., Grantee's initial approval of the project as conditionally eligible for funding hereunder); and it is understood that failure to meet this requirement shall result in revocation of that project's eligibility for funding hereunder and forfeiture of any right of Grantee to payment hereunder for that project, and accordingly shall result in the Authority's return of such previously designated funds to the general TOD funding pool. [Provided, however; and notwithstanding the foregoing, in the discretion of Authority's Board an extension of said 24-month deadline may be granted, for a period not exceeding not exceeding an additional (6) months, but only if approved by a two-thirds (2/3) vote of the Authority's Board, based upon an express finding of good cause shown by Grantee in accordance with Section 3.25 below; and in such case,

failure to meet the extended deadline for this requirement of 30 months shall result in revocation of that project's eligibility for funding hereunder and forfeiture of any right of Grantee to payment hereunder for that project, and accordingly shall result in the Authority's return of such previously designated funds to the general TOD funding pool.]

1.3 Reporting Requirements. Grantee shall submit periodic reports to the Authority, on at least an annual basis at a minimum, and in any case within six (6) months after Grantee's initial approval of any project as conditionally eligible for funding under the Program.

1.3.1 Each such report shall include, as to any project listed for the first time in any such periodic report to the Authority, each of the following:

- (i) The date of Grantee's initial approval of the project for participation in Grantee's Impact Fee Forgiveness Program; and
- (ii) The type(s) and amount(s) of any impact fee for which payment by the Developer was foregone by Grantee for that project; and
- (iii) A certification by an appropriately authorized official of Grantee, that such project currently is Grantee's highest priority project eligible for TOD funding under Grantee's Program.

1.3.2 Each such report shall specify the status of each pending project (including either date of project completion or estimated date of project completion), and also including the status with regard to compliance of that project with the building permit issuance deadline specified (in Subparagraph 1.2.3.2 above) as a condition to continued maintenance of funding eligibility for that project.

1.3.3 If, on the basis of the foregoing provisions, it is determined by Authority's staff, either that Grantee has failed to submit any required periodic report in a timely manner, or that the contents of any periodic report submitted by Grantee are materially deficient, then Grantee shall be notified with all reasonable promptness, and Grantee's eligibility for receipt of funding hereunder shall be suspended until such omission or deficiency has been rectified.

1.4 Compliance with Other Laws. In performance of its obligations relating to administration and completion of the any project in its program for which TOD funding is sought pursuant hereto, Grantee shall at all times comply with all

federal, state and local laws, ordinances and regulations currently in force as well as those that are subsequently enacted, promulgated or amended and thereby become applicable during the term of this Agreement.

1.5 Measure “C” Funds Defined. For purposes of this Agreement, Measure “C” funds are deemed to be available under the TOD for any eligible project from and after the effective date of this Agreement, subject to the limitations and conditions specified in this Agreement and the TOD Guidelines. Provided, however, that unless another amount is formally approved by a prior written amendment to this Agreement, the total cumulative amount of Measure “C” funds allocated for Grantee’s Program under the TOD shall not exceed either of the following: (a) the \$700,000 total amount approved by the Authority’s Board as the maximum amount reserved for all projects in Grantee’s Program considered cumulatively, or (b) the total cumulative amount of impact fees for all eligible projects for which payment by Developers was forgiven by Grantee, and for which appropriate supporting documentation was provided by Grantee, in accordance with the immediately following Section 1.6.

1.6 Maintenance of Project Records. Grantee shall maintain complete and accurate records for each project for which reimbursement funding is sought hereunder, and shall provide appropriate documentary support (including copies of all relevant correspondence) sufficient to establish the type and amount of each development impact fee for which Developer’s payment of same was foregone by Grantee. All such records shall be maintained on a generally-accepted accounting basis and be clearly identified and readily accessible. Grantee shall provide free access to the Authority at all times to such books and records. Grantee shall maintain all work data, documents, and proceedings relating to this Agreement for a period of five (5) years from the date of final audit from the Authority.

1.7 Project Groundbreaking and Ribbon Cutting Ceremonies. Grantee shall, at any groundbreaking and/or ribbon cutting ceremony in which Grantee participates with the private Developer for any project subsidized to any extent by TOD funding pursuant to the provisions hereof, publicly acknowledge the contribution of Measure “C” funding to such project.

ARTICLE II

Covenants of Authority

Authority agrees to provide Measure "C" Extension funds available under the TOD, up to the maximum cumulative limit of \$700,000 approved for Grantee's Impact Fee Forgiveness Program, to the Grantee in accordance with the terms and conditions set forth herein, and in compliance with the Expenditure Plan, the TOD Guidelines, all Measure "C" Policies and Procedures, and all adopted Policies and Procedures as applicable, as well as any subsequent amendments, updates, or other applicable plans.

2.1 Conditions Precedent to Disbursement of Funds. In addition to Grantee's performance of all covenants required on its part to be performed, and together with any other requirements or limitations imposed under this Agreement or the TOD Guidelines, the disbursement of funds by Authority hereunder also shall be expressly conditioned upon Grantee's prior performance of each of the following:

2.1.1 Grantee shall be required to provide notification to the Authority that the development project is complete and that the certificate of occupancy has been issued by the Grantee.

2.1.2 The notification required by the preceding Paragraph 2.1.1 shall be accompanied by Grantee's certification, executed by an appropriately authorized official of Grantee, that the development project has been completed in accordance with this Agreement and all applicable requirements of the TOD Guidelines.

2.2 Payment of Reimbursement for Eligible Project Impact Fees Foregone.

Subject to the provisions of the immediately preceding Section 2.1, the Authority shall make payments to Grantee (up to the maximum reserved funding allocation of \$700,000 for all projects considered cumulatively) for reimbursement of the amount of development impact fees actually foregone by Grantee on any eligible project(s), in accordance with the provisions of this Agreement and consistent with all applicable provisions of the TOD Guidelines. To receive payment from the Authority hereunder to reimburse the Grantee for its foregone payment by Developer of impact fees on an eligible project, the Grantee shall comply with the following procedures:

2.2.1 Ineligible Costs. The Authority reserves the right to recover payment from the Grantee if an invoice includes ineligible project costs.

2.2.2 Payment Amount. The amount of payment to the Grantee for any eligible project shall be made pursuant to the TOD Guidelines and this Agreement, and the cumulative amount of such payments on all eligible projects combined shall not exceed the approved maximum allocation to the Program of \$700,000.

2.2.3 Suspension of Payment. Payments for eligible project costs shall be suspended without interest when:

- (i) A dispute arises as to whether or not a cost item(s) is eligible for payment; or
- (ii) Pending correction by Grantee of an omission or deficiency in meeting its reporting obligations, as more thoroughly provided above in Paragraph 1.3.3.

2.2.4 Dispute Resolution. All disputes shall be settled in accordance with the laws of the State of California. Once a dispute has occurred, the Authority and Grantee shall attempt to resolve the dispute informally in a mutually agreeable manner.

2.3 Right to Conduct Audit. The Authority shall have the right to conduct an audit of all Grantee's records pertaining to any project for which funding is provided hereunder, at any time following completion of the project.

2.3.1 Notice of Audit. The Authority must provide timely notice to the Grantee if an audit is to be conducted.

ARTICLE III

Mutual Covenants

The Authority is released from any liability to Grantee regarding the Authority's administration and issuance of the Measure "C" proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan and Handbook.

- 3.1 **Effective Date and Term.** This Agreement shall become effective as of the date of its execution by the Authority and Grantee and shall remain in full force and effect for a period of ten (10) years following its approval by the Authority's Board, unless sooner terminated as provided in Section 3.2 or in Section 3.4 or unless the Agreement's term is extended.
- 3.2 **Discharge.** This Agreement shall be subject to discharge as follows:
- 3.2.1 **Termination by Mutual Consent.** This Agreement may be terminated at any time by mutual consent of Grantee and Authority. If this Agreement is mutually terminated by the parties, Grantee will no longer receive Measure "C" funds for its Impact Fee Forgiveness Program (unless a new agreement between Grantee and Authority relating to such Program is formed); and in the event of such mutual termination, those funds remaining from the originally reserved funding allocation of \$700,000 for this program shall be returned by the Authority to the general TOD funding pool.
- 3.2.2 **Discharge Upon Completion of Grantee's Program.** Except as to any rights or obligations which survive discharge as specified in Section 3.14, upon completion of Grantee's Program, this Agreement shall be discharged, and the parties shall have no further obligation to each other.
- 3.2.3 **Termination by Authority.** The Authority reserves the right to terminate the Agreement at any time by giving written notice to Grantee of such termination and specifying the effective date thereof. If this Agreement is terminated by the Authority as provided herein, Grantee will be paid for eligible Program costs incurred prior to termination of the Agreement by the Authority consistent with the requirements of the Program contained herein and in the TOD Guidelines. In that event, all finished or unfinished documents and other materials shall, at the option of the Authority, become its property subject to the terms and conditions of Section 1.6.
- 3.3 **Indemnity.** It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Grantee:
- 3.3.1 Grantee shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any and all damages, liabilities, claims and expenses, arising out of Grantee's errors, omissions, negligent acts or willful misconduct during the term of this

Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Grantee shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Grantee under this Agreement or in connection with any work, authority, or jurisdiction delegated to Grantee under this Agreement.

3.3.2 Authority shall fully defend, indemnify and hold harmless Grantee, and any officer or employee of Grantee, against any and all damages, liabilities, claims and expenses, arising out of Authority's errors, omissions, negligent acts or willful misconduct during the term of this Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold Grantee harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

3.4 Limitation. All obligations of the Authority under the terms of this Agreement are expressly subject to the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure "C" Extension funds. If for any reason the Authority's right to collect or expend such sales tax proceeds is terminated or suspended in whole or part, the Authority shall promptly notify the Grantee, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any future obligation to fund from the date of the notice shall be expressly limited by and subject to: (i) the lawful ability of the Authority to expend sales tax proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of the Authority under all outstanding contracts, agreements to other obligations of the Authority, of funds for such purposes.

3.5 Notices. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

AUTHORITY:

Mr. Ron Peterson, Executive Dir.
Fresno County Transportation Authority
2220 Tulare Street, Suite 411
Fresno, CA 93721
Ph: (559) 453-5023 Fax: (559) 488-3303

RESPONSIBLE AGENCY:

Patrick Wiemiller, Public Works Director
City of Fresno
2600 Fresno Street, 4th Floor
Fresno, CA 93721
Ph: (559) 621-8650; Fax: (559) 488-1045

3.5.1 Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

- 3.6 Additional Acts and Documents.** Each party agrees to do all such things and take all actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.
- 3.7 Integration.** This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. NO representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.
- 3.8 Amendment.** This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- 3.9 Independent Agency.** Grantee renders services under this Agreement as an independent agency under the Agreement. None of the Grantee's agents or employees shall be agents or employees of the Authority and none of the Authority's agents or employees shall be agents or employees of the Grantee agency.
- 3.10 Assignment.** The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of all parties hereto.
- 3.11 Binding on Successors.** This Agreement shall be binding upon each of the parties and their respective successor(s), assignee(s) or transferee(s).

Provided however that this provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement, other than as provided in Section 3.10 above.

- 3.12 Severability.** Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
- 3.13 Counterparts.** This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14 Survival.** The following provisions in this Agreement shall survive discharge:
- 3.14.1 Grantee. As to the Grantee agency, the following sections shall survive discharge: Section 3.3 (Indemnity),
- 3.14.2 Authority. As to Authority, the following section shall survive discharge: Section 2.3 (Right to Conduct Audit) and Section 3.3 (Indemnity).
- 3.15 Time.** Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- 3.16 Remedies Cumulative.** No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
- 3.17 Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Fresno County, California.
- 3.18 Captions.** The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify

the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

- 3.19 No Continuing Waiver.** The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
- 3.20 No Rights in Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.
- 3.21 Attorney's Fees and Costs.** Authority and Responsible Agency will bear their own respective costs, including attorney's fees, in connection with any legal proceedings related to the interpretation or enforcement of this Agreement or any of the terms and conditions hereof.
- 3.23 Exhibits and Recitals.** The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 3.24 Signatory's Warranty.** Each party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.
- 3.25 Force Majeure.** Any party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by federal, state or local government; national fuel shortage; or a material act or omission by any party; when satisfactory evidence of such cause is presented to that other party, and provided further such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing. (See Subparagraph 1.2.3.2 above.)

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

FRESNO COUNTY TRANSPORTATION AUTHORITY

By 
(Signature)

Name Harry Armstrong
(Typed)

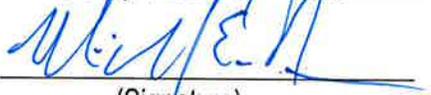
Title Chair of the Authority

ATTEST
By 
(Signature)

Name Ron Peterson
(Typed)

Title Executive Director

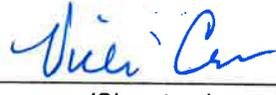
APPROVED AS TO LEGAL FORM:
KEVIN BRIGGS, COUNTY COUNSEL

By 
(Signature)

Name MICHAEL E ROWE

Title Senior Deputy County Counsel

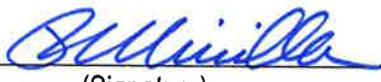
APPROVED AS TO ACCOUNTING
FORM:

By 
(Signature)

Name VICKI CROW, C.P.A.

Title Auditor-Controller/Treasurer-Tax Collector

CITY OF FRESNO

By 
(Signature)

Name Patrick Wiemiller

Title Public Works Director

ATTEST
By  11/30/12
(Signature) Deputy

Name Yvonne Spence, CMC

Title City Clerk

APPROVED AS TO FORM
~~JAMES SANCHEZ~~, City Attorney

BY: 
L. Abrams



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. **GA-A**

COUNCIL MEETING **8/23/2012**

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

August 23, 2012

FROM: CRAIG SCHARTON, Assistant Director
Development and Resource Management Department

PATRICK N. WIEMILLER, Director
Public Works Department

BY: ELLIOTT BALCH, Downtown Revitalization Manager
Development and Resource Management Department

SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department

SUBJECT: ADOPT THE DOWNTOWN DEVELOPMENT IMPACT FEE FORGIVENESS INCENTIVE PROGRAM

APPROVE A MEASURE C COOPERATIVE AGREEMENT WITH THE FRESNO COUNTY TRANSPORTATION AUTHORITY (FCTA) FOR THE DOWNTOWN DEVELOPMENT IMPACT FEE FORGIVENESS INCENTIVE PROGRAM

ADOPT A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO APPROVING THE REALLOCATION OF \$381,500 IN BUDGETED REVENUE IN VARIOUS CITYWIDE IMPACT FEE FUNDS FOR THE MEASURE C TRANSIT ORIENTED DEVELOPMENT (TOD) PROGRAM ACTIVITY

RECOMMENDATION

Staff recommends that the Council take the following actions:

1. Adopt the proposed Downtown Development Impact Fee Forgiveness Incentive Program.
2. Approve a Measure C Cooperative Agreement with the Fresno County Transportation Authority (FCTA) for the Downtown Development Impact Fee Forgiveness Incentive Program and authorize the City Manager or designee to execute the agreement on behalf of the City, subject to approval as to form by the City Attorney's Office.
3. Adopt a Resolution of the Council of the City of Fresno, approving the reallocation of \$381,500 in budgeted revenue in various citywide impact fee funds for the Measure C Transit Oriented Development (TOD) Program activity.

REPORT TO THE CITY COUNCIL

Impact Fee Forgiveness for Downtown Residential Projects

August 23, 2012

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EXECUTIVE SUMMARY

There has long been a desire to revitalize Downtown, and the City is currently working to bring more residential uses, employment, retail services and 24-hour-a-day vitality to certain priority areas within the Downtown. The proposed Downtown Development Impact Fee Forgiveness Incentive Program will use \$700,000 in Measure C Transit Oriented Development (TOD) Program funds to offer a waiver of citywide development impact fees for downtown housing projects that meet the criteria pursuant to the proposed plan and in accordance with the adopted Measure C TOD program.

Projects will be eligible for waivers on a first-come, first-served basis, with all qualifying projects receiving, at a minimum, a waiver of the Citywide Park Facility fees. The Citywide Parks Facility fee accounts for over half of the impact fees assessed on new residential units within Downtown, and at times may be the only development impact fee assessed on many kinds of adaptive reuse projects.

In addition, residential projects that voluntarily comply with the draft Downtown Development Code (available for download at www.fresnodowntownplans.com), will be eligible for a waiver of four additional Citywide development impact fees covering Fire, Police, Major Streets and Traffic Signals (Attachment A)

BACKGROUND

Context and funding source

The revitalization of Downtown Fresno is one of the most important factors in the long-term success of the rest of the City. The ability to revitalize thousands of acres that surround the Downtown area depends entirely on the successful turnaround of its central business district. For almost 40 years, community leaders have expressed a desire to bring revitalization to the Downtown Area and while a great deal of public and private investment has been made, there is much work remaining in order for Downtown to be reestablished as a thriving and vibrant community center.

The Measure C reauthorization plan includes a funding earmarked to incentivize new construction and revitalization developments that increase demand for multi-modal transportation through higher density and mixed land uses. It was envisioned that these types of development would reduce dependence on the automobile by locating development near or adjacent to public and alternative modes of transportation. According to the Measure C TOD Program Policies and Guidelines, developed and approved by the Fresno County COG and the Fresno County Transportation Authority (FCTA), the TOD Program "strives to support livable, viable and sustainable transit oriented healthy communities that promote walking, biking, and the use of public transit..." It is anticipated that approximately \$14 million will be allocated toward this program over the 20-year life of the Measure.

The Fresno COG Policy Board approved the TOD Program guidelines in September 2011, which were based on the Fresno County Public Transportation Infrastructure Study. The program guidelines specify that TOD funds are to be allocated within three specific areas, including Downtown Fresno, FAX's proposed Blackstone/Ventura BRT corridor followed by and future Shaw Avenue BRT corridor, with Downtown given the highest priority area.

According to the adopted TOD Program guidelines (Attachment D) funds can be used for three types of projects/programs:

REPORT TO THE CITY COUNCIL

Impact Fee Forgiveness for Downtown Residential Projects

August 23, 2012

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- Transportation infrastructure improvements to transit facilities to encourage safety and access to transit facilities;
- Planning projects – for existing neighborhoods, downtowns, and commercial cores to create access to transit and mixed use development in transit friendly environments, including land-use concept plans, streetscape design concept plans, environmental studies, detailed drawings, construction cost estimates, and implementation plans for specific capital projects. The guidelines emphasize the importance of community involvement in the planning process; and
- Housing in-fill incentive programs – local governments can spend funds to supplement development fees or on a capital project that supports new housing development connections to transit.

On March 8, 2012, the City Council approved Resolution No. 2012-33 authorizing the City Manager to apply for \$2.7 million in Measure C TOD Program funds, including \$700,000 under “housing in-fill incentive programs” to offset impact fees for qualifying development projects in downtown Fresno. The City’s application for the \$700,000 has subsequently been approved by the Fresno Council of Governments (COG) Policy Board and the FCTA Board. City staff and FCTA staff are working now to finalize the terms of the Measure C Cooperative Agreement (Attachment B) for the use of these funds. Today’s proposed action authorizes the Public Works Director to sign this Cooperative Agreement, upon approval by the City Attorney’s Office as to form, consistent with the Council’s proposed approval of the fee waiver program recommended herein and described below.

Downtown Development Incentive Program

Consistent with the Measure C TOD guidelines, the City’s application for funding, and the FCTA Board’s action in making the award, the proposed Downtown Development Incentive Program has the following parameters.

As determined by the Director of the Development and Resource Management Department, all projects must:

- a. Be located within the Downtown Development Incentive Zone (Attachment A).
- b. Contain an overall residential unit density (including any previously existing units) of at least 18 units per acre. Projects that do not propose the creation of residential units are not eligible for the Program.
- c. Not have building permits or construction activity begun yet at the site.
- d. Have submitted a conditional use permit or site plan review application for the project to the Development and Resource Management Department.

Projects meeting the above criteria will receive a Measure C TOD-funded waiver of the citywide development impact fee for parks. This fee is currently \$2,764 per unit for multifamily housing. (Single-family housing, with a parks fee of \$3,398 per unit, is also theoretically eligible for the waiver, although it would be difficult to design at the densities required for eligibility.) It is worth noting that the Parks fee, unlike the other citywide development impact fees, is not charged on office and commercial development. Therefore, many adaptive reuse projects in which former office or commercial space is being converted into residential units, the Parks fee is the only citywide impact fee due. In such cases, the proposed waiver constitutes the 100% elimination of the developer’s impact fee obligation.

In addition to park fees, the City collects citywide development impact fees for major streets, traffic signals, police facilities, and fire facilities, for all new construction. Together, these five impact fees total approximately \$4,800 per unit for multifamily housing at a density of 18 units per acre. A development project may receive a Measure C TOD-funded waiver of all citywide development impact fees if the project is determined by the Director of the Development and Resource Management Department to Meet all standards in the latest draft of the Downtown Development Code available at the time of submittal.

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It should be noted that separately, City staff and consultants are working to prepare the Fulton Corridor Specific Plan, Downtown Neighborhoods Community Plan, and associated Downtown Development Code for adoption by the City Council. If Council adopts these Plans and the new Code, the Code will become the zoning code of record, and compliance with the Code would then be legally required for all projects. However, today's proposed action, if approved, has no bearing on the Council's future decision to adopt these documents.

FISCAL IMPACT

The proposed Non-AAR (Attachment C) will adjust the \$700,000 in TOD Program revenue made available by the FCTA to the corresponding City accounts. The adopted City FY2013 budget did include the full \$700,000 as a placeholder in the budget, recognizing that the specifics of the program would need to first be approved by the Council before any dollars were expended.

Therefore, the TOD revenue in the City FY2013 budget needs to be adjusted to properly reflect the estimate usage of the TOD funds across the various development impact fee funds. There will be no impact to the General Fund nor will there be any shortfall in any of the development impact fee accounts. The fee program will be kept whole by the payment of the fees coming from the TOD Program instead of being paid by the developer.

Attachments:

Attachment A — Downtown Development Incentive Zone Map

Attachment B — Measure C TOD Cooperative Agreement

Attachment C — Resolution, Non-AAR

Attachment D — Measure C TOD Program Criteria



Downtown Development Incentive Zone



02/11/2010