



BILL NO.   B-40  

ORDINANCE NO.   2016-37  

AN ORDINANCE OF THE CITY OF FRESNO,  
CALIFORNIA, APPROVING THE FIRST AMENDMENT TO  
THE DEVELOPMENT AGREEMENT BETWEEN THE CITY  
OF FRESNO AND BETTS SPRING COMPANY, A  
CALIFORNIA CORPORATION, EXTENDING THE TERM  
OF CERTAIN INCENTIVES THEREIN

WHEREAS, on November 27, 2007, the Council of the City of Fresno ("City") adopted Ordinance No. 2007-84/Bill No. B-84 approving a development agreement with Betts Spring Company, a California Corporation, ("Betts") pursuant to the provisions of Government Code sections 65864 et seq. (the "Development Agreement"); and

WHEREAS, the Development Agreement was made effective January 10, 2008, and recorded in the Official Records of Fresno County, California on April 28, 2008, as Document No. 2008-0061225 and relates to the property located at 2867 South Maple Avenue in Fresno, California; and

WHEREAS, Betts has requested that the City amend the Development Agreement via the First Amendment to the Development Agreement (the "Amendment"), attached hereto as Exhibit "A", to extend the property tax and sales tax incentives provided therein in exchange for its continued commitment to sustaining its business within the City; and

WHEREAS, City is agreeable to Betts' proposal for amending the Development Agreement; and

WHEREAS, pursuant to Government Code section 65686, a development agreement may be amended by mutual consent of the parties to the agreement; and

Date Adopted: 10/20/2016  
Date Approved: 10/26/2016  
Effective Date: 11/26/2016



WHEREAS, on October 13, 2016, the Council of the City of Fresno conducted a duly noticed public hearing on the proposed amendment of the Development Agreement; and

WHEREAS, the City prepared an Environmental Assessment for the Development Agreement, which resulted in a finding of conformity with the 2025 Fresno General Plan Master Environmental Impact Report (MEIR) No. 10130 under Environmental Assessment No. S-07-04 with Addendum dated March 1, 2007, under the California Environmental Quality Act ("CEQA"); and

WHEREAS, City Staff has performed a preliminary environmental assessment based upon the proposed Amendment and, pursuant to CEQA Guidelines, section 15061(b)(3), has determined with certainty that there is no possibility that the Amendment may have a significant effect on the environment because it pertains solely to financial incentive timelines.

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

SECTION 1. The above recitals are true and correct and adopted as findings.

SECTION 2. Based upon the testimony and information presented at the hearing and upon review and consideration of the supporting documents, the Council of the City of Fresno finds that adoption of the Amendment is in the best interests of the City of Fresno;

SECTION 3. The Council of the City of Fresno further finds that the provisions of the proposed Amendment are consistent with the City's General Plan and all applicable specific plans.



**SECTION 4.** The First Amendment to the Development Agreement between the City of Fresno and Betts Spring Company is approved in the form attached hereto as Exhibit "A," and the City Manager is authorized to execute the Amendment on behalf of the City.

**SECTION 5.** This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

\* \* \* \* \*



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

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 20<sup>th</sup> day of October, 2016.

AYES : Baines, Brand, Brandau, Olivier, Quintero, Soria, Caprioglio  
 NOES : None  
 ABSENT : None  
 ABSTAIN : None

Mayor Approval: October 26<sup>th</sup>, 2016  
 Mayor Approval/No Return: N/A, 2016  
 Mayor Veto: N/A, 2016  
 Council Override Vote: N/A, 2016

YVONNE SPENCE, CMC  
 City Clerk

BY: *Yvonne Spence*  
 Deputy

APPROVED AS TO FORM:  
 CITY ATTORNEY'S OFFICE

BY: *Raj Singh Badhesha* 10-31-16  
 Raj Singh Badhesha Date  
 Deputy City Attorney

Attachment: Exhibit A - First Amendment to Development Agreement



October 21, 2016

Council Adoption: 10/20/2016  
Mayor Approval:  
Mayor Veto:  
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC  
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 10/20/16, Council adopted the attached Bill No. B-40 and Ordinance No. 2016-37, entitled, **Council Approval of First Amendment to the Development Agreement between the City of Fresno, a municipal corporation, and Betts Company, a California corporation, recorded with the Fresno County Recorder dated April 28, 2008, including incentives.** Item No. 1L, ID#16-1217, by the following vote:

Ayes : Baines, Brand, Brandau, Caprioglio, Olivier, Quintero, Soria  
Noes : None  
Absent : None  
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before October 31, 2016. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10<sup>th</sup> day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

\*\*\*\*\*

**APPROVED/NO RETURN:** \_\_\_\_\_

**VETOED** for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

\_\_\_\_\_  
\_\_\_\_\_

Ashley Swearengin, Mayor

Date: 10/21/16

**COUNCIL OVERRIDE ACTION:**

Date: \_\_\_\_\_

Ayes :  
Noes :  
Absent :  
Abstain :

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "First Amendment") amends the Development Agreement entered into between the CITY OF FRESNO, a municipal corporation, (the "City") and BETTS COMPANY, a California corporation (the "Developer").

### RECITALS

- A. The City and the Developer are parties to that certain Development Agreement, effective January 10, 2008, and recorded in the Official Records of Fresno County, California on April 28, 2008, as Document No. 2008-0061225 relating to the property located at 2867 South Maple Avenue in Fresno, California (the "Development Agreement").
- B. Pursuant to the Development Agreement, Developer's responsibilities include:
1. Relocating its corporate headquarters to, and expanding its manufacturing facilities in, the City of Fresno and developing approximately 120,000 square feet of gross buildable area into corporate and manufacturing facilities for office and manufacturing/industrial uses;
  2. Constructing agreed upon on-site and off-site improvements;
  3. Creating new jobs at its expanded Fresno facilities; and
  4. Restructuring its point of sales in California to the City of Fresno;
- C. Developer has substantially fulfilled its development-related obligations under the Development Agreement and has represented that it is in the process of administratively restructuring its points of sale to the City of Fresno.
- D. Pursuant to the Development Agreement, City agreed to provide Developer with certain Project Specific Assistance including:
1. Property Tax Incentive: A 70% reimbursement of the City's portion of increased real and personal property (general fund) taxes actually received by the City and associated with the project, not to exceed \$80,000 per year for a period of ten years, from annually allocated and available City funds, consistent with Constitutional and local law requirements.  
  
Fiscal Year ("FY") 2008-09 was the first full fiscal year following improvements to the Developed Property, so FY 2008-09 became the base year for determining the Property Tax Incentive. Pursuant to the term set forth in the Development Agreement, the Property Tax Incentive expires on June 30, 2019.
  2. Sales Tax Incentive: A 50% reimbursement of the City's portion of increased sales (general fund) tax actually received by the City and generated by Betts Spring for a period not to exceed ten years from annually allocable and available City funds, consistent with Constitutional and local law requirements.  
  
City used the First Quarter of 2008 as the base quarter for determining Sales

Tax Incentives. City began delivering on its Sales Tax Incentive obligation beginning in the Second Quarter of 2008, the first full quarter following execution of the Development Agreement. Under the terms of the Development Agreement, the Sales Tax Incentive expires on March 31, 2018.

- E. During Development Agreement negotiations, the Developer projected that it would recover \$800,000 in Property Tax Incentives and \$527,833 in Sales Tax Incentives over the ten year term of the Development Agreement. In the more than eight years since executing the agreement, the Developer has recovered less than 20% of the projected incentive amount between both incentives. The low incentive recovery is due in large part to the Great Recession of 2008.
- F. Despite less than expected incentive recovery, the City has enjoyed the benefits of the Developer's project, including relocation of the Developer's corporate headquarters to the City of Fresno, increased employment for City residents, and the general positive economic impacts of new development.
- G. The City and the Developer now wish to amend the Development Agreement to extend the expirations dates for the Property Tax Incentive and the Sales Tax Incentive to December 31, 2026, in exchange for the Developer's commitment to keep its corporate headquarters in Fresno and commitment to maintain and grow its employment and business base in Fresno through 2026.
- H. Section 11 of the Development Agreement provides that the Development Agreement may be amended or otherwise modified in a writing signed by the parties and in accordance with Government Code sections 65867 through 65868.
- I. On ~~September 20~~ <sup>October</sup> 20, 2016, the City Council of the City adopted Ordinance No. 2016-~~37~~/Bill No. ~~40~~ approving this Agreement. The ordinance, a copy of which is attached hereto as **Exhibit A**, will take effect at 12:01 a.m. of the 31<sup>st</sup> day following its adoption.

## AGREEMENT

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

1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
2. Effective Date. This First Amendment becomes effective on the date that the City of Fresno Ordinance No. 2016-~~37~~/Bill No. ~~40~~ takes effect.
3. Property Tax Incentive. The term of the Property Tax Incentive is hereby extended and shall expire on December 31, 2026. FY 2008-09 shall remain the base year for determining Property Tax Incentives. For purposes of calculating the Property Tax Incentive for FY 2026-27, Developer shall recover from only the first property tax installment due to be paid by property owners to the County by December 10, 2026, as

said installment covers the property tax period ending December 31, 2026.

4. Sales Tax Incentive. The term of the Sales Tax Incentive is hereby extended through and shall expire on December 31, 2026 (at the end of the Fourth Quarter of 2026). The First Quarter of 2008 shall remain the base quarter for determining Sales Tax Incentives.

5. Incentives Not Guaranteed. The parties agree that neither the Agreement nor this Amendment guarantees any Property Tax Incentive or Sales Tax Incentive recovery by Developer and that any discussions regarding prospective incentive amounts between the parties have been and are purely speculative and may not be relied upon by either party.

6. Development in Fresno. Developer agrees to continue being headquartered in Fresno and continue to conduct business and maintain its employment base in the City of Fresno through December 31, 2026.

7. Restructure of Points of Sale. Developer shall fulfill its obligation under the original Agreement to restructure its points of sale to the City of Fresno. The Developer shall accomplish the restructuring by no later than December 31, 2016, and shall notify the City of completion in writing.

8. Further Indemnity. In addition to the indemnification provided in Paragraph 8.1 of the Development Agreement, Developer agrees that, to the furthest extent allowable by law, it shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, volunteers, boards, and commissions against all loss, liability, fines, penalties, forfeitures, costs and damages imputed to or incurred by the City from any and all claims, demands, actions and suits in law or equity (including attorneys' fees and litigation expenses) that arise out of, pertain to, or relate to the Developer's transfer of its point of sales to the City of Fresno, including, but not limited to any resulting reallocation of Bradley-Burns uniform local sales taxes.

9. Integration. This Amendment contains all the terms agreed to by the parties relating to its subject matter. It replaces all previous discussions, understandings, and agreements.

10. Terms. Except as otherwise provided herein, the Development Agreement entered into by the City and the Developer, effective January 10, 2008, remains in full force and effect.

11. Exhibits. This First Amendment contains one exhibit: **Exhibit A** – City of Fresno Ordinance No. 2016-~~37~~/Bill No. ~~40~~

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties have executed this First Amendment at Fresno, California, the day and year first above written.

CITY

DEVELOPER

CITY OF FRESNO, a Municipal Corporation

BETTS COMPANY, a California corporation

By:   
for Bruce Rudd, City Manager


By: 

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk


Name: Mike Betts

Title: Chairman & CEO

(if corporation or LLC, Board Chair, Pres., or Vice Pres.)

BY:   
Deputy Marco Martinez-Velasquez  
11/10/16

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY:  10.5.16  
Raj Singh Badhesha, Deputy