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Agenda Item: ID16-1305 (2-B)

Date: 12/1/16

2016 NOV 29 AM 10 51

FRESNO CITY COUNCIL

CITY CLERK, FRESNO CA



Supplemental Information Packet

Agenda Related Item(s) – ID16-1305 (2-B)

Contents of Supplement: Amended Agreement Item(s)

Attached please find a Supplement to File ID16-1305. The title of the item is as follows:

Actions pertaining to the City's loan program for installation of sewer lines, abandonment of existing septic tank(s) and cesspool systems, and for single family residence connection to the City sanitary sewer system (Citywide).

1. BILL (for introduction) - Amending Section 6-305 of the Fresno Municipal Code relating to the City's loan program for mandatory connections to the City's sewer system for single family residences, increasing the loan amount per residence from \$5,000 to \$15,000 and term from 15 years to 20 years.
2. ***RESOLUTION - Amending Exhibit "A" to Resolution 2011-147 setting forth revised Loan Program Terms and Conditions for abandonment of single family residential septic tank and cesspool systems and sewer line installation and connection. (Citywide)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

Recording Requested By:
Public Utilities Department, City of Fresno
Attn: []
No Fee-Govt. Code Sec. 610

When Recorded Mail To:
City Clerk, City of Fresno
2600 Fresno Street
Fresno, CA 93721

APN # [APN]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Account # [Account Number]

AGREEMENT AND LIEN
Payment of Sewer Connection and Related Charges
FMC 6-305

THIS AGREEMENT is entered into by and between [Property Owner], at [Property Address] Fresno, CA, [zip code] (hereinafter collectively referred to as "Owners") who are all the record owners of the Property, and the CITY OF FRESNO (hereinafter referred to as "City").

RECITALS:

WHEREAS, Owners desire that their real property located at [Property Address], Fresno, California, [zip code], hereinafter referred to as "Property," be connected to the City sewer system for the purpose of allowing property to discharge waste materials into such sewer system; and

WHEREAS, Owners' Property is as legally described in Appendix "A" attached hereto and incorporated herein by reference as if set forth herewith in full; and

WHEREAS, Owners are required to pay all applicable sewer connection charges for connecting to the City sewer system under Article 3 of Chapter 6 of the Fresno Municipal Code, as amended; and

WHEREAS, Owners seek to defer payment of all applicable sewer connection charges by entering into an agreement with the City to finance these charges over a period of not more than twenty years at a variable rate of interest, adjusted annually on July 1, each year, as provided for in Section 6-305 of the Fresno Municipal Code, and the Master Fee Schedule as amended from time to time; and

WHEREAS, Owners hereby warrant that any and all parties having record title interest in the Property which may ripen into a fee have subordinated to this Agreement; and all such instruments of Subordination, if any, are attached hereto and made a part of this Agreement.

AGREEMENT:

NOW, THEREFORE, Owners, in consideration of all the foregoing and said sewer connection and allowed use of the sewer, agree as follows:

1. To pay those sewer connection charges for Property as are set forth in Appendix "A" which shall be paid in substantially equal monthly installments amortized over a period of not more than twenty years, at a variable rate of interest, adjusted annually on July 1, each year, which shall not be less than the rate the City would otherwise be able to receive by placing such amount in investment accounts as periodically established by the City Controller and adopted by the Council of the City of Fresno in the Master Fee Resolution.

2. Owners reserve the right to accelerate and pay, at any time, the whole or any part of the full remaining balance of said charges due to City. In case of any default hereunder, the Controller of the City of Fresno may declare the entire remaining balance due.

3. That said sewer connection charges, and any balance thereof due and any delinquencies thereof, including accumulated interest and service charges attaching thereto, shall be a lien upon Property, which lien shall be as described in, and shall be enforceable in any manner provided in law or equity including private foreclosure and sale of property as provided in Civil Code Section 2924, as amended.

4. This Agreement shall apply to house branch sewer connection charges, lateral sewer charges, and oversized sewer charges for sewers within the extended edges of Property, and shall not apply to similar charges for sewers outside of said extended edges. This Agreement shall also apply to trunk sewer connection charges and wastewater facilities connection charges applicable to the Property.

5. This Agreement shall constitute a covenant running with the land, shall be in favor of and for the benefit of City and its property, shall be enforceable thereby, and shall be binding upon the successors and heirs of Owners.

6. In the event that there is a sale or transfer of property by Owners, Owners shall be required to pay the entire balance, including accumulated interest and service charges, on or before the date of the recording of such sale or transfer. If payment is not made, the City shall not release the lien upon the Property, and shall retain the option to pursue any and all legal remedies available to obtain payment.

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

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Dated: This _____ day of _____, 2016

CITY OF FRESNO

Department of Finance

[Property Owner]

[Property Owner]

[Property Owner]

By: _____
Michael Lima
City Controller

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

On _____ before me, _____, Notary Public personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

SUBORDINATION

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on _____, in the office of the Fresno County Recorder as Document No. _____ of _____ which the _____ Deed of Trust in by _____ and _____ between: _____, as Trustor, _____, as Trustee, and _____, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing AGREEMENT AND LIEN, Payment of Water Connection and Related Charges, FMC 6-507(d) and 6-305.

DATED: _____, 201__

BENEFICIARY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

(Beneficiary to print/type document information, Name, Title and attach Notary Acknowledgment)

Appendix "A"

SEWER CONNECTION CHARGES

Attachment to Sewer Connection Charges Agreement, FMC 9-503.1

Owners' Name: _____

Mailing Address: _____

Telephone Number: (559) [Phone Number]

Address of Property to be connected: _____

Assessor's Parcel Number (A.P.N.): _____

Legal Description of Property Connected:

The real property situated in the State of California, County of Fresno, and is described as follows:

The following are connection charges for sewer service to the described property:

- 1. **HOUSEBRANCH SEWER CHARGE**..... \$ _____
 - 2. **WASTEWATER FACILITIES CHARGE**
 _____ Units @ \$2,119/unit..... \$ _____
 - 3. **LATERAL SEWER CHARGE**
 Sq. Ft. @ \$0.10/Sq. Ft. \$ _____
 - 4. **OVERSIZE SEWER CHARGE**
 Sq. Ft. @ \$0.05/Sq. Ft. \$ _____
 - 5. **TRUNK SEWER CHARGE**
 _____ Trunk Sewer Service Area
 _____ Units @ \$ _____/Living Unit..... \$ _____
- TOTAL SEWER CONNECTION CHARGE OBLIGATION..... \$ _____**

Public Works/Land Section By: Frank Saburit
Sewer Connection Charges

Date: _____

Less Down Payment (if any) \$ _____

Balance to be Financed \$ _____

The balance of \$ _____ is to be financed by a lien agreement for a period of twenty [20] years at an initial variable rate of interest of ____% per annum on the unpaid principal balance during the first year of the agreement as provided for by the Fresno Municipal Code Section 9-503.1 and the Master Fee Schedule. The interest rate will be adjusted annually each year effective July 1, following the amendment of the Master Fee Schedule. Substantially equal payments of principal and interest of \$ _____ initially will be collected monthly commencing _____. A notice of the new adjusted rate of interest and new equal monthly payments for the year to follow will be issued annually. Delinquencies, unpaid balances, accelerated payments and late charges may be collected from the owners pursuant to this agreement, Fresno Municipal Code Section 9-503.1 and the Master Fee Schedule as amended from time to time by the Fresno City Council.

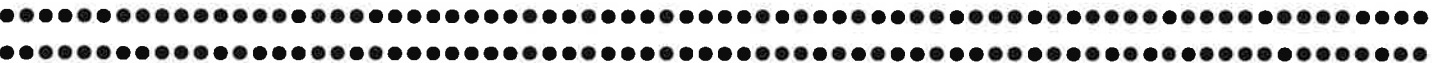
Please note:

This is a VARIABLE RATE of interest and it changes each JULY 1. If this agreement is effective during the months of either MARCH or APRIL, there may be only ONE PAYMENT DUE at the rate __% and for the amount \$ __ shown above. The new rate, effective JULY 1, will change the payment amount after the first payment.

If this agreement is effective during the months of either MAY or JUNE, there may be NO PAYMENTS DUE at the rate __% and for the amount \$ __ shown above. The new rate, effective JULY 1, will change the payment amount shown above.

All borrowers are notified by the City of Fresno Finance Department of their new rate and their new payment amount in JUNE of each year.

If you have any questions, please call the City of Fresno Finance Department at 621-7023.



If total charges are to be paid in Cash or Check, take this form to the Development Department. If any portion is to be paid under deferred payment plan, take this form to the Finance Department, Enterprise Accounting Section.