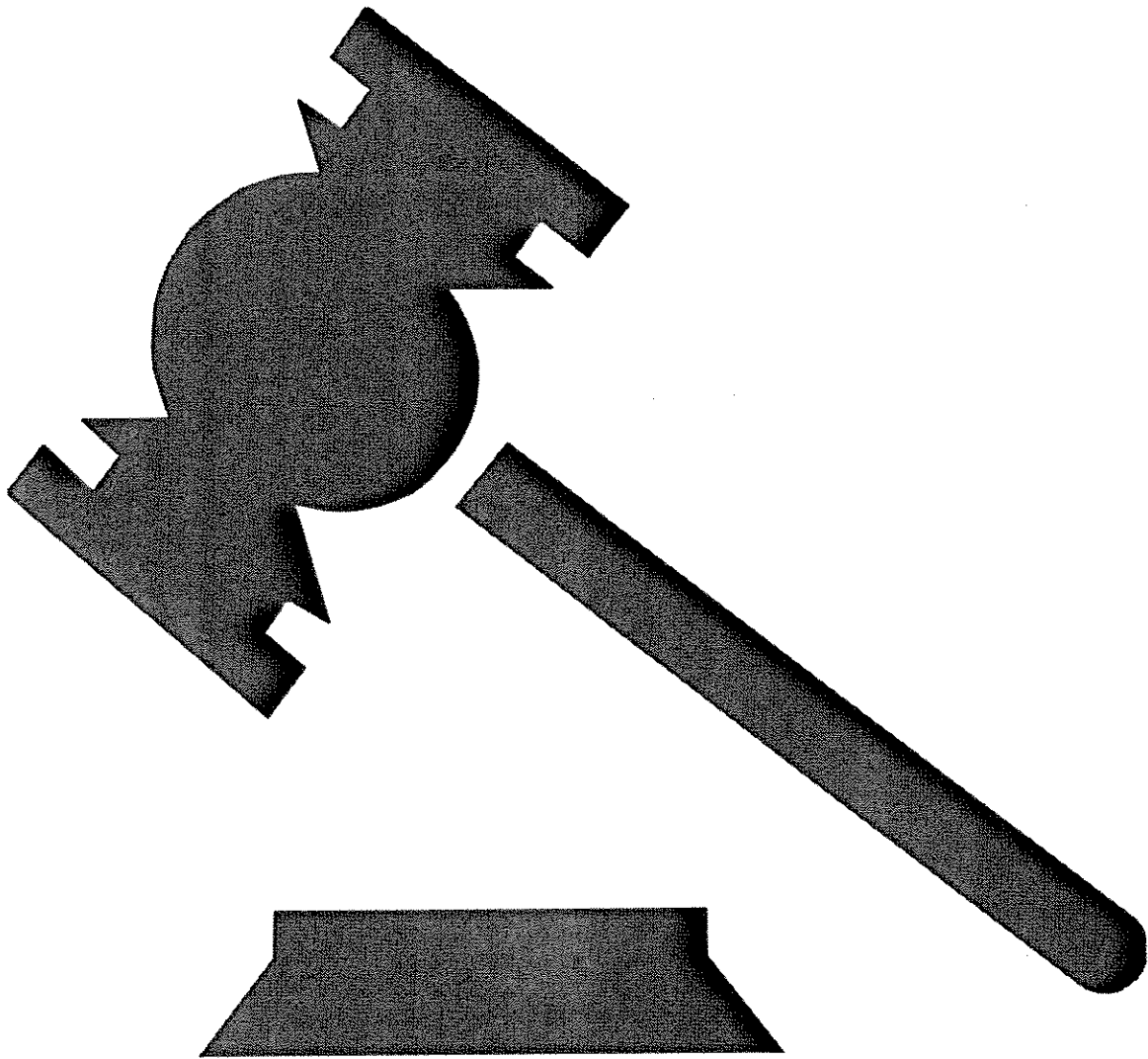




***TRANSPORTATION
ACTION/DISCUSSION ITEMS
AGENDA ITEM IV. A.***

BEFORE THE
COUNCIL OF FRESNO COUNTY GOVERNMENTS
RESOLUTION NO. 2008- 45

In the Matter of:)
)
REGIONAL BLUEPRINT)
PLANNING PROGRAM)

RESOLUTION OF SUPPORT
FOR THE CALIFORNIA
REGIONAL BLUEPRINT
PLANNING PROGRAM

WHEREAS, the Council of Fresno County Governments (Fresno COG) is the designated Regional Transportation Planning Agency (RTPA), the designated Metropolitan Planning Organization (MPO), and the designated Council of Governments (COG) for the Fresno County Region; and

WHEREAS, Fresno COG is authorized to manage the regional blueprint planning grant and to collaborate with the stakeholders; and

WHEREAS, the California Regional Blueprint Planning Program is a voluntary, competitive grant program to conduct comprehensive scenario planning that results in consensus by regional leaders, local governments and stakeholders on a preferred growth scenario that achieves the objectives for a twenty-year planning horizon; and

WHEREAS, scenario planning enables public officials and other participants to evaluate future land use patterns and their potential impacts on the region's transportation system, housing supply, jobs-housing proximity and balance, environment, and natural resources; and

WHEREAS, the California Regional Blueprint Planning Grant Program is designed to support related statutory requirements, programs, and guidelines that address the need for integrated planning, including the Regional Transportation Plan Guidelines, the State's planning priorities, "alternative planning scenario", and the Congestion Management Program;

NOW, THEREFORE, BE IT RESOLVED, Fresno COG supports fourth year participation in the California Regional Blueprint Planning Program as it will contribute to the vision of improved quality of life within California by addressing future growth through the integration of transportation, housing, land use, environmental resources, other infrastructure and services

THE FOREGOING RESOLUTION was passed and adopted by the Council of Fresno County Governments this 23rd day of October, 2008.

AYES:

NOES:

ABSTAIN:

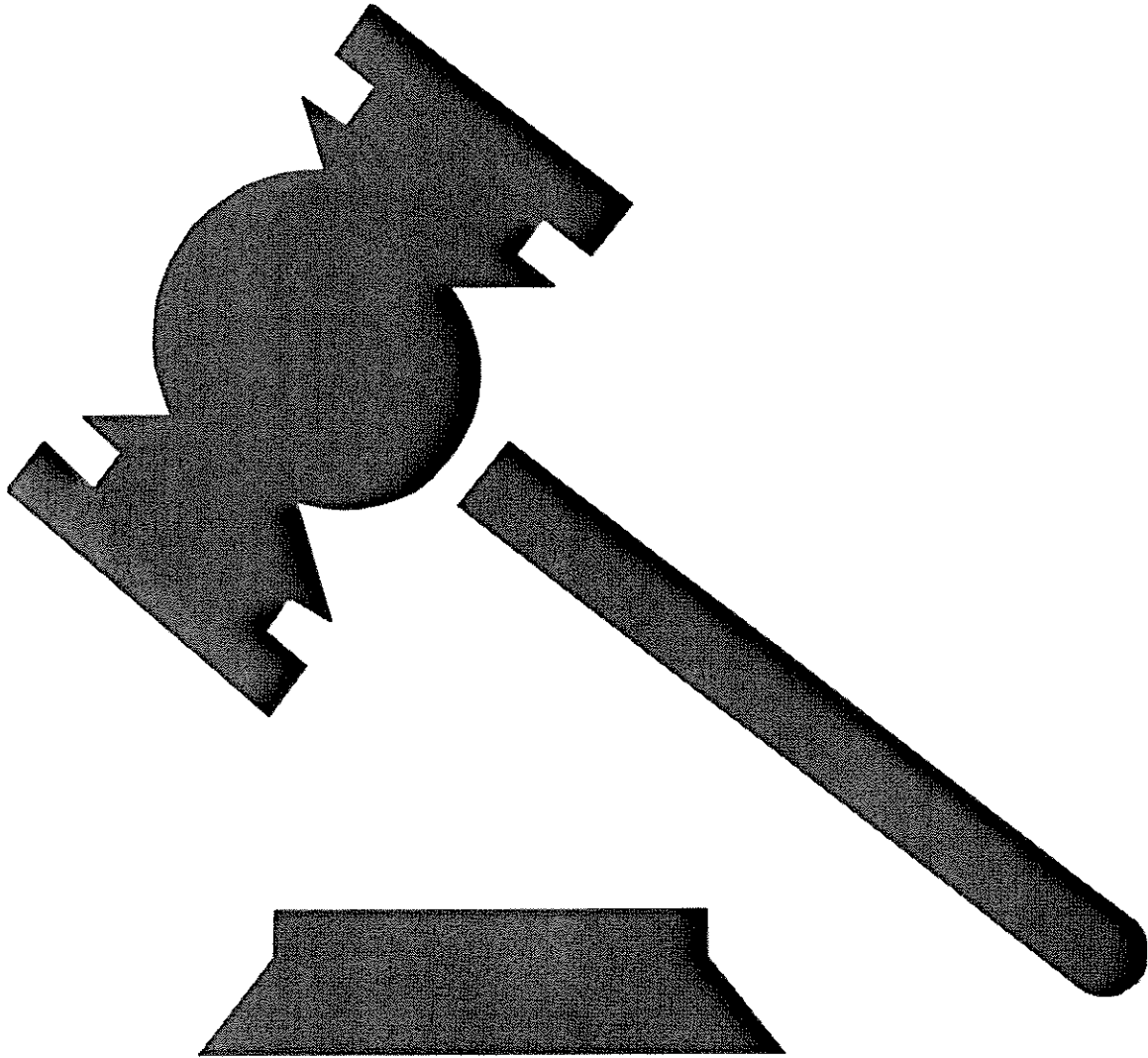
ABSENT:

ATTEST:

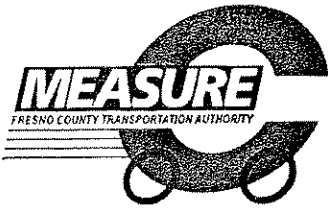
Signed: _____
Trinidad M. Rodriguez, Chairman

I hereby certify that the foregoing is a true copy of a resolution of the Council of Fresno County Governments duly adopted at a regular meeting thereof held on the 25th day of October, 2007.

Signed: _____
Tony Boren, Executive Director



***TRANSPORTATION
ACTION/DISCUSSION ITEMS
AGENDA ITEM IV. C.***



Ron Peterson
Executive Director

TO: Fresno County Transportation Authority

FROM: Ron Peterson, Executive Director

DATE: October 15, 2008

SUBJECT: Indemnification Agreement Between the Fresno County Transportation Authority and Each City Within Fresno County and with Fresno County Regarding Indemnification of Legal Cost Incurred as a Result of Enactment of Ordinances Implementing the Requirements Imposed by the Measure C Extension Regional Transportation Mitigation Fee Program.

RECOMMENDATION: Staff recommends that the Board authorize the Chairman to execute an Indemnification Agreement between the Fresno County Transportation Authority and each city within Fresno County and with Fresno County regarding indemnification of legal cost incurred as a result of enactment of ordinances implementing the requirements imposed by the Measure C Extension Regional Transportation Mitigation Fee Program at such time as the Agreement has been reviewed and approved by all parties including Fresno County Transportation Authority staff and legal counsel.

DISCUSSION: Pursuant to discussion and direction received at the October 10th joint Board meeting, staff has drafted a proposed indemnification agreement for Board review and comment. The draft agreement was distributed to Board members on October 14, 2008 and a copy is also at your desk today. Staff is requesting that the Board provide comments regarding the proposed agreement and further that the Board authorize the Chairman to execute the agreement after review and approval by all parties.

1 INDEMNIFICATION AGREEMENT

2 THIS AGREEMENT is entered into this _____ day of
3 _____, 20_____, by and between the FRESNO COUNTY
4 TRANSPORTATION AUTHORITY, a Transportation Authority organized under the
5 provisions of Public Utilities Code § 142200 and following of the State of California,
6 (hereinafter "AUTHORITY") and the CITY OF FRESNO, a municipal corporation,
7 (hereinafter "CITY").

8 WITNESSETH:

9 WHEREAS, AUTHORITY is charged with administering Measure C; and

10 WHEREAS, the Final 2006 Measure C Extension Expenditure Plan
11 provides that the Regional Transportation Program requires new growth and
12 development within the County and each of the cities to contribute to regional street
13 and highway project costs through establishment of the Regional Transportation
14 Mitigation Fee ("RTMF") program; and

15 WHEREAS, Final 2006 Measure C Extension Expenditure Plan,
16 Appendix D – Implementing Guidelines: Regional Transportation Program specifies
17 that the RTMF shall be developed and approved by the Fresno COG and AUTHORITY
18 in coordination with all local jurisdictions and further specifies that the RTMF shall be
19 enacted by all cities in the County and by Fresno County; and

20 WHEREAS, the Fresno COG has retained the services of a consultant
21 experienced in the development of such mitigation fees to conduct an RTMF study to
22 serve as the foundation of the RTMF and the Fresno COG and AUTHORITY have
23 selected one of the fee options to be forwarded to each city and to the County for
24 consideration and enactment by ordinance; and

25 WHEREAS, each city and the county will undertake to enact the RTMF
26 using its own police power and legislative process using the RTMF study prepared by
27 the Fresno COG retained consultant; and
28

1 WHEREAS, fairness and sound fiscal policy require that the
2 AUTHORITY should bear the burden of the liability for potential injuries and the
3 expense of litigation arising out of the CITY's enactment of the RTMF in furtherance of
4 the Measure C Regional Transportation Plan; and

5 WHEREAS, AUTHORITY and CITY mutually desire to enter into this
6 Indemnification Agreement, by which AUTHORITY shall indemnify, (at CITY's request)
7 defend, save and hold CITY harmless, in order that CITY shall bear no fiscal or
8 financial burden whatsoever resulting from any litigation challenging the CITY's
9 enactment of the RTMF.

10 NOW, THEREFORE, based on good and valuable consideration, receipt
11 of which is hereby acknowledged, the parties agree:

12 1. HOLD HARMLESS.

13 The AUTHORITY hereby agrees to save, indemnify, hold harmless and,
14 at CITY's request, defend CITY, its officers, agents, and employees, the Fresno City
15 Council, each member of the Fresno City Council, and the Fresno City Mayor, from
16 and against all expenses, demands, liabilities, claims, costs (including but not limited
17 to court costs and attorney's fees), or damages of any nature whatsoever occurring or
18 resulting to CITY, including an award of attorney's fees and costs to the person,
19 organization or entity bringing the cause of action, or their officers, agents, and
20 employees, arising, from resulting from, or in connection with any CITY action to enact
21 the Fresno COG and FCTA supplied RTMF ordinance and related CEQA actions only.

22 The AUTHORITY shall pay all reasonable attorneys' fees and costs
23 related to the representation of the CITY in any action brought against the CITY,
24 except for costs incurred by the AUTHORITY in defense of any action, as provided in
25 section 3 of this agreement.

26 2. NOTIFICATIONS AND COOPERATION BY AUTHORITY.

27 CITY shall Notify AUTHORITY within ten (10) AUTHORITY business days of its
28 receipt of any demand, claim, action, proceeding, or litigation in which CITY is to be

1 indemnified and held harmless by AUTHORITY. If CITY requests that AUTHORITY
2 defend CITY, it shall notify AUTHORITY in writing within ten (10) business days of its
3 receipt of any such demand, claim, action, proceeding, or litigation. AUTHORITY shall
4 cooperate fully in such defense.

5 3. AUTHORITY PARTICIPATION IN DEFENSE.

6 Nothing contained herein shall prohibit AUTHORITY, in its sole discretion, from
7 participating in the defense of any demand, claim, action, proceeding, or litigation over
8 and above representation by outside counsel, or from participating in the defense of
9 any demand, claim, action, proceeding, or litigation. If AUTHORITY elects to also
10 defend, it shall do so in good faith and AUTHORITY shall bear its own cost. In no
11 event shall AUTHORITY's participation in the defense of any demand, claim, action,
12 proceeding, or litigation affect the obligations imposed upon AUTHORITY in section 1
13 of this Agreement.

14 4. TERMINATION OF AGREEMENT.

15 (a) This Indemnification Agreement may be terminated upon the
16 parties, by their express, mutual, written consent agree to terminate this
17 Indemnification Agreement, which consent shall not be unreasonably withheld.

18 5. SEVERABILITY.

19 If any provision of this Agreement is determined to be invalid in a final judgment
20 by a court of competent jurisdiction, each and every other provision hereof shall
21 remain in full force and effect.

22 6. CONSTRUCTION OF CONTRACT.

23 The parties hereby acknowledge that they and their respective counsel have
24 cooperated in the drafting and preparation of this agreement, for which reason this
25 agreement shall not be construed against any party as the drafter thereof.
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IN WITNESS WHEREOF, AUTHORITY and CITY hereby execute this Agreement.

FRESNO COUNTY TRANSPORTATION
AUTHORITY

By: _____
Harry Armstrong, Chairman

CITY OF FRESNO

By: _____

REVIEWED AND RECOMMENDED
FOR APPROVAL

By _____
Ron Peterson, Executive Director

APPROVED AS TO LEGAL FORM:
JANELLE E. KELLEY,
COUNTY COUNSEL

By _____
Kevin B. Briggs,
Chief Deputy County Counsel



CITY OF CLOVIS

CITY HALL • 1033 FIFTH STREET • CLOVIS, CA 93612

October 9, 2008

Council of Fresno County Governments
2035 Tulare Street, Suite 201
Fresno, CA 93721

Fresno County Transportation Authority
2220 Tulare Street, Suite 411
Fresno, CA 93721

Re: Regional Transportation Mitigation Fee and Implementation Issues

Dear COG Boardmembers and FCTA Boardmembers:

As you proceed with deliberations to reach a consensus for approval of an appropriate option for the Regional Transportation Mitigation Fee (RTMF), I wish to call your attention to an important issue that will need to be resolved immediately after decision on the fee and prior to the anticipated enactment date of January 1, 2009.

The issue is how the agencies, collectively, will deal with vesting maps that have been approved by the agencies prior to the adoption of this new fee. Generally, the vesting privilege is used to "lock" in place the requirement to pay only those fees in place at the time of approval of the vesting and for a two year period. At the time of expiration of the two years, the agency may then require that the applicant become subject to any additional fees that may have been enacted during that period.

The issue is that such a "lock" on the fees means that for up to a two year period after enactment of the fee, it is possible that thousands of building permits may be issued by the agencies for existing vesting maps and those permits will not be subject to collection of the RTMF. This would result in the loss of millions of dollars to the RTMF fund and could further impact the ability to deliver the Tier 1 projects of the Measure C Regional Program in a timely fashion.

The technical staffs of your respective agencies are aware of this and have been discussing the issue over recent months. But, the agencies have not yet come to a resolve concerning an equitable way to implement the RTMF in order to avoid the disparity of contribution to the RTMF between the agencies and to temper the competitive disadvantage it represents to builders active throughout Fresno County and its cities.

