

FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE AGENCY AGENDA

Date: September 24, 2009

Time: Immediately Following Council of Fresno County
Governments Policy Board Meeting

Place: COG Sequoia Room
2035 Tulare Street, Suite 201, Fresno, CA

Item	Description	Enclosure	Action*
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I. PRESENTATIONS

A. Public Presentations

This portion of the meeting is reserved for persons wishing to address the Board on items within its jurisdiction but not on this agenda. **Note: Prior to action by the Board on any item on this agenda, the public may comment on that item. Unscheduled comments may be limited to 3 minutes.**

II. Adoption of Bylaws

Yes

Adopt

Summary: Section 3.53 of the Joint Powers Agency Agreement (JPA) states the Board shall adopt bylaws for the conduct of meeting, the selection of a Chair and Vice Chair, and any other matters necessary to perform its duties pursuant to this agreement. The Board may adopt the bylaws of the COG for its own with the exception of any provisions that are inconsistent with this Agreement and the intent of this Agreement or may adopt any other alternate bylaws as the Board deems appropriate.

PB Americas and County counsel have reviewed the current COG bylaws and made changes relevant to the JPA. The modified bylaws retain the identical voting structure to the COG and allows the Board to appoint legal counsel of their choice. A copy of the original COG bylaws with changes and a copy of the final modified version are provided. The Board may adopt these bylaws or propose additional changes.

Action: Adopt the proposed Bylaws.

III. Election of Chairman, Vice Chairman

No

Elect

IV. Appointment of Legal Counsel

No

Appoint

Summary: Section 3.6.6 of the JPA states the Board may contract for legal counsel to the Agency. This was one of the items that changed from the COG JPA which specifies that the Fresno County Counsel's office shall provide all legal services to the COG. At this point the staff recommendation is to appoint County Counsel as legal counsel. The board may revisit this recommendation at any time should the need to obtain specialized counsel arise.

Action: Appoint County Counsel as legal counsel.

V. Appointment of Executive Director and Secretary

No

Appoint

Summary: The JPA gives the Board authority to appoint an Executive Director/Secretary. The consensus in forming the JPA was to use existing COG staff as much as possible to keep the cost of administrating the agency down. The recommendation to appoint the COG Executive Director to those positions and grant authority to delegate responsibilities to COG staff is compatible with this intent.

Action: Appoint the COG Executive Director as JPA Executive Director and Secretary.

VI. Appointment of Treasurer and Controller	No	Appoint
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Summary: The JPA initially designates the Fresno County Auditor/Controller/Treasurer-Tax Collector as the JPA Treasurer and Controller and grants the option to redesignate either of those positions at any time. The Board need not take action to retain the County Auditor/Controller as Treasurer and Controller or it may take action to appoint someone else to the position. The Fresno County Auditor/Controller/Treasurer-Tax Collector office proposed the arrangement will work similar to the way it works with the COG, with COG staff doing the detail accounting transactions and the County Auditor supplying oversight.

Action: Reaffirm or appoint the Treasurer and Controller.

VII. Indemnity Agreement with Fresno County Transportation Authority	No	Info/Disc.
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Summary: The Regional Transportation Mitigation Fee (RTMF) fee will be applied to projects implemented by the Fresno County Transportation Authority (FCTA) in conjunction with Measure "C". Prior to formation of the JPA the cities and county had negotiated an indemnification agreement with FCTA to hold the cities and county harmless from litigation arising from adopting the RTMF Fee Schedule Ordinance on the basis that the fee was being implemented to augment FCTA's construction program, therefore the liability for imposing the fee should remain there. The Indemnification Agreement has been changed to reflect the formation of the JPA and is being review by County Counsel for adoption at the October 29, 2009 meeting.

Action: Information

VIII. Discussion of Administrative Cost Structure and Handling Fee	Yes	Initiate Review
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Summary: The ballot measure provided that the Transportation Authority, consistent with the adopted and updated Measure "C" Expenditure Plan, shall have the authority and flexibility to allocate the RTMF based upon regional priority need within the county as defined by the Measure "C" component of the Regional Transportation Plan that is prepared by the Council of Fresno County Governments. A contract between the Authority and the RTMF JPA will be developed to cover this implementation.

During the development of the Nexus Study and fee schedule, before the concept of forming the JPA, the topic of administrative costs were discussed over a number of meetings. Typically administrative cost for something of this nature run 3% to 4%, however the consensus was to establish a 2% fee to keep the fee as low as possible. The 2% is expected to generate approximately \$4.3 million over the life of the program and is intended to cover only the cost of the Transportation Authorities administration. It was agreed that since collection of the fees by the cities and county would represent only an incremental cost to their existing fee collection program, they could impose reasonable handling fees to cover their incremental cost. Forming the JPA created an administrative layer that wasn't included in the 2% and although we intend to run this program with as little cost as possible from an administrative point of view, there will still be incremental cost associated with fee collection, public noticing, audit, account maintenance by the auditor controller and routine legal fees not covered by the Indemnity agreement with FCTA.

This topic was brought up during the discussion of the JPA and the consensus was the JPA should impose a handling fee over and above the administrative fee agreed to in the Nexus study. By state law such a fee must be based on the actual cost of administration or estimated cost if actual costs are not known. In other words, the handling fee must be per transaction and not per unit based, so that a developer or builder paying permits for multiple lots would pay the same handling fee as someone paying the fee for a single lot permit if the same amount of staff time was needed to process both. Staff estimates that the handling fee will run \$25 per transaction. The handling fee will be adopted with the Fee Schedule Resolution at the October 29, 2009 Public Hearing.

Action: Introduce the Handling Fee for adoption October 29, 2009.

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| IX. | Regional Transportation Fee Nexus Study - Receive and file | Yes | Adopt |
|------------|---|------------|--------------|

Summary: The Nexus Study for the Fresno Regional Transportation Mitigation, done by PB Americas, provides the legal basis for establishing the Regional Transportation Mitigation Fee. This report underwent extensive public review and has been approved by both the Council of Governments and the Transportation Authority. The fee will be phased in over three years and may generate up to \$190 million for specific Measure "C" Tier 1 projects, \$23.5 million for projects identified in the Freeway Deficiency Study and \$4.3 million in administrative cost.

Action: Adopt the Nexus Study for the Fresno Regional Transportation Mitigation Fee

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|-----------|--|------------|------------------------|
| X. | Public Hearing - Introduce the RTMF Fee Schedule with intent to adopt on October 29, 2009. Resolution 2009-01 | Yes | Initiate Review |
|-----------|--|------------|------------------------|

Summary: A public hearing introducing the RTFM Fee Schedule is open for written or oral comments. On September 10, 2009 public notices were posted in member agencies public notice foyers and in the Fresno Bee announcing the formation of the JPA and inviting oral or written comments on the nexus study and fee schedule. The fee schedule is scheduled for adoption October 29, 2009. Once the Fee Schedule is adopted there will be a 60-day waiting period before the fee takes effect January 1, 2010.

Action: Information

- XI. OTHER BUSINESS**
- A. Items from Staff
 - B. Items from Members

***Items listed as information still leave the option for guidance/direction actions by the Committee.**

****All enclosures are available on our website at www.fresnocog.org – Committees and Agendas**

Notes on the Draft Bylaws for the RTMF Joint Powers Agency

These draft bylaws are based on the bylaws of the Fresno COG. Changes have been made where needed to be consistent with the Joint Powers Agreement for the RTMF-JPA. For example:

- 1) The phrase "Council of Fresno County Governments" has everywhere been replaced with "Fresno County Regional Transportation Mitigation Fee Joint Powers Agency" or "RTMF-JPA" per JPA Section 3.1.
- 2) The phrase "Council", meaning the governing board of the agency, has everywhere been replaced by "Board" per JPA Section 3.5.1.
- 3) The requirements for a quorum have been changed from members representing a majority of the total population to members representing 40% per JPA sections 3.5.2 and 3.5.4.
- 4) The Joint Powers Agreement for Fresno COG Section 1.3 specified that a Policy Advisory Committee be created. The new JPA Section 3.5.1 instead makes the Board the policy making body, so references to the Policy Advisory Committee have been deleted.
- 5) The COG's bylaws (Section 19) specify that the Fresno County Counsel's office shall provide all legal services to the COG. However, the new JPA (Section 3.6.6) simply says that the Board may contract for legal services.

All deletions are indicated in red font with strikethroughs (~~deletion~~) while additions are indicated by blue font (**addition**). Passages not so marked are unchanged.

BY-LAWS FOR THE
~~COUNCIL OF FRESNO COUNTY GOVERNMENTS~~
FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE
JOINT POWERS AGENCY

WHEREAS, the county of Fresno and certain Cities of Fresno County, California, have executed a Joint Powers Agreement creating the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency; and

WHEREAS, the Joint Powers Agreement designates the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency to perform certain duties: and

WHEREAS, the organizational structure, process and functions of the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency are specified in the Joint Powers Agreement:

THEREFORE, BE IT RESOLVED:

1. The By-Laws of the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency shall be specified herein, except that these By-Laws shall not limit, restrict, modify or supersede those activities or duties conferred or implied in the Joint Powers Agreement.
2. Membership in the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency shall be as provided in the Joint Powers Agreement of March 25, 1976 September 24, 2009.
(Date)
3. The ~~Council~~ Board, as specified in the Joint Powers Agreement, shall constitute the governing body of the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency.
4. The ~~Council~~ Board shall hold regular meetings on the last Thursday of every month, at such time and location as may be prescribed by vote of the membership at a previous meeting. In the event such meeting date should fall on a holiday or the day before a holiday, the membership at its next preceding meeting, or prior thereto, shall fix another convenient date for such regular meetings. If no time or location is so prescribed, the Chairman, or his representative, shall fix said time and location.

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Special Meetings may be called by the Chairman or his representative at any time. The members shall be notified in writing of all special and regular meetings.

Deleted: ; written nature of meeting shall be forwarded by first class mail or other appropriate means not less than seven days prior to the meeting

All regular and special meetings shall be conducted in accordance with the Ralph M. Brown Act, as amended.

5. The duly authorized representatives of a majority of the members in good standing which represent ~~a majority~~ 40% of the total population of the member agencies in good standing shall constitute a quorum for the transition of all business of the Council Board.

6. Except as provided herein or in the Joint Powers Agreement, the most recent edition of Robert's Rules of Order shall constitute the parliamentary authority for the Council Board.

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7. Officers of the Council Board shall consist of a Chairman and Vice-Chairman, who shall be elected from the duly authorized representatives of members in good standing. Their duties shall be as follows:
- Chairman: To preside over all meetings, maintain order, decide questions of parliamentary procedure, call special meetings, and such other duties as elsewhere herein provided.
 - Vice-Chairman: To perform the duties of the Chairman in the absence of such officer or upon disqualification of such officer.

8. Nomination and election of officers shall be held at the March meeting of each year, and such officers shall serve a one-year term. Any vacancy during the term shall be filled by nomination and election of such officer for the remainder of the term.

9. Nominations may be made by a committee of duly authorized members in good standing appointed by the Chairman and approved by the Council Board or from the floor by duly authorized representatives.

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10. An election for each office, beginning with that of Chairman, shall be held immediately after all nominations have been declared closed by the Chairman. If there is more than one nominee for any office, voting shall be by roll call in accordance with the voting formula as established by the Joint Powers Agreement.

11. Officers shall take office immediately after their election or as soon thereafter as practicable, and serve until disqualified or their successors are duly elected, whichever condition occurs first.

- ~~12. The Policy Advisory Committee, as specified in the Joint Powers Agreement and such committees as established by the Council shall select a Chairman and Vice-Chairman in June of each year from among its members. The duties of the Policy Advisory Committee shall be:~~
- ~~To hold meetings and conduct business as deemed appropriate under the Joint Powers Agreement.~~
 - ~~To advise, recommend to and assist the Council, as required to carry out Council functions.~~
 - ~~To review and recommend to the Council all business which is to come before the Council, including but not limited to, the annual budget and work program, Overall Program Design, reports, studies, plans and policy items.~~
 - ~~To review and comment on applications submitted to the Council of Fresno County Governments for A-95 review.~~

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~~13. The Policy Advisory Committee shall hold regular meetings each month, at such time and location as may be prescribed by vote of the committee members. In the event such meeting date should fall on a holiday, or the day before a holiday, the membership at its next preceding meeting, or prior thereto, shall fix another convenient date for such regular meeting. If no time or location is so prescribed, the Chairman, or his representative, shall fix said time and location.~~

~~Special meetings may be called by the Chairman or his representative at any time. The members shall be notified in writing of all special and regular meetings; written nature of meeting shall be forwarded by first class mail or other appropriate means not less than seven days prior to the meeting.~~

~~Business may be conducted when there are at least five (5) members present to perform the duties of the Policy Advisory Committee. Any motion or action of the Policy Advisory Committee in order to be deemed carried or approved must receive an affirmative vote from a majority of the members present.~~

12. The **Council Board** agenda shall be established by the Executive Director. ~~Subjects for inclusion on the agenda of the Council shall be directed to the Executive Director sufficiently in advance of the Council meeting so as to be reviewed by the Policy Advisory Committee.~~
- ~~a. Agenda subjects proposed by the Council shall be referred to the Policy Advisory Committee for its review and recommendation.~~
 - ~~b. Agenda subjects proposed by persons or organizations not members of the Council Board shall be placed on the agenda following review and recommendation by the Policy Advisory Committee.~~
 - ~~c. All subjects on the Council's Board's agenda shall be accompanied by a report from the Policy Advisory Committee, which report shall include the Policy Advisory Committee's voting on the subject.~~

The **Council Board** Chairman may establish time limits or any other control measure he deems appropriate for presentation or comment.

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13. The **Council Board** agenda shall be included in written notice of meeting and forwarded to **Council Board** Members as specified elsewhere herein. Items of an emergency nature which require immediate action by the **Council Board** may be added to the agenda upon concurrence of a majority of the members in good standing present and representing a majority of the population Of the member agencies.

14. All administrative work of the **Council Board** shall be performed by or under the direction of an Executive Director, ~~or if specifically directed by the Council, the Policy Advisory Committee.~~ The duties of the Executive Director shall be:
- ~~a. To serve as Secretary to the Council Board and Policy Advisory Committee.~~
 - ~~b. To serve as Secretary to such committees as the Council Board may establish.~~
 - ~~c. To keep a good and sufficient record of the proceedings and business of the Council Board.~~
 - ~~d. To keep a record and ascertain the qualifications of each duly authorized representative.~~
 - ~~e. To maintain files for all reports, correspondence and other business of the Council Board, the Policy Advisory Committee and other committees as may be established.~~
 - ~~f. To coordinate the work program and budget of the Council Board.~~
 - ~~g. To assist member agencies in making application for Federal funds.~~

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- g. To maintain a record of all financial transactions.
- h. To transmit to his successor all books, records and files of the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency in his possession.
- i. To perform such other duties as may be assigned.

15. A proposed annual Overall Work Program (OWP) for the ensuing fiscal year shall be prepared by the Executive Director and presented to the ~~Board Policy Advisory Committee~~ for their approval in January of each year. The ~~Board Policy Advisory Committee~~ shall have forty-five (45) days and shall review and prepare a preliminary budget by March 1 of each year.

A proposed annual budget for the ensuing fiscal year shall be prepared by the Executive Director and presented to the ~~Board Policy Advisory Committee~~ for their approval in February of each year. The ~~Board Policy Advisory Committee~~ shall have forty-five (45) days and shall review and prepare a preliminary budget by April 1 of each year. The budget shall be a financial plan to undertake the work program of the ~~Council Board~~. The ~~Council Board~~ shall review and adopted the budget and OWP at or before the May meeting.

16. ~~The Fresno County Counsel's Office shall provide de all legal services to the Council of Fresno County Governments, the Council and any committees as specified in the Joint Powers Agreement, except~~ The ~~Council Board~~ may retain independent legal counsel when it deems appropriate.

17. The ~~Council Board~~ shall be responsible for making all amendments to these By-Laws.

- a. Proposed amendments may be originated by the ~~Council Board~~ or any duly authorized representative to the ~~Council Board~~.
- b. Proposed amendments may not be finally acted upon unless all of the members have been given written notice thereof at a prior meeting or by mail at least 15 days prior to the date of the meeting at which final action is to be taken.
- c. Amendment to these By-Laws shall require the approval of a majority of the ~~Members in good standing~~ representing ~~a majority~~ 40% of the population of the member agencies in good standing.

Deleted: <#>Membership costs, as specified in the Joint Powers Agreement shall be due and payable at the start of the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency's fiscal year. The Executive Director shall provide each member agency written notice of its cost due not later than thirty (30) days prior to the due date. If the costs to be shared are not paid within sixty (60) days of the date they are due and payable the member agency shall immediately be sent written notice by first class mail advising amount due and consequences of non-payment. If payment is not made within ninety (90) days of the date due and payable, the member agency shall immediately be sent written notice that it is no longer a member in good standing, as specified in the Joint Powers Agreement, and no longer carries voting privileges in the conduct of the business of the ~~Council of Fresno County Governments~~ Fresno County Regional Transportation Mitigation Fee Joint Powers Agency.¶ <#>Good standing shall be restored to a member agency immediately after payment of delinquent costs is received.¶

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**BY-LAWS FOR THE
FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE
JOINT POWERS AGENCY**

WHEREAS, the county of Fresno and certain Cities of Fresno County, California, have executed a Joint Powers Agreement creating the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency: and

WHEREAS, the Joint Powers Agreement designates the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency to perform certain duties: and

WHEREAS, the organizational structure, process and functions of the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency are specified in the Joint Powers Agreement:

THEREFORE, BE IT RESOLVED:

1. The By-Laws of the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency shall be specified herein, except that these By-Laws shall not limit, restrict, modify or supersede those activities or duties conferred or implied in the Joint Powers Agreement.
2. Membership in the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency shall be as provided in the Joint Powers Agreement of September 24, 2009.
(Date)
3. The Board, as specified in the Joint Powers Agreement, shall constitute the governing body of the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency.
4. The Board shall hold regular meetings on the last Thursday of every month, at such time and location as may be prescribed by vote of the membership at a previous meeting. In the event such meeting date should fall on a holiday or the day before a holiday, the membership at its next preceding meeting, or prior thereto, shall fix another convenient date for such regular meetings. If no time or location is so prescribed, the Chairman, or his representative, shall fix said time and location.

Special Meetings may be called by the Chairman or his representative at any time. The members shall be notified in writing of all special and regular meetings.

All regular and special meetings shall be conducted in accordance with the Ralph M. Brown Act, as amended.

5. The duly authorized representatives of a majority of the members in good standing which represent 40% of the total population of the member agencies in good standing shall constitute a quorum for the transaction of all business of the Board.

6. Except as provided herein or in the Joint Powers Agreement, the most recent edition of Robert's Rules of Order shall constitute the parliamentary authority for the Board.
7. Officers of the Board shall consist of a Chairman and Vice-Chairman, who shall be elected from the duly authorized representatives of members in good standing. Their duties shall be as follows:
 - a. Chairman: To preside over all meetings, maintain order, decide questions of parliamentary procedure, call special meetings, and such other duties as elsewhere herein provided.
 - b. Vice-Chairman: To perform the duties of the Chairman in the absence of such officer or upon disqualification of such officer.
8. Nomination and election of officers shall be held at the March meeting of each year, and such officers shall serve a one-year term. Any vacancy during the term shall be filled by nomination and election of such officer for the remainder of the term.
9. Nominations may be made by a committee of duly authorized members in good standing appointed by the Chairman and approved by the Board or from the floor by duly authorized representatives.
10. An election for each office, beginning with that of Chairman, shall be held immediately after all nominations have been declared closed by the Chairman. If there is more than one nominee for any office, voting shall be by roll call in accordance with the voting formula as established by the Joint Powers Agreement.
11. Officers shall take office immediately after their election or as soon thereafter as practicable, and serve until disqualified or their successors are duly elected, whichever condition occurs first.
12. The Board agenda shall be established by the Executive Director.
The Board Chairman may establish time limits or any other control measure he deems appropriate for presentation or comment.
13. The Board agenda shall be included in written notice of meeting and forwarded to Board Members as specified elsewhere herein. Items of an emergency nature which require immediate action by the Board may be added to the agenda upon concurrence of a majority of the members in good standing present and representing a majority of the population of the member agencies.
14. All administrative work of the Board shall be performed by or under the direction of an Executive Director. The duties of the Executive Director shall be:
 - a. To serve as Secretary to the Board.
 - b. To serve as Secretary to such committees as the Board may establish.
 - c. To keep a good and sufficient record of the proceedings and business of the Board.
 - d. To keep a record and ascertain the qualifications of each duly authorized representative.
 - e. To maintain files for all reports, correspondence and other business of the Board and other committees as may be established.

- f. To coordinate the work program and budget of the Board.
- g. To maintain a record of all financial transactions.
- h. To transmit to his successor all books, records and files of the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency in his possession.
- i. To perform such other duties as may be assigned.

15. A proposed annual Overall Work Program (OWP) for the ensuing fiscal year shall be prepared by the Executive Director and presented to the Board for their approval in January of each year. The Board shall have forty-five (45) days and shall review and prepare a preliminary budget by March 1 of each year.

16. A proposed annual budget for the ensuing fiscal year shall be prepared by the Executive Director and presented to the Board for their approval in February of each year. The Board shall have forty-five (45) days and shall review and prepare a preliminary budget by April 1 of each year. The budget shall be a financial plan to undertake the work program of the Board. The Board shall review and adopted the budget and OWP at or before the May meeting.

The Board may retain independent legal counsel when it deems appropriate.

17. The Board shall be responsible for making all amendments to these By-Laws.
- a. Proposed amendments may be originated by the Board or any duly authorized representative to the Board.
 - b. Proposed amendments may not be finally acted upon unless all of the members have been given written notice thereof at a prior meeting or by mail at least 15 days prior to the date of the meeting at which final action is to be taken.
 - c. Amendment to these By-Laws shall require the approval of a majority of the Members in good standing representing 40% of the population of the member agencies in good standing.

**Fresno County Regional Transportation Mitigation Fee
Handling Fee**

Fee Collection	12,000
Public Noticing	2,000
Legal & Accounting	6,000

Estimated Handling Cost	20,000
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Estimated Applications (First Year)	800
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Handling Fee	\$25
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PLEASE REFER TO THE WEBSITE FOR
THE
FRESNO REGIONAL TRAFFIC
MITIGATION FEE
NEXUS STUDY REPORT
WWW.FRESNOCOG.ORG

RESOLUTION NO. 2009-01

A RESOLUTION OF
THE FRESNO COUNTY REGIONAL TRANSPORTATION MITIGATION FEE AGENCY
AUTHORIZING PARTICIPATION IN THE COUNCIL OF FRESNO COUNTY GOVERNMENTS
REGIONAL TRANSPORTATION MITIGATION FEE PROGRAM

The Board of Directors of the Fresno County Regional Transportation Mitigation Fee Agency (the "Board") ordain as follows:

Section 1: Title

This Resolution shall be known as the "Fresno County Regional Transportation Mitigation Fee Resolution of 2009" (the "Resolution").

Section 2: Findings

A. This Resolution establishes the "Fresno County Regional Transportation Mitigation Fee" (the "RTMF") as directed by the "Fresno County Transportation, Safety, Road Repair Measure" approved by the voters of Fresno County on November 7, 2006 (the "Measure 'C' Extension").

B. Pursuant to the authority of California Government Code, section 6500, et seq., the Joint Exercise of Powers Act, the County of Fresno (the "County") and the incorporated cities situated in Fresno County (the "Cities") established the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency (the "Agency") to jointly exercise the powers of the Cities and County pursuant to the Mitigation Fee Act to enact, adopt, establish, implement, impose, collect, and administer the RTMF to mitigate the regional transportation impacts of new development in the jurisdictional boundaries of the Cities and County.

C. The Council of Fresno County Governments ("FCOG") is a joint powers agency consisting of the Cities and the County. As Member Agencies of FCOG, the Cities and the County participated in the preparation of a certain "Fresno County Regional Transportation Mitigation Nexus Study", dated February, 2009 (the "RTMF Nexus Study") prepared pursuant to California Government Code, Section 66000 et seq., the Mitigation Fee Act.

D. Consistent with the findings made in the RTMF Nexus Study, the Board has been informed and advised, and hereby finds, that future development within the Cities and the County will result in traffic volumes exceeding the capacity of certain facilities on the freeway and regional arterial highway network (referred to as the "network") as it presently exists.

E. Consistent with the findings made in the RTMF Nexus Study, the Board has been further informed and advised, and hereby finds, that if the capacity of the network is not enlarged, the result will be additional traffic congestion in the Cities and the County, with unacceptable Levels of Service on facilities throughout the Cities and the County by 2030.

F. The Board has been further advised, and so finds that existing and known future funding sources will be inadequate to provide necessary improvements to the network, resulting in an unacceptably high level of traffic congestion within and around the Cities and the County.

G. The Board has reviewed the RTMF Nexus Study, and hereby finds that future development within the Cities and the County will adversely affect the network, and that unless such development contributes its fair share of the cost of improving the network, the network will operate at unacceptable Levels of Service.

H. The Board further finds and determines that there is a reasonable and rational relationship between the use of the RTMF and the type of development projects on which the fees are imposed because the fees will be used to construct the transportation improvements that are necessary for the safety, health and welfare of the residential and non-residential users of the development projects on which the RTMF will be levied.

I. The Board finds and determines that there is a reasonable and rational relationship between the need for the improvements to the network and the type of development projects on which the RTMF is imposed because it will be necessary for the residential and non-residential users of such projects to have access to the network. Such development will benefit from the network improvements and the cumulative impact of such development will be mitigated in part by the payment of the RTMF.

J. The Board further finds that the cost estimates set forth in the RTMF Nexus Study are reasonable cost estimates for constructing the facilities that comprise the network; and that RTMF program revenues to be generated by new development will not exceed the total fair share of these costs.

K. The fees collected pursuant to this Resolution shall be used to help pay for the construction and acquisition of the network improvements identified in the RTMF Nexus Study. The need for the improvements is related to new development because such development results in additional traffic thus creating the demand for the improvements.

L. By notice duly given and published, the Board set the time and place for a public hearing on the RTMF Nexus Study and the fee proposed thereunder, and at least ten days prior to the hearing, the Agency made the RTMF Nexus Study available to the public.

M. At the time and place set for the hearing, the Board duly considered that data and information provided by the public relative to the cost of the services for which the fees are proposed and all other comments, whether written or oral, submitted prior to the conclusion of the hearing.

N. The Board finds that the RTMF Nexus Study proposes a fair and equitable method for distributing a portion of the unfunded costs of improvements to the network.

O. The Board hereby adopts the RTMF Nexus Study, which Study is attached hereto as Exhibit "A", and incorporates it herein as though set forth in full.

Section 3: Definitions

For the purpose of this Resolution, the following words, terms and phrases shall have the following meanings:

- A. **"Single Family Dwelling Unit (market-rate)"** means a detached building designed primarily for residential use by a single family and containing at least one (1) kitchen.
- B. **"Single Family Dwelling Unit (affordable)"** means each building meeting the definition of Single Family Dwelling that is affordable to persons with 80% of Fresno County median income or less annually. The definition for median income and affordable housing is as provided annually by the U. S. Housing & Urban Development Agency (HUD) to the Cities and the County.
- C. **"Multi-Family Dwelling Unit (market-rate)"** means each unit used by one (1) family and containing but one (1) kitchen, which is designed primarily for residential occupancy, in a building containing more than one such unit.
- D. **"Multi-Family Dwelling Unit (affordable)"** means each building meeting the definition of Multi-Family Dwelling that is affordable to persons with 80% of Fresno County median income or less annually. The definition for median income and affordable housing is as provided annually by the U. S. Housing & Urban Development Agency (HUD) to the Cities and the County.

- E. **“Education Development”** means any development project that is predominately dedicated to conducting regular academic instruction at preschool, kindergarten, elementary, secondary and collegiate levels, and including graduate schools, universities, non-profit research institutions and religious institutions. This definition applies only to public or non-profit institutions and does not include schools, academies or institutes, incorporated or otherwise which operate for a profit, nor does it include commercial or trade schools.
- F. **“Government Development”** means any development project that is predominately dedicated to the provision of administrative, clerical, law enforcement, public safety, taxation and governance services by public institutions with legislative, executive or judicial authority.
- G. **“Commercial/Office/Service Development”** means any development project that is predominately dedicated to business activities associated with professional, administrative or clerical services, and typically consist of corporate offices, financial institutions, legal and medical offices.
- H. **“Commercial/Retail Development”** means any development project that is predominately dedicated to selling goods, wares or merchandise directly to the ultimate consumer.
- I. **“Light Industrial”** means any development project employing fewer than 500 people that is predominately dedicated to processing of small articles such as printing, assembly of data processing equipment, and other similar types of enterprise.
- J. **“Heavy Industrial”** means any development project that is predominately dedicated to the manufacture, fabrication, processing reduction or destruction of any article, substance or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof, and including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprise.
- K. **“Other Non-Residential”** means any development project that is predominately non-residential and does not meet any of the definitions of Education Development, Government Development, Commercial/Office/Service Development, Commercial/ Retail Development, Light Industrial, or Heavy Industrial.
- L. **“Development”** means any work or improvement that requires a building permit or development approval but shall not include any work or improvement for offsite construction or improvements to be dedicated to public use as a condition of a development entitlement.
- M. **“New Development”** means any development on vacant land or additions or expansions on existing development wherein square footage of the development, in the case of non-residential use, or the number of dwelling units, in the case of residential use, is increased, or where the use is changed. It shall not include remodels or reuse wherein the number of dwelling units or overall square footage is not increased or the use has not changed.
- N. **“Actual Construction Costs”** mean, for the purpose of imposing a fee adjustment pursuant to Section 4, Paragraph C, any actual and estimated costs of the network improvements, including, but not limited to, debt service, lease payments and construction and acquisition costs.

Section 4: Establishment of the Regional Transportation Mitigation Fee

A. **Fee.** All new development in the Cities and the County shall be responsible for paying the RTMF unless otherwise exempted by this Resolution.

B. **Fee Calculation.** The fees shall be assessed according to the RTMF fee provided in the Regional Mitigation Fee Schedule and the methodology set forth in the Fee Calculation Handbook adopted on September 24, 2009, as amended from time to time. The following shall be observed for purposes of calculating the fee:

- i. For residential projects, the fee rate utilized shall be computed on a per-dwelling unit basis.
- ii. For non-residential projects, the fee rate utilized shall be based on a per-square-foot of the building or structure identified in the building permit as determined by the highest and best use based on the underlying zoning approved for the site.
- iii. Pursuant to California Government Code, Section 66005.1, the RTMF shall be applied at a reduced rate for those developments meeting the criteria set forth in the Section. The fee reduction shall follow whatever guidelines are established by the State of California for administration of this section of the California Government Code. Pursuant to California Government Code, Section 66005.1(e), this fee reduction shall take effect on January 1, 2011.

C. **Fee Adjustment.** By amendment to the Regional Transportation Mitigation Fee Schedule, consistent with the requirements of the Mitigation Fee Act (Government Code Sections 66000, et seq.) , the fees shall be increased or decreased to reflect changes in Actual Construction Costs every five years, and shall be adjusted annually in a manner consistent with that prescribed in Appendix D of the Final 2006 Measure "C" Extension Expenditure Plan. The adjustment of the fees may also reflect changes in the facilities required to be constructed, in estimated revenues received pursuant to this Resolution, as well as the availability or lack thereof of other funds with which to construct the network.

D. **Purpose.** The purpose of the RTMF is to augment funding for those certain improvements to the network as identified in the RTMF Nexus Study, Exhibit "A".

E. **Applicability.** The RTMF shall apply to all new development within the Cities and the County effective January 1, 2010, unless otherwise exempt hereunder.

F. **Exemptions.** Education developments and government developments shall be exempt from the RTMF. Tentative maps approved prior to January 1, 2010 shall also be exempt from the RTMF, unless they require discretionary approvals after that date, in which case the RTMF shall apply.

G. **Credit.** Network improvements may be credited toward the RTMF in accordance with the following:

- i. **Exaction Credits:** If a developer constructs improvements identified on the network as a condition of development approval to mitigate a direct impact of the development, the developer shall receive credit for all costs associated with the improvement based on the estimated cost share attributable to new development as identified in the RTMF Nexus Study. Fresno County Transportation Authority ("FCTA") staff must pre-approve any credit agreements that deviate from the standard FCTA approved format.
- ii. **Other Credits:** In special circumstances, when a developer constructs off-site improvements such as an interchange, bridge, or railroad grade separation, credits shall be determined by FCTA and the Agency, in consultation with the developer. All such credits must have prior written approval from FCTA.
- iii. The amount of the development fee credit shall not exceed the maximum amount determined by the most current estimated cost share attributable to new development as prescribed in the RTMF Nexus Study or actual costs, whichever is less.

Section 5: Reimbursements

Should the developer construct network improvements in excess of the RTMF fee obligation, the developer shall be reimbursed based on reasonable actual costs. Reimbursements shall be enacted through a three party agreement including the developer, FCTA, and the Agency, contingent on funds being available. In all cases, however, reimbursements under such special agreements must coincide with construction of the transportation improvements as scheduled in the most current Measure "C" Implementation Plan adopted by FCTA.

Section 6: Procedures for the Levy, Collection and Disposition of Fees

A. **Authority of the Board.** The Board, or the Board's designee, is hereby authorized to levy and collect the RTMF and make all determinations required by this Resolution.

B. **Payment.** Payment of the fees shall be as follows:

- i. The fees shall be paid no later than the time a certificate of occupancy is issued for the Development pursuant to Agency policy.
- ii. The amount of the fee to be paid shall be the fee amount in effect at the time that payment is made under this Resolution
- iii. If all or part of any development project is sold prior to payment of the fee, the property shall continue to be subject to the requirement for payment of the fee, accordingly, the fees shall run with the land.
- iv. Applicants shall pay a processing fee of twenty-five dollars per application that shall be used to help cover the cost to the Agency of administering the RTMF program. This fee shall be paid at the same time as the RTMF fee.

C. **Disposition of Fees.** All fees collected hereunder shall be transmitted to the Executive Director of FCTA within ninety days for deposit, investment, accounting and expenditure in accordance with the provisions of this Resolution and the Mitigation Fee Act.

D. **Appeals.** Appeals shall be filed with FCTA in accordance with the administrative procedures established by FCTA. Appealable issues shall be the application of the fee, application of credits, application of reimbursement, and application of exemption. Appeals may also be made that the fee level for development of unique types of land uses be evaluated on an individual basis. Such unique projects and specific evaluation shall be paid for by the project applicant and performed by Fresno COG or its designee.

E. **Reports to FCTA.** The Board, or the Board's designee, shall prepare and deliver to the Executive Director of FCTA, periodic reports as will be established under the RTMF administrative handbook.

Section 7: Severability

If any one or more of the terms, provisions or sections of this Resolution shall to any extent be judged invalid, unenforceable and/or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions and sections of this Resolution shall not be affected thereby and shall be valid and enforceable.

Section 8: Term

Unless otherwise amended, the term of this Resolution shall coincide with the term of the Measure "C" Extension.

Section 9: Judicial Review

In accordance with State law, any judicial action or proceeding to attack, review, set aside, void or annul this Resolution shall be commenced within 90 days of the date of adoption of this Resolution.

Section 10: Effective Date

This Resolution shall become effective January 1, 2010.

By: _____

Chairman, Board of Directors

ATTEST:

Secretary to the Board

By: _____

Regional Transportation Mitigation Fee Schedule

Land Use Category	2010	2011	2012 and thereafter
Residential Developments (\$/dwelling unit)			
Single-Family Dwelling (market-rate)	\$1,200	\$1,450	\$1,727
Single-Family Dwelling (affordable)	\$600	\$725	\$864
Multi-Family Dwelling (market-rate)	\$843	\$1,018	\$1,212
Multi-Family Dwelling (affordable)	\$421	\$509	\$606
Non-Residential Developments (\$/sq.ft.)			
Education	exempt	exempt	exempt
Government	exempt	exempt	exempt
Commercial/Retail	\$1.36	\$1.65	\$1.96
Commercial/Office/Service	\$0.85	\$1.03	\$1.23
Light Industrial	\$0.34	\$0.41	\$0.49
Heavy Industrial	\$0.07	\$0.09	\$0.10
Other Non-Residential	\$0.29	\$0.35	\$0.42

