

# **City of Modesto**

## **Capital Facilities Fees Policies and Procedures**

**Adopted on February 5, 2008 – City Council Resolution No. 2008-070**

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## **I. INTRODUCTION**

The following policies and procedures (“Policies and Procedures”) are for the administration of Capital Facilities Fees, (“CFF”), which are established to mitigate the impacts of new development as outlined in §66000 of the California Government Code. These fees may be used for the purchase, construction, expansion, rehabilitation, or acquisition of public facilities, and must be consistent with the adopted fee program, which is updated every five years. These policies and procedures have been developed to govern the administration of the CFF Program.

## **II. DEFINITIONS**

The intent and meaning of the terms that are used shall be as defined in these CFF Policies and Procedures except as specifically noted, revised, or added.

- A. BUILDING INSPECTION – shall mean the Building Safety Division of the Community and Economic Development Department for the City of Modesto.
- B. CFF ADMINISTRATOR – person or persons, appointed by the City Manager or his designee responsible for the management of the Capital Facilities Fee Program.
- C. CFF REVIEW COMMITTEE – shall mean a committee comprised of city staff from the following departments or divisions of the City of Modesto: CFF Administrator, Community and Economic Development, City Attorney’s Office, Planning Division, Building Safety Division, Finance, Parks, Recreation and Neighborhoods, and Public Works as appointed by the City Manager.
- D. CHIEF BUILDING OFFICIAL – The Chief Building Official of the City of Modesto.
- E. CITY – shall mean the City of Modesto.
- F. CITY ATTORNEY – The City Attorney of the City of Modesto or his or her designee.
- G. CITY ENGINEER – The City Engineer of the City of Modesto or his or her designee.
- H. CITY MANAGER – The City Manager of the City of Modesto or his or her designee.
- I. COMMERCIAL – as used in this section, shall mean any of the following retail uses:
  - 1. Convenience markets, often with on-site gasoline pumps, usually 24-hours or extended hours.

2. Fast-food restaurants with or without sit-down facilities and with or without drive-up windows; generally food is ordered and taken to be consumed outside the restaurant building, although some on-site seating is usually provided.
  3. Sit-down restaurants where food is ordered and consumed in the restaurant and customers generally stay less than one hour; frequently belonging to chains and typically serve breakfast, lunch and dinner. This category also includes all drinking establishments such as bars and cocktail lounges, except those in conjunction with low turnover restaurant. The later are charged the low turnover rate.
  4. Sit down restaurants, which generally have turnover rates of one hour or longer, typically do not serve breakfast, and may or may not serve lunch.
  5. Banks – full service banking institutions with or without drive-up windows.
  6. Savings and Loan institutions, including thrift and credit unions, with or without drive-up windows, which typically offer fewer financial services than banks and are typically smaller in gross floor area than banks. If a given Savings and Loan is 5,000 gross feet or more, or provides full banking services, it should be treated as a bank.
  7. Other retail includes a wide range of retail service uses, both free-standing and in shopping centers, including but not limited to supermarkets, drug stores, department stores, general merchandise, building materials or lumber stores, specialty retail stores, discount stores, hardware/paint stores, video arcades, and new and used car sales as well as auto repair shops. Other retail may include uses in small retail category if located in a shopping center.
- J. DEVELOPMENT PROJECT – shall mean any project undertaken for the purpose of development. Development projects include projects involving the issuance of a permit for construction or reconstruction, but not a permit to operate.
- K. FACILITIES or PUBLIC FACILITIES – shall mean any of the following:
1. Public buildings, including park, recreation, police, fire, and administrative buildings.
  2. Facilities for the storage, treatment, and distribution of nonagricultural water.
  3. Facilities for the collection, treatment, reclamation, and disposal of sewage.
  4. Facilities for the collection and disposal of storm waters and for flood control purposes.

5. Facilities for the generation of electricity and the distribution of gas and electricity, facilities for the distribution of information, including radio and communication like towers and satellite dishes.
  6. Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, parkways and related facilities.
  7. Parks and recreation facilities, including bike trails, public landscape areas and community centers.
  8. Public vehicles for public safety.
- L. FEE – shall mean a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad-hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in §66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with §65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for their development of property in furtherance or for the benefit of a development project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with §33000) of Division 24 of the Health and Safety Code).
- M. IMPROVEMENTS – See FACILITIES.
- N. LAND DEVELOPMENT ENGINEERING – shall mean the Land Development Engineering Division of the Community and Economic Development Department, City of Modesto.
- O. INDUSTRIAL LAND USE – as used in this section, shall mean any of the following:
1. Manufacturing/Light Industrial/Industrial Park
    - Electronics assembly, paper products
    - Metal fabricator
    - Bottling plant
    - Cabinet shop
    - Machine shop
    - Sheet-metal shop
    - Welding shop
    - Wholesale shop
    - Printing plant

- Mini-warehouse
- Material testing labors manufacturer
- Food processor, brewery, bakery
- Recycling facility
- Burning operations for lumber and wood products
- Junk handling, processing storage
- Landfill, waste products disposal or transfer station
- Manufacture, fabrication, processing, packaging and treatment of explosives, oil and great products, chemicals and chemical products.
- Rock crushing
- Pulp and paper mill
- Reduction, processing and storage of offal, dead animals, bones or similar materials
- Septic tank, cesspool services
- Stockyard
- Tannery
- Vehicle salvaging, wrecking

2. Mixed Industrial Uses – when a development proposal contains more than an incidental mixture of uses, the general type of uses should be segregated and treated separately for the purpose of calculating development fees.

P. VERY LOW and LOW INCOME HOUSING – shall mean housing at rents affordable to households earning sixty percent (60%) or eighty percent (80%), respectively, or less of the Area Median Income as determined from time to time by the United States Department of Housing and Urban Development.

For a single-family affordable housing unit constructed by any person or entity, as used in this subparagraph, the term “single-family affordable housing unit” shall mean a single-family home purchased by a homebuyer earning sixty percent (60%) or less of the Area Median Income as determined from time to time by the United States Department of Housing and Urban Development to be used by the homebuyer as its principle place of residence.

Q. OFFICE LAND USE – as used in this section, shall mean any of the following:

1. Medical Office – shall mean offices and clinics devoted to the practice of medical and dental professions or providing medical or dental services, including pseudo-medical services, but excluding hospitals and nursing homes, which are treated separately.
2. General Office – shall mean all other types of general and professional offices.

R. OTHER COMMERCIAL LAND USE – as used in this section, shall mean any of the following:

1. Church – Structures primarily designed or used as a place of public worship.
2. Daycare and School – An educational, vocational or daycare facility.
3. Hospital – A structure designed for health services, both inpatient and outpatient; that includes surgical care of the sick or injures of the physically ill and/or therapeutic treatment for the mentally ill. Included as an integral part of a hospital or laboratories, outpatient departments, training facilities, central services facilities, and hospital staff offices on the same site. The preceding ancillary uses are considered “professional offices” if located “off-site” unless a multi-site campus is covered by a P-D Zone or hospital uses. A separate set of offices on the same site for physicians is considered “professional offices.”
4. Mini-Warehouse – A personal storage facility not associated with industrial uses.
5. Nursing Home – Structures designed for use as a convalescent hospital, or a retirement home, or a twenty-four hour care center for seven or more persons in addition to members of the family.

S. PUBLIC FACILITIES – see FACILITIES.

T. RESIDENTIAL LAND USE – as used in this section, shall mean any of the following:

1. Single-Family – shall mean single family detached homes on individual lots, such as in residential subdivision, but could also be in planned developments. Density of development may vary, but is typically ten (10) dwellings per acre or less.
2. Multiple-Family – shall mean multiple family dwelling units of several types, including high and low rise apartments, high and low rise condominiums, and multi-family residential planned unit developments greater than a density of ten (10) units per acre. The category also applies to mobile homes and hotel/motel uses.
3. Medium Density – shall mean duplex or triplex buildings located on a single lot designed for occupancy by two or three families.
4. Senior Housing – shall mean retirement communities restricted to adults or senior citizens, congregate care facilities, and similar residential uses.

U. WAREHOUSE DISTRIBUTION/HEAVY LAND USE – shall mean facilities in which the primary activity is the storage of materials or in which the primary activity

is receiving and shipping materials. Uses which are considered to be in this category include uses such as those listed below:

- Freight
- Warehousing
- Corporation yard, freight yard
- Equipment rental yard
- Moving and storage service
- Bulk feed storage
- Lumberyard

### **III. ADMINISTRATION**

Overall administration and oversight of the CFF Program shall reside with the person or persons designated as CFF Administrator(s), as determined by the City Manager. The CFF Administrator(s) shall have the responsibility of ensuring that all issues relating to CFF are managed in accordance with applicable rules and regulations.

#### **A. CFF REVIEW COMMITTEE**

The CFF Review Committee, appointed by the City Manager, is hereby established to review policy matters related to the CFF Program in the event of appeals regarding fees, the administration of the CFF Program, and other issues that may arise as a result of the implementation of the CFF Program.

#### **B. ANNUAL REPORT**

As required by §66006 of the Government Code, each year an annual report will be prepared and made available to the public within 180 days after the last day of each fiscal year. The report shall contain the following information:

1. A description of the type of fee in the account or fund.
2. The amount of the fee.
3. The beginning and ending balance of the account or fund.
4. The amount of the fees collected and the interest earned.
5. An identification of each public facility on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.
6. An identification of an approximate date by which the construction of the public facility will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public facility, as

identified in paragraph (2) of subdivision (a) of §66001, and the public facility remains incomplete.

7. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.
8. The amount of refunds made pursuant to subdivision (e) of §66001 of the Government Code and any allocations pursuant to subdivision (f) of §66001.

### C. INFLATIONARY ADJUSTMENTS

#### 1. Timing of Adjustments

In an effort to ensure that the fees collected are adequate for inflation, an annual inflation adjustment shall be applied each year to the CFF. The CFF rates for all land use categories shall be administratively adjusted annually to account for inflation.

All fees shall be automatically adjusted annually for inflation by the City's Director of Community & Economic Development or his designee. The annual inflation adjustment shall be the annual change in the San Francisco Bay Area Engineering News Record ("ENR") Construction Cost Index through the month of December of the year preceding each inflation adjustment. The inflation adjustment shall be made and become effective on or about July 1<sup>st</sup> of each year. The Director of Community and Economic Development or designee is hereby authorized and directed to administratively to make the inflation adjustments annually.

#### 2. Notification of Inflationary Adjustment

The City will provide at least one meeting with stakeholders and other interested parties at least 60 days in advance of the effective date of the inflationary adjustment.

While an administrative function, the automatic inflationary adjustment shall be submitted to the Council for their information. The item should be scheduled to allow for sufficient time for the increase to become effective at the beginning of the fiscal year or the programmed effective date of the fee increase if a particular fee has a start date that is different than the commencement of the fiscal year.

### D. CALCULATION AND COLLECTION OF FEES

#### 1. Authority

The establishment of capital fees is outlined in Section 8-1.904 in the Modesto Municipal Code.

2. Calculation of Fees

As codified in the Modesto Municipal Code, fees are collected at the time of building permit issuance and the Chief Building Official has the final say as to the type of use for fee assessment purposes. Below are guidelines in assessing the fee based on circumstances where the fee category has not been explicitly detailed in the CFF Program, but where there is an analysis of how the fee is applied, exemptions of CFF, and deferrals of CFF.

3. Undefined Uses

a. Recreation Buildings

- i. For residential projects, the CFF on a dwelling unit or room basis are deemed adequate for ancillary recreation buildings that are oriented primarily to the residential development such as:
  - o Mobile home park clubhouse
  - o Cabana, weight room, lounge, activity building for a single-family subdivision, apartment or condo complex.
- ii. For non-residential projects, CFF shall be based on the closest comparables. For example:

<b>Facility</b>	<b>Capital Facilities Fee to Apply</b>
Church multipurpose room or gym	Church rate
Gym for private school that also has a church	Daycare rate
Racquetball courts (freestanding or part of a recreation facility like the YMCA or SOS Club)	Commercial rate
Locker rooms, showers, etc., with health club	Commercial rate or equivalent

b. Multi-use Buildings

For single tenant buildings, when the square footage of a use is greater than 15% of the total square footage of the building, a separate use category is triggered. Multi-use buildings are buildings which have a single tenant, but use the building for multiple purposes. For example, a company may use part of the building for warehousing materials it produces in an adjacent manufacturing area.

c. Temporary Trailers

- i. A maximum term of two (2) years is used to define “temporary” use of trailers.
- ii. Construction trailers are administratively exempt from CFF.
- iii. All other temporary trailers are not exempt and pay full CFF. However, if an applicant who paid CFF on a temporary trailer removes that temporary trailer from a given site within five (5) years of payment of CFF, that applicant can apply in writing and be reimbursed for the entire

CFF paid including average interest generated by City accounts less 2.5% CFF administrative fees.

iv. The deadline for receipt of written application for rebate by the City Building Safety Division is six (6) years from the payment of CFF.

d. Roof Structures – Erecting, Enclosing or Replacing w/Buildings

i. When an open area exists and a roof structure is to be added, 50% of the total CFF shall be charged. When one (1) or more sides are added, 100% of CFF shall be applied.

- The roof provides shelter and is an enhancement of a business activity. Police surveillance and fire suppression can be provided more easily in an open structure without walls.
- Once one (1) or more walls are added, it is basically a completed building and warrants full CFF.

ii. Canopy Construction

- 50% CFF if the canopy is enclosed on one (1) or two (2) sides with walls
- 100% if canopy is enclosed on three (3) or four (4) sides with walls.

4. Change of Use

For Tenant Improvements (TI), any alteration or change of use of an existing building shall not trigger the payment of capital facilities fees, provided no new square footage is added. Tenant Improvements are defined here as improvements within an existing structure.

For Tenant Improvements (TI) in Shell Buildings, the first tenant in a lease space will be charged the incremental difference in CFF if the proposed TI use is a greater impact on CFF than the Shell Building CFF use.

#### E. EXEMPTIONS

Capital Facilities Fees established by these policies *shall not* be imposed on any of the following:

1. Commercial and Non-Residential Applications for Exemptions

a. Canopied and Enclosed Truck Loading Bays

It should be noted, that staging areas for the storage and or protection of products are non-exempt.

b. Parking Garages

c. Restaurant Outdoor Dining Patios - Weather conditions limit outside dining areas to seasonal use; therefore, the patio dining area *shall not* be considered in determining square footage and parking requirements, provided they are not enclosed.

- d. The rebuilding of any non-residential structure that has been destroyed or demolished if both of the following conditions are met:
    - i. The square footage of the rebuilt structure is equal to or less than the square footage of the destroyed or demolished structure, **and**
    - ii. The building use of the rebuilt structure is the same as the destroyed or demolished structure.
      - If Condition **ii** is met, and the square footage increases, then CFF shall be paid on only the incremental square footage increase.
2. Residential Applications for Exemptions
- a. Any Low or Very Low Income housing units constructed or expanded by the Housing Authority of the County of Stanislaus or any entity in which the Housing Authority is a major partner.
  - b. Any Low or Very Low Income or special needs housing, constructed or expanded by any other person or entity.
    - i. Time period of the Exemption
 

The term of the exemption would be the term of the period deemed low income. The homebuyer would be granted a full CFF exemption provided there is not a resale or refinance for ten (10) years. If a resale or refinance should occur within the ten (10) year period, the full CFF exemption would be due, with no interest thereon.
    - ii. Authorization
 

The exemption authorized by this subparagraph may be granted by the City Council on a case-by-case basis after the completion of an exemption agreement and a noticed public hearing. The public hearing shall focus on whether or not the unit to be constructed would be a single-family affordable housing unit. If approved by the City Council, the benefit of the CFF exemption would be transferred to the homebuyer at the time of purchase.
    - iii. Agreement
 

The homebuyer would be required to sign a CFF Exemption Agreement, Promissory Note, and City Trust Deed to secure the note, as prepared by the City Attorney. The term for the CFF exemption would be the term of the period deemed low income.
    - iv. Maximum Number of CFF Exemptions for Residential Projects – 2% Cap
 

The total number of residential CFF exemptions shall not exceed two percent (2%) of the total CFF Program housing units.

      - (a) Staff Reports to Council shall:
        - (1) indicate the cumulative inventory of exempt units and the percent of anticipated total exempt units at build out.
        - (2) provide a comparison of cumulative CFF exempt units to total units built since 1989. During recessions and other times of low production of market-rate housing, it is acknowledged that the cumulative, exempt units may exceed two percent (2%) or the total units built.

- (b) For each use listed in “a” and “b” above for which the fee is calculated on the basis of the total number of square feet of building space, the area of public or private garages shall not be included in the area of building space for the purpose of calculating the CFF for that use. As used herein, the term “public parking garage” and the term “private parking garage” shall mean the same as those terms are defined in the California Building Code.
- (c) Any alteration or addition to a residential structure, except to the extent that additional dwelling units are created.
- (d) For newly created developments, such as new subdivisions, when a structure is demolished and new structures are built, an exemption is appropriate for the structure that was destroyed provided:
  - i. Residential Exemption: Any replacement or reconstruction of a residential structure that has been destroyed or demolished, except to the extent that additional units are created. Replacement or reconstruction is limited to residential use only.
  - ii. Multi-family Residential Exemption: The payment of CFF will be exempt for the rebuilding of any multi-family residential structure that has been destroyed or demolished if both of the following conditions are met:
    - (a) The square footage of the rebuilt structure is equal to or less than the square footage of the destroyed or demolished structure, and
    - (b) The number of residential units in the rebuilt structure is equal to or less than the residential units that were contained in the destroyed or demolished structure.
- (e) Any replacement of an existing residential or non-residential structure that has been or will be vacated due to the fact that the title to the property has been acquired by a public entity through eminent domain proceedings or the threat of such proceedings provided that the building permit for the replacement structure or structures is applied for within two (2) years after the transfer of title or within two (2) years after the property has been vacated, whichever occurs last. The exemption granted by this subparagraph shall not apply to the replacement of a non-residential structure to the extent it adds additional square feet, the use is devoted to a higher density category, or results in the generation of additional peak hour trip ends or to the replacement of a residential structure to the extent additional units are created.
- (f) Such other exemptions as the City Council may establish by Resolution from time to time.

## F. DEFERRALS

Rather than paying CFF at the time a building permit is issued, the developer of a “qualified project” may elect to defer payment of all or a portion of those fees as

hereinafter set forth. The purpose of this procedure is to specify the steps involved in this process, and the responsibilities of various City departments.

1. Non- Residential Qualifications

- a. Category "A": The property owner and/or developer in the case of "Category 'A' qualified projects" may enter into CFF Deferred Payment Agreement with the City to pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option)
  - i. Qualified projects shall include any *non-residential* project (except industrial/warehouse projects) on one (1) parcel of land or a group of contiguous parcels under the same ownership for which CFF exceed \$150,000.00 *or*
  - ii. Category "A" for Industrial Warehouse on one (1) parcel of land or a group of contiguous parcels under the same ownership for which CFF exceeds \$50,000.00.
  
- b. Category "B": The property owner and/or developer in the case of "Category B qualified projects" may enter into a CFF Deferred Payment Agreement with the City to pay twenty percent (20%) of those fees at the time the building permit is issued with the remaining eighty percent (80%) to be paid in equal installments over the next five (5) years (or less at the property owner's option).
  - i. Qualified projects shall include any *non-residential* project (except industrial/warehouse projects) on one (1) parcel of land or a group of contiguous parcels under the same ownership for which CFF is more than \$25,000.00 but less than \$150,000.00.
  - ii. Category "B" qualified projects shall also include industrial warehouse projects on one (1) parcel of land or a group of contiguous parcels under the same ownership for which CFF is more than \$25,000.00 but less than \$50,000.00.
  
- c. Other Projects: Projects which may be designated by the City Council as "qualified projects," are privately constructed projects on the City/Council Airport where the CFF exceeds \$5,000.00.
  
- d. Process for Non- Residential Deferrals
  - i. Completion of a CFF Deferral Application
  - ii. All projects must have City Council approval
  - iii. In all cases of Category A, B, and Other Projects, the unpaid balance of the fees will be subject to interest and collection charges. The annual interest rate shall be equal to the Wall Street Journal Prime Rate adjusted thereafter semi-annually every July and January.

- iv. Adequate security acceptable to the City in the form of an irrevocable letter of credit in an amount sufficient to secure both principal and interest shall be provided for the duration of the deferral.
  - v. The terms and conditions of the deferral shall be set forth in an agreement which shall also provide that the unpaid balance of the fee shall be due and payable on the sale or the transfer to the property.
  - vi. As an alternative to providing the irrevocable letter of credit, the agreement may, at the option of the property owner/developer, authorize the City to lien the property and collect the balance of the CFF due through property tax assessment.
- e. For those projects where a mitigated negative declaration or an Environmental Impact Report (EIR) has been certified, no CFF deferral shall be allowed to the extent that one (1) or more of the mitigation measures consists of payment of CFF or construction or installation of a public improvement, the cost of which, subject to funding availability, may be eligible for reimbursement of CFF.
2. Residential Qualifications
- a. Qualifications: Any single-family affordable housing unit constructed by any person or entity. As used in this subparagraph and the preceding subparagraph, the term “single-family affordable housing unit” shall mean a single-family home purchased by a homebuyer earning between sixty-one percent (61%) and eighty percent (80%) Area Median Income as determined from time to time by the United States Department of Housing and Urban Development to be used by the homebuyer as its principal place of residence.
  - b. Time for Deferral: The homebuyer may be granted a CFF deferral for up to five (5) years, with payments of principal and interest to begin in year six (6). Interest will not accrue during the deferral period, and the CFF would be paid over a ten (10) year period with five percent (5%) interest rate on the unpaid balance. If a resale or refinance should occur within the ten (10) year period, the remaining unpaid balance of the CFF, including interest, shall immediately become due and payable on the sale, transfer or refinancing of the Property.
  - c. Authorization: The deferral authorized by this subparagraph may be granted by the City Council on a case-by-case basis after a public hearing. The public hearing shall focus on whether or not the unit to be constructed would be constructed as an affordable housing unit. If approved by the City Council, the benefit of the CFF deferral shall be transferred to the qualified homebuyer at the time of purchase.
  - d. Agreement Process
    - i. The homebuyer is required to sign a CFF Deferral Agreement, Promissory Note, and City Trust Deed to secure the note, as prepared by the City Attorney.

- ii. The CFF Administrator will complete and record the CFF Deferral Agreement and will either obtain the letter of credit or file a Notice of Tax Lien for the total amount due. The original agreement and letter of credit or lien will be kept on file in the City Clerk's office, with copies to Accounts Receivable.
- iii. The developer will take copies of the completed documents to Building Safety Division. No permits will be issued until all required documents are received and approved by the CFF Administrator and City Attorney's Office and the down payment has been collected.
- iv. Once payment has been received, Building Safety Division will enter either ten percent (10%) or twenty percent (20%) of the total CFF on the permit, since this is the actual cash down payment due. The ten percent (10%) or twenty percent (20%) must be split to each CFF in the appropriate ration.
- v. A copy of the paid permit will be sent to Accounts Receivable
  - (a) Letter of Credit on File – Accounts Receivable will send a reminder bill eleven (11) months after the permit is issued. The due date of the first installment will be one (1) year from the original permit date.
  - (b) If the Notice of Tax Lien is filed – The first installment will be added to the tax roll in August of the fiscal year after the permit is issued. Interest will be calculated from the original permit date through November 1<sup>st</sup> of the first installment year.
    - Example 1: Permit is issued on May 30, 2005. Finance will prorate interest from May 30 through November 1, 2005, and will cause the first principal and interest installment to be added to the tax roll in August 2005. The tax bill received in November 2005 will include the first installment.*
    - Example 2: Permit is issued in August 1, 2005. Finance will prorate interest from August 1, 2005 through November 1, 2006, and will cause the first principal and interest installment to be added to the tax roll in August 2006. The tax bill received will include the first installment.*
  - (c) In the event that the developer does not pay annual installments, Accounts Receivable shall contact the CFF Administrator, and 1) if a Letter of Credit is on file, the necessary amount will be drawn, and 2) if the property is liened, the City will receive its share upon the sale or transfer of the property.

#### **IV. IMPLEMENTATION OF CFF-RELATED IMPROVEMENTS**

##### **A. RESIDENTIAL STREETS**

Those residential and collector streets required by new development shall be dedicated and improved to City Standard Specifications, as those may be amended from time to time, by the abutting developer.

##### **B. EXPRESSWAYS**

With respect to expressways, expressway improvements or rights of way shall be dedicated as required by conditions of approval but developer shall be reimbursed the cost of said improvements and rights of way with CFF funds, subject to limitations of available CFF funding. All reimbursements shall be detailed in advance of construction or dedication in a reimbursement agreement in accordance with the municipal code.

###### **1. Exceptions:**

###### **a. Interim Improvements**

Where interim improvements are required to facilitate current development pending future expressway improvement, such interim improvements shall be provided by the abutting developer.

###### **b. Extra Facilities**

Where extra facilities are required specifically for the particular development at hand (e.g. deceleration/acceleration lanes, slip ramps), such extra facilities shall be provided by and at the expense of the developer without reimbursement.

##### **C. ARTERIAL/MAJOR COLLECTOR STREETS**

When a developer is required to dedicate and improve more than forty (40) feet of arterial street or major collector street as measured from the new property line on each side of the street towards the centerline, the cost of right of way and improvements in excess of forty (40) feet shall be reimbursed to the developer with CFF funds, provided funding for said improvements are included in the CFF Program and subject to availability of CFF funds. All reimbursements shall be detailed in advance of construction or dedication in a reimbursement agreement in accordance with the municipal code.

With respect to existing streets, where at least 40 feet of dedication and improvements have previously been made (measured from the existing property line up to the street centerline), any additional dedication and improvements shall be subject to appropriate reimbursement to the developer. On existing streets, if the street has not previously been improved to applicable City Standard Specifications, only dedication

or improvements in excess of 40 feet (measured from the new property line towards the street centerline) will be subject to appropriate reimbursement.

Exception: Where extra facilities are required specifically for the particular development at hand (e.g. deceleration/acceleration lanes, slip ramps), such extra facilities shall be provided by and at the expense of the developer without reimbursement.

#### D. PRIORITY POLICIES

Within each category of fees collected for capital projects, there are competing demands for the use of those funds by multiple projects listed in the program. As a result, below are guiding policies used to establish priorities for the construction of the projects identified in the City's Capital Improvement Program. The following principles will be applied for transportation related construction priorities:

1. Priority Principles
  - a. Address Critical Safety Issues
  - b. Legal Obligations
    - i. Projects must be included in the program to use CFF funding.
    - ii. Honor all commitments in existing executed agreements.
  - c. Maximize Traffic Benefits For Dollars Spent
    - i. Phase projects to maximize traffic benefits per unit cost.
    - ii. Utilize lower cost traffic improvements such as restriping and signal modifications where possible.
    - iii. Project amenities will follow later.
  - d. Economic Development: Projects to complement high priority economic development.
  - e. Segment Completion: Projects that complete segments of previously phased work.
2. Priority Transportation Corridors

The following corridors are of high priority for programming projects:

- a. East-West Priority Corridors:
  - (i). Pelandale Avenue
  - (ii) Briggsmore Avenue
- b. North-South Priority Corridors:
  - (i). Carpenter Road
  - (ii) Claus Road

## E. REIMBURSEMENTS

Prior to the commencement of any work that is to be reimbursed, an agreement between the developer and the City must be approved per §8-3.102 of the Modesto Municipal Code.

### 1. Reimbursement Process

It is the obligation of the developer, landowner, and or the developer's engineer to submit a request to the CFF Administrator for reimbursement. Requests will not be granted if the dedication has already been made, or the improvements have been started.

#### a. Request for Reimbursement

Requests for reimbursement shall include:

- (i) Engineer's estimate on reimbursement amount
- (ii) All exhibits relating to the improvements or right of way including the plat and, where applicable, closure calculations
- (iii) Developer may also be reimbursed for design costs incurred prior to the execution of a Reimbursement Agreement for completed and accepted, City-funded facilities as determined and approved by the CFF Administrator and the City's Engineer

#### b. Agreement

Prior to the issuance of a construction permit, and prior to recording of a final map for dedication, the developer will be required to enter into all necessary agreements in a form provided by the City and consistent with these Policies and Procedures. These agreements may include, but not be limited to:

- Reimbursement Agreement
- Land Dedication Agreement (where required)
- Development Agreement
- Other Agreements (as required)

Prior to execution of any such agreements, the agreements shall be reviewed and approved by the CFF Administrator and the City Attorney. Other consultants may also review them, as the City believes are appropriate.

#### c. Timing of Agreement

The planning contained in the City's annually adopted Capital Improvement Program shall guide the amount and the schedule of reimbursements to be paid from CFF funds to reimburse developers for advances in cash which are determined by the City to benefit CFF eligible improvements. All such reimbursements shall be made pursuant to a written reimbursement agreement ("RA"), which must be executed, by both the City and the developer *prior to the start* of any potentially reimbursable work by the developer.

A RA will be required where development occurs fronting a planned CFF project, or which requires CFF work off-site, and all such work shall be done by developer advances, subject to reimbursement pursuant to the RA. RAs in an amount less than that stated in Modesto Municipal Code §8-3.102 as it currently reads, or as it may be amended in the future, may be approved by the City Manager alone. *The rate of reimbursement specified in a RA shall be the amount of the actual cost of the developer advanced project, subject to documentation and approval by City staff and not to exceed the City Engineer's estimate of the cost of the project as stated in the RA.*

With respect to timing of reimbursement, the CFF Administrator shall determine the fiscal year or years in which funds will become available in the appropriate CFF fund for reimbursement, and such years or dates shall be specified in the RA. Reimbursement shall actually be paid from the relevant CFF fund, pursuant to the provisions of any RA, and pursuant to the timing and rate provisions contained in the RA.

d. Payment of Agreements

Payment of a Reimbursement Agreement shall correspond to the CFF Update that the developer paid CFF, regardless of length of time. The corresponding inflation adjustment shall also apply to the payment of the agreement.

The CFF Administrator will be the initial contact for developers wishing to commence or process a RA in order to provide advances to CFF eligible projects.

## **VII BIDDING PROCESS, PREVAILING WAGES, and LICENSES**

No permits shall be issued and no work shall commence until the developer and the CFF Administrator have executed a Reimbursement Agreement for the improvements to be constructed.

### **A. REIMBURSEMENT FOR WORK LESS THAN \$300,000**

In retaining construction contractors for work which is reimbursable by the City of Modesto and where a Reimbursement Agreement (or other similar agreement) with the City is less than \$300,000.00, the developer shall abide by the following bid process:

1. Three Competitive Bids

The developer shall provide three (3) competitive bids. If the developer desires to award to a contractor other than the low bidder, a written request must be submitted to the City. The City may allow this if the developer can provide adequate justification.

2. Licensing

The developer shall make sure that all contractors and subcontractors are licensed in accordance with §7000 through §7145 inclusive, of the California Business and Professions Code and maintain adequate insurance for any work or services performed. Developer, its contractors and subcontractors shall have and maintain a City business license during the term of any agreement.

3. Payment of Prevailing Wages

In accordance with California Labor Code §1770, developer shall require the payment of prevailing wages based on the rates determined by the California Director of Industrial Relations. Unless otherwise directed by the City, developer's construction schedule shall provide adequate time for completion of the work such that no holiday or overtime labor shall be required. The City shall not reimburse developer for any labor costs which exceed the normal and customary straight time rates as described in the City of Modesto General Provisions, §4.19, for the work performed unless the City authorizes the use of overtime or legal holiday time, in advance and in writing.

The developer shall maintain certified payroll records for all labor costs incurred on all City reimbursable work for a minimum period of four (4) years from the issuance of the Notice of Completion. Said payroll records shall be made available to the City or any state regulatory agency for review, audit, inspection or copying upon request.

4. Indemnification

Developer shall indemnify and hold the City harmless for ensuring that the project is bid and constructed in accordance with City standards, and in compliance with all applicable local, state and federal laws. Developer shall also indemnify and hold the City harmless for any damages, claims or actions arising out of said construction activities in a form approved by the City Attorney and the Risk Manager.

5. Overtime & Change Orders

The City shall retain the right to be in attendance to inspect all bids and change orders. Any extra work or charges during construction for which reimbursement is sought shall be justified and documented. Except in the case of an emergency, any such charges shall be approved by the City in advance and in writing. In the case of an emergency, any such charges may be authorized by the City if the developer provides adequate justification that an emergency existed and that the extra work or charges incurred were reasonable. Said justification shall be provided within a reasonable time after the emergency ends and prior to reimbursement for any such charges.

## **8.0 COMPLETION AND ACCEPTANCE OF WORK**

The completion and acceptance of work for reimbursement will follow Chapter 4, Title 4 of the Modesto Municipal Code.