

TO: James App, City Manager

FROM: Ron Whisenand, Community Development Director

SUBJECT: Fee Deferral Agreement for Hidden Creek Village

DATE: April 20, 2010

NEEDS: For the City Council to consider a Fee Deferral Agreement with the Redevelopment Agency to provide that payment of up to \$1 million in City development fees for this project may be deferred incrementally for a period of 10 years in a manner that the future value of \$100,000 in Agency Low and Moderate-Income Housing ("LMIH") funds are transferred annually from the LMIH Fund to the appropriate City funds to pay the fees due for this project.

FACTS:

1. At its meeting of April 20, 2010, the Redevelopment Agency will consider a Participation Agreement to provide \$1 million in LMIH Funds to assist Hidden Creek Village, an approved 81 unit affordable housing complex at 80 S. River Road.
2. The \$1 million in LMIH funds is to be used to offset the City building and development fees for this project, which exceed \$2 million.
3. Exhibit F of the Participation Agreement is a Fee Deferral Agreement, which provides that the fees may be deferred over 10 years.
4. Attached is a status report on the estimated revenues to and commitments of the LMIH Fund.

ANALYSIS AND

CONCLUSION: The purpose of the fee deferral is to allow the housing project to proceed before the requested \$1 million in LMIH assistance is available. Although the attached LMIH status report shows an expected balance of \$1.67 million in the current fiscal year, up to \$1.2 million may be borrowed to pay the Supplemental Education Revenue Augmentation Funds (SERAF), as required by AB 26 4X this year. The constitutionality of that legislation is being challenged.

The Fee Deferral Agreement in Exhibit F of the Participation Agreement proposes that the \$1 million be paid in annual increments of \$100,000 over 10 years. However, it is expected that City development impact fees will continue to be adjusted upwards in the next 10 years to compensate for inflation. In order to allow the City is to recover the true costs to build the public improvements covered by the fees, the fee deferral agreement has been structured to provide for graduated payments of LMIH funds that are based on the original principal amount of \$1 million, but adjusted for the future value of \$100,000 in the year of payment.

The attached LMIH status report includes an assumed 3 percent annual compounded interest rate. At a compounded rate of 3 percent, the overall amount of LMIH Assistance, based on the future value of \$1 million in the first year would come to \$1.15 million. In addition, the Fee Deferral Agreement allows the Agency to pay the City fees at a faster rate if it is able to do so.

REFERENCE: California Redevelopment Law; 2010 - 2014 Redevelopment Implementation Plan; Housing Element; Economic Strategy

FISCAL

IMPACT: The proposed LMIH Assistance would have no effect on the General fund.

OPTIONS: That the City Council take one of the following options:

- a. Adopt Resolution No. 10-XX approving a Fee Deferral Agreement with the Redevelopment Agency providing that payment of up to \$1 million in City development fees for Hidden Creek Village may be deferred for up to ten (10) years in a manner that the future value of \$100,000 in LMIH funds, calculated at a rate of 3% compounded annually, are transferred annually from the LMIH Fund to the appropriate City funds to pay the development impact fees owed for this project.
- b. Amend, modify, or reject the above option.

Prepared By: Ed Gallagher, City Planner

ATTACHMENTS:

1. Resolution RA 10-XXX Approving a Fee Deferral Agreement Between the City of Paso Robles and the Redevelopment Agency
2. Fee Deferral Agreement (Exhibit F of Participation Agreement)
3. LMIH Status Report

RESOLUTION NO. 10-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING A FEE DEFERRAL AGREEMENT WITH THE PASO ROBLES REDEVELOPMENT
AGENCY TO ASSIST THE DEVELOPMENT OF THE AFFORDABLE HOUSING PROJECT AT 80
S. RIVER ROAD (HIDDEN CREEK VILLAGE)

WHEREAS, at its meeting of April 20, 2010, the Redevelopment Agency of the City of Paso Robles (the "Agency") approved a Participation Agreement authorizing a loan of up to \$1 million in Redevelopment Low and Moderate Income Housing (LMIH) Funds (the "Loan") to assist the development of Hidden Creek Village, an 81-unit apartment complex for low-income families at 80 S. River Road (the "Project"); and

WHEREAS, the Project would help the City of El Paso de Robles (the "City") meet its low-income housing needs, as set forth in the 2004 Housing Element of the General Plan and the City's objective of housing its workforce as stated in the 2006 Economic Strategy; and

WHEREAS, the City has estimated that the cost of building permit and development impact fees for the Project would be about \$2.2 million; and

WHEREAS, the purpose of the loan of LMIH Funds is to offset \$1 million of the development impact fees due for the Project; and

WHEREAS, while the City does not normally allow a deferral in the payment of development impact fees, the benefits of increasing the community's supply of affordable housing outweigh the cost of any such deferral; and

WHEREAS, the Participation Agreement provides that, pursuant to a fee deferral agreement to be executed between the Agency and the City, the principal of the loan will be paid by the Agency to the City in annual increments of \$100,000 over a 10 year period, plus interest on the unpaid principal at the rate of three percent (3%), compounded annually;

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. The City Council hereby approves the Fee Deferral Agreement, in substantially the form attached to this resolution as Exhibit "A," and authorizes the City Manager to execute such Fee Deferral Agreement, subject to any minor technical, clarifying and non-substantive changes as approved by the city Attorney.

PASSED AND ADOPTED by the City Council of the City of Paso Robles on this 20th day of April, 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Duane Picanco, Mayor

Lonnie Dolan, Deputy City Clerk

EXHIBIT A

FEE DEFERRAL AGREEMENT

THIS FEE DEFERRAL AGREEMENT (this "Agreement") is entered into as of _____, 20__ (the "Execution Date") by and between the REDEVELOPMENT AGENCY OF THE CITY OF EL PASO DE ROBLES, a public body, corporate and politic ("Agency"), and the CITY OF EL PASO DE ROBLES, a municipal corporation ("City").

RECITALS

A. Agency and South River Road Associates, a California limited partnership ("Developer"), entered into that certain Participation Agreement dated _____, 2010, (the "Participation Agreement"), pursuant to which Developer has agreed to develop an 81-unit residential apartment complex in the City, defined therein as the "Project," upon that certain real property located within City, defined therein as the "Site," for rental to qualified low income persons and families. The Project is located within that certain portion of the City subject to the Paso Robles Redevelopment Project (the "Project Area").

B. As consideration for Developer's obligations under the Participation Agreement, Agency has agreed to make a loan (the "Agency Loan") to Developer in the amount of \$1,000,000.00 to finance a portion of the building permit and development impact fees ("Development Fees") related to the Project. Pursuant to the Participation Agreement, Agency is not obligated to make the Agency Loan until, among other things, this Agreement has been fully executed between Agency and City.

C. The parties desire to enter into this Agreement evidencing City's agreement to defer the receipt of certain Development Fees associated with the Project, and that City shall accept payment of such fees by Agency on behalf of Developer, upon the terms and conditions of this Agreement.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

AGREEMENT

1. Deferred Fees. City hereby agrees to (i) defer a portion of the Development Fees charged Developer for the development of the Project upon the Site, in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) (the "Deferred Fees"); and (ii) accept Agency's payment of the Deferred Fees on behalf of Developer, upon the terms and conditions of this Agreement.

2. Repayment. Agency shall pay to City on _____, and on each subsequent _____ thereafter during the Deferral Period (as hereinafter defined), the minimum amount of One Hundred Thousand Dollars (\$100,000), plus interest on the unpaid amount of three percent (3%) compounded annually, from Agency's Low and Moderate-Income Housing Fund (as hereinafter defined) (each an "Agency Payment"). All outstanding amounts owed City under this Agreement shall be paid in full upon expiration of the Deferral Period. As used herein, "Low and Moderate-Income Housing Fund" shall mean that portion of the taxes allocated to the Agency pursuant to Section 33670(b) of the California Health and Safety Code from the Project Area that are required to be set-aside by the Agency pursuant to Section 33334.2 of the Health

EXHIBIT A

and Safety Code. Agency may prepay all or any portion of the outstanding principal amount of the Deferred Fees at any time.

Payment shall be made in lawful money of the United States to the City of El Paso de Robles, 1000 Spring Street, Paso Robles, California 93446. The place of payment may be changed from time to time as the City may from time to time designate in writing.

3. Term. This Agreement shall commence on the Execution Date and expire upon the earlier of (i) full payment of all the sums owed hereunder; or (ii) the tenth (10th) anniversary date of the first payment made hereunder (the "Deferral Period").

4. Evidence of Indebtedness. This Agreement shall constitute evidence of indebtedness of the Agency pursuant to California Health and Safety Code section 33670(b) and shall be included on the Agency's annual statement of indebtedness, filed pursuant to California Health and Safety Code section 33675.

5. Subordination. Agency may request that City subordinate its right to receive the Agency Payments under this Agreement to bonds or other financing issued or arranged by Agency. City shall not unreasonably withhold approval of such request if Agency has presented evidence to City that it has sufficient Net New Tax Increment Revenues to pay the debt service on the bonds or other financing that is proposed and make each Agency Payment to City as set forth in Section 2.

6. Costs of Enforcement. Agency agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by City or adjudged by a Court: (1) reasonable costs of collection, costs, and expenses, and reasonable attorneys' fees paid or incurred in connection with the collection, enforcement, or foreclosure sale of any security for this Agreement, or of any covenant of this Agreement or such security, whether or not suit is filed; (2) costs of suit and such sums the Court may adjudge as attorneys' fees in any action to enforce payment of all amounts due under this Agreement or any part of it; and (3) costs of suit and such sums as the Court may adjudge as reasonable attorneys' fees in any other litigation or controversy connected with the enforcement of this Agreement

7. No Liability of Agency Officials. No councilmember, director, official or employee of the Agency shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Agency under this Agreement or for any amount which may become due to the City under the terms of this Agreement.

8. Certificate of Occupancy. City hereby acknowledges and agrees that payment of the Deferred Fees shall not be a condition of City issuing a Certificate of Occupancy for the Project.

9. Miscellaneous Provisions.

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, to the jurisdiction of which the parties hereto submit.

EXHIBIT A

b. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

c. Notices. Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

City: City of El Paso de Robles
1000 Spring Street
Paso Robles, California 93446
Attn: City Manager

Agency: Redevelopment Agency of the City of El Paso de Robles
1000 Spring Street,
Paso Robles, California 93446
Attn: Executive Director

d. Invalidity. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

e. Headings. The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

f. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such or the remaining provisions of this Agreement.

g. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executing in writing by the party making the waiver.

h. Number and Gender. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each include the others whenever the context so indicates or requires.

EXHIBIT A

i. Further Assurances. The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

j. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.

k. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

o. Attorneys' Fees. In the event of any litigation arising out of this Agreement, the prevailing party in such action, or the nondismissing party where the dismissal occurs other than by reason of a settlement, shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

[Signatures to appear on the following page.]

EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the
Execution Date.

CITY: CITY OF EL PASO DE ROBLES, a municipal corporation By: _____ City Manager APPROVED AS TO FORM: By: _____ City Attorney ATTEST: By: _____ City Clerk	AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF EL PASO DE ROBLES, a public body, corporate and politic By: _____ Executive Director APPROVED AS TO FORM: By: _____ Agency Counsel ATTEST: By: _____ Agency Secretary
--	---

STATUS OF LMIH FUNDS

April 2010

Estimated Fund Balance and Commitments Through June 30, 2009

Activity	Amount	Notes
LMIH Fund balance as of 6/30/09	1,423,900	1

Commitments for Future Fiscal Years

Fiscal Year	Amount	Purpose	Notes
10	300,000	Payment on CalHFA Loan for Chet Dotter Senior Housing	2
11	300,000	Payment on CalHFA Loan for Chet Dotter Senior Housing	2
12	100,000	Hidden Creek Village	3

Notes:

1. Jim Throop's 11/17/09 email on FY 10 Encumbrances.
2. Approved via Ordinance 921 N.S. and Resolution RA 05-03.
3. \$100,000 per year over 10 years per Resolution RA 09-002. Assumes project is built.

All figures on this page are rounded to the nearest \$100.

Projections for the Next 10 Years (not including investment income)

Fiscal Year	Estimated Deposits into LMIH Fund *	Estimated Administrative Expense **	Commitments ***	Estimated LMIH Fund Balance
09				1,423,900
10	840,000	295,500	300,000	1,668,000
11	858,000	301,400	300,000	1,925,000
12	877,000	307,400	100,000	2,395,000
13	896,000	313,500	103,000	2,875,000
14	916,000	319,800	106,100	3,365,000
15	937,000	326,200	109,300	3,867,000
16	958,000	336,000	112,600	4,376,000
17	979,000	346,100	116,000	4,893,000
18	1,000,000	356,500	119,500	5,417,000
19	1,021,000	367,200	123,100	5,424,000
20	1,043,000	378,200	126,800	5,955,000
21	1,065,000	389,500	130,600	5,969,000

* Estimated Deposits thru FY 18 provided by Craig Hill on 05/08/09.

* Estimated Deposits in FY 19 and 20 provided by Ed Gallagher on 11/17/09.

** Estimated administrative expense begins with \$295,500 in FY10. (\$295,500 = \$349,500 Budgeted minus \$54,000 CDBG Admin Funds.) Subsequent fiscal years' amounts are adjusted by 2.0% through FY 15 and then by 3.0% to FY 20.

*** Payments to Hidden Creek Village in FYs 13-20 assume future values at a compounded interest rate of 3.0%