

RESOLUTION NO. 2008-430

Adopted by the Sacramento City Council

June 24, 2008

APPROVING AGREEMENT: AGREEMENT FOR COLLECTION OF SACRAMENTO AREA FLOOD CONTROL AGENCY DEVELOPMENT IMPACT FEE AND INDEMNIFICATION OF CITY OF SACRAMENTO

BACKGROUND

- A. SAFCA is a joint exercise of powers agency. Its jurisdiction and authority are provided by the January 17, 1991, Joint Exercise of Powers Agreement (Joint Powers Agreement) and the Sacramento Area Flood Control Act, Chapter 510 of the Statutes of 1990 (Flood Control Act).
- B. City is a party to the Joint Powers Agreement, along with the County of Sacramento and Sacramento County Water Agency, County of Sutter and Sutter County Water Agency, Reclamation District 1000, and American River Flood Control District.
- C. SAFCA's purpose under the Joint Powers Agreement and the Flood Control Act includes coordinating a regional effort to finance, provide, and maintain flood control facilities and works and to protect life, property, watercourses, watersheds, and highways from flood and storm water damage.
- D. The Flood Control Act authorizes SAFCA to prescribe, revise, and collect fees as a condition of development of land. SAFCA may use that revenue for acquisition, engineering, design, construction, reconstruction, maintenance, operation, or finance of flood control projects.
- E. The Flood Control Act prohibits City and the counties from approving development without written confirmation from SAFCA that any fee levied by SAFCA for such development has been paid.
- F. On April 17, 2008, the SAFCA Board of Directors (SAFCA Board) conceptually approved a resolution and nexus study to implement the proposed SAFCA Development Fee Program (Fee Program) under the provisions of the Flood Control Act.
- G. The SAFCA Board also directed SAFCA's Executive Director to work with the land use agencies in the Program Area to secure their support for entering into agreements with SAFCA to collect the development impact fee (DIF) whenever building permits are issued for new structures in this area. SAFCA does not have the staff to assume the responsibility for collection of the fees. SAFCA has asked that City collect and transfer to SAFCA the fees payable under the Flood Control Fee Schedule, in the course of City's review and approval of developments.

- H. The Fee Program has been under consideration by the SAFCA Board since November 2006 and has been the focus of significant outreach to stakeholders, including representatives of the City of Sacramento (City), over the past six months and the input received during the course of this outreach is reflected in the structure of the DIF.
- I. On May 15, 2008, SAFCA adopted resolution No. 08-048 prescribing a schedule of development fees (Flood Control Fee Schedule).
- J. SAFCA has found that the Fee Program would contribute to meeting the SAFCA Board's objectives of (1) completing the projects necessary to provide 100-year flood protection for developed areas in Sacramento's major floodplains as quickly as possible, (2) providing 200-year flood protection to these areas over time, and (3) ensuring that new development in these areas does not substantially increase Sacramento's exposure to flood damages and associated governmental costs.
- K. SAFCA has agreed to provide for full cost recovery for any fee collection expenses incurred by the City and to indemnify the City from any liability arising from collection of the DIF.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager or the City Manager's designee is hereby authorized to execute the attached Agreement for Collection of the Sacramento Area Flood Control Agency Development Impact Fee substantially in the form of the attached agreement and with such modifications as the City Manager or the City Manager's designee may deem necessary and approved as to form by the City Attorney.

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Exhibit A – Agreement

Adopted by the City of Sacramento City Council on June 24, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: Councilmember Tretheway.



Mayor Heather Fargo

Attest:



Shirley Concolino, City Clerk

**AGREEMENT FOR COLLECTION
OF SACRAMENTO AREA FLOOD CONTROL AGENCY
DEVELOPMENT IMPACT FEE
(CITY OF SACRAMENTO)**

This Agreement is entered into this ___ day of _____, 2008, by and between the City of Sacramento ("City"), a charter municipal corporation, and the Sacramento Area Flood Control Agency, a joint exercise of powers agency ("SAFCA").

RECITALS

1. SAFCA, through certain state legislation, has legal authority to impose fees as a condition of development of land for the purpose of assisting in the financing of flood control facilities, including the authority to make such fees applicable to development of land within the City.
2. SAFCA has exercised this authority by approving Resolution 08-048 Establishing the Sacramento Area Flood Control Agency Development Impact Fee ("DIF Resolution"), which is attached hereto as Attachment 1 and incorporated herein by this reference, for the purpose of assisting in the financing of levee improvements and related flood risk reduction measures necessary to provide at least a 200-year level of flood protection to lands within the 200-year floodplain along the Lower American and Sacramento Rivers and their tributaries ("Program Area") and to thereby offset the increase in damageable property that is placed in the levee protected floodplain as new development occurs in this area during the next 11 years.
3. SAFCA has requested that the City, as a condition of issuance of a building permit for new development in the portion of the Program Area that is within the City's land use authority, collect and transmit to SAFCA the SAFCA Development Impact Fee (the "DIF") applicable DIF for the development project for which such building permit is to be issued.
4. The City is willing to collect the DIF as long as SAFCA pays the City's actual costs for calculating, reporting, and collecting the Fee.
5. The City and SAFCA desire to define formally the parameters for collecting the DIF.
6. Upon the terms and conditions set forth in this Agreement, City has agreed to collect and transmit the DIF to SAFCA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promise hereinafter set forth, THE PARTIES AGREE AS FOLLOWS:

1. **Collection and transmission of DIF.** Commencing January 1, 2009, City shall as a condition of issuance of a building permit for development of land in the Program Area, which is also in the City, all as shown in Exhibit B to the DIF Resolution, collect the DIF applicable to such development. City shall transmit to SAFCA all amounts of the DIF that have been collected. The methodology for computing the DIF together with other procedural criteria, are specified in the DIF Resolution and in the Sacramento Area Flood Control Agency Development Impact Fee Program Final Report (May 5, 2008) which is attached as Exhibit A to the DIF Resolution.
2. **Deposit of DIF.** On a daily basis, City shall post the DIF funds collected to a Liability Account in the City's General Ledger. At least quarterly, the Liability Account shall be reconciled and the DIF funds remitted to SAFCA. Any returned checks, credit card charge backs, or other non-honored payments will be included in the reconciliation.
3. **Periodic Update of the DIF.** SAFCA shall promptly notify City of any adjustments to the DIF pursuant to Sections 14 and 15 of the DIF Resolution. City shall commence collection of the adjusted DIF sixty (60) calendar days following notification to the public of any such adjustments.
4. **Refunds.** If the City refunds an applicant's building permit fees, the related DIF will be refunded. Refunds will be included in the reconciliation process described above.
5. **Payment of DIF under Protest.** Pursuant to Title 7, Division 1, Chapter 9 of the California Government Code, commencing with Section 66020, any aggrieved landowner shall be entitled to pay the applicable DIF to the City under protest. The protest procedures set forth therein shall apply to the DIF paid under protest.
6. **Appeal.** SAFCA's Board of Directors shall hear all appeals for waiver or reduction in SAFCA's DIF. The Board of Directors shall follow SAFCA's existing Appeals Policy in deciding the issue and shall have the sole authority to grant or deny the appeal. Within five business days following the final action of its Board of Directors regarding an appeal, SAFCA shall notify City in writing of its determination.
7. **Compensation of City.** In consideration for collecting the DIF, SAFCA shall reimburse City its actual cost of employee time and materials for DIF collection and associated functions. These costs include (a) set up of City's systems to accommodate collection of the DIF, (b) any DIF audit related costs and (c) ongoing operations and maintenance. The set up and audit costs shall be reimbursed on an hourly basis utilizing the City's appropriate current billing rate, which will be billed to SAFCA. The ongoing operations will be a percentage of the DIF remittance not to exceed actual costs. By March 31st of each year, City shall provide SAFCA an estimate of such costs for time and materials necessary for functions related to the DIF collection for the following fiscal year. On an annual or as needed basis, City shall review its permitting process and the activity associated with the DIF to assure projected reimbursement amounts are sufficient to recover its actual costs.

8. **Indemnification of City by SAFCA.** SAFCA agrees to indemnify, hold harmless and defend City, its City Council, officers, directors, agents, attorneys and employees from and against any and all demands, liabilities, claims, actions, costs, damages, losses, litigation or expenses (including attorney's fees) arising out of or in any way related to, directly or indirectly, any action taken by City to collect the DIF and/or its performance of the obligations of this Agreement.

9. **Notices.** Notice to be provided to any party to this Agreement arising out of matters pertaining to this Agreement shall be addressed as follows:

City of Sacramento
Development Services Department
300 Richards BLVD
Sacramento, CA 95811
Attn: Operations Manager

Sacramento Area Flood Control Agency
1007 7th Street, 5th Floor
Sacramento, CA 95814-3407
Attn: Executive Director

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

10. **Term.** This Agreement shall be effective and commence as of the execution date of this Agreement and shall end when either party terminates the agreement in accordance with Section 11.

11. **Termination.** Either party may terminate this Agreement by giving the other party at least six (6) months written notice of termination.

12. **Attorney Fees.** In the event of litigation arising out of or relating to this Agreement, the prevailing party therein shall be entitled to its reasonable attorney fees and costs, including but not limited to costs relating to staff time.

13. **Saving Clause.** In the event that any portion of this Agreement shall at any time be declared invalid by any court of competent jurisdiction, or by governmental regulations or decree, such decision shall not invalidate the entire Contract, it being the expressed intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect.

14. **Modifications.** This Agreement contains the entire understanding of the parties and no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

15. **Governing Laws And Jurisdiction.** This Agreement shall be deemed to have

been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento City, California.

16. **Successors.** This Agreement shall bind the successors of City and SAFCA in the same manner as if they were expressly named.

17. **Interpretation.** This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

18. **Entire Agreement.** This Agreement constitutes the entire contract between City and SAFCA regarding the collection, deposit and reporting of the DIF. Any prior agreements, whether oral or written, between City and SAFCA regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

19. **Duplicate Counterparts.** This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

CITY OF SACRAMENTO

By: _____
Ray Kerridge
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Senior Deputy City Attorney

SACRAMENTO AREA FLOOD CONTROL AGENCY

By: _____
Stein Buer
Executive Director

APPROVED AS TO FORM:

Timothy N. Washburn, Esq.
Agency Counsel