BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF ADOPTING A RESIDENTIAL FEE DEFERRAL PROGRAM FOR DEFERRAL OF ALL TURLOCK UNIFIED SCHOOL DISTRICT, COUNTY OF STANISLAUS (ONCE APPROVED BY THEIR RESPECTIVE LEGISLATIVE BODIES), AND CITY OF TURLOCK CITY-WIDE AND MASTER/SPECIFIC PLAN IMPACT FEES TO OCCUPANCY OR CLOSE OF ESCROW; APPROVING A STANDARD AGREEMENT FOR DEFERRAL OF RESIDENTIAL DEVELOPMENT IMPACT FEES; AND AUTHORIZING THE CITY MANAGER OR MAYOR TO EXECUTE SAID AGREEMENTS	RESOLUTION NO. 2015-136

WHEREAS, on October 13, 2013, the City Council continued the fee deferral program for commercial and industrial development for an additional 24 months; and

WHEREAS, currently there is no adopted residential impact fee deferral program; and

WHEREAS, the state of the economy has shown improvement but continues to impact the development communities ability to build and improve the city; and

WHEREAS, stimulating the economy through job creation is in the best interest of the city to enhance revenue through fee collection as well as increasing the city's tax base; and

WHEREAS, the deferral of impact fees would enhance the residential developers cash flow through postponing fee payments to occupancy or close of escrow; and

WHEREAS, forgiving fees to stimulate the economy would be detrimental to health and financial viability of the city's various City-wide and Master/Specific Plan fee programs. However, fee deferrals to stimulate the economy could be given without risking the health and financial viability of the city's various City-wide and Master/Specific Plan fee programs; and

WHEREAS, the developer shall enter into a lien agreement with the city detailing the fee deferral amount and schedule of payment; and

WHEREAS, the deferral of Turlock Unified School District and Stanislaus County impact fees will only occur following their respective boards approval; and

WHEREAS, the Council authorizes the City Manager or Mayor to execute the standard agreement for deferral of residential development impact fees (Attachment "A") and the standard assignment agreement (Attachment "B") at his/her discretion.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Turlock adopts a residential fee deferral program for deferral of all Turlock Unified School District, County of Stanislaus (once approved by their respective legislative bodies), and City of Turlock City-wide and Master/Specific Plan Impact Fees (Attachment "C") to Occupancy or Close of Escrow; approving a standard agreement for deferral of residential development impact fees; and authorizing the City Manager or Mayor to execute said agreements.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Turlock this 23rd day of June, 2015, by the following vote:

AYES:	Councilmembers DeHart, Nascimento, Bublak, Jacob, and Mayor Soiseth
NOES:	None
NOT PARTICIPATING:	None
ABSENT:	None

ATTEST:

Kellie E. Weaver, City Clerk,
City of Turlock, County of Stanislaus,
State of California

RECORDING INFORMATION
Recording Requested by and
When recorded, please return to:

CITY OF TURLOCK
DEVELOPMENT SERVICES
ENGINEERING DIVISION
156 South Broadway, Suite 150
TURLOCK, CA 95380

AGREEMENT
BETWEEN
THE CITY OF TURLOCK
AND

_____
FOR THE PAYMENT OF
RESIDENTIAL DEVELOPMENT IMPACT FEES
PURSUANT TO GOVERNMENT CODE §66007

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, between the **CITY OF TURLOCK** (hereinafter referred to as "City") and _____, (hereinafter referred to as "Property Owner"), who is the owner of the real property described in Exhibit A attached hereto and made a part of this Agreement (hereinafter referred to as "Property").

RECITALS

A. The PROPERTY OWNER is constructing a residential dwelling at _____, Turlock, California 9538_.

B. The PROPERTY OWNER, as a condition of development, is required to pay City Impact Fees, County of Stanislaus Impact Fees, Turlock Unified School District Impact Fees, and other City fees for Building Permit ___-_____ totaling $_____ at building permit issuance.

C. Pursuant to Government Code §66007, Resolution 2015-__, and as a condition of issuance of the building permit, the City is willing to defer the collection of certain fees as set forth herein up to close of escrow, pursuant to Government Code §66007(g).

D. The PROPERTY OWNER has agreed to pay $_____ of the total fees at building permit issuance and has requested that all City Impact Fees, as set forth on Exhibit B, in the amount of $_____ be deferred for each parcel/dwelling to close of escrow in accordance with Resolution No. 2015-_____ of the City Council of the City of Turlock, adopted on _____, 2015 and Government Code §66007(g).

OK for Agenda

E. The deferred fees are as follows:

City of Turlock Impact Fees ..... $_____

Total Deferral Amount ..... $_____

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PROPERTY AFFECTED

The PROPERTY OWNER holds fee title to the Property Affected and legally described on Exhibit A. The Property consists of one parcel/dwelling for which development impact fees have been deferred and which parcel/dwelling is encumbered by the outstanding fee balance indicated above until the parcel is released upon payment to the City (the "Property Affected").

2. RECORDATION

This Agreement shall be recorded in the office of the Stanislaus County Recorder and, from the date of recordation, pursuant to Government Code §66007(c)(2), shall constitute a lien for payment of the fees or charges set forth herein which shall be enforceable against successors in interest to the PROPERTY OWNER or lessee at the time of issuance of the building permit. This contract shall be recorded in the Grantor-Grantee Index in the name of the City of Turlock as Grantee and in the name of the PROPERTY OWNER as Grantor.

3. LIEN CREATED

In addition to the statutory lien created by paragraph 2, the PROPERTY OWNER hereby expressly grants to City a lien against the Property Affected. Said lien is intended to guarantee the payment in full, plus accrued interest, processing fees, and the cost of collection, if applicable, of the deferred development impact fees. Cost for recording said lien shall be paid for by PROPERTY OWNER.

4. TERM OF PAYMENT

The outstanding fee/lien balance, allocated to each parcel/dwelling listed above, shall be due and payable to City at close of escrow of each parcel/dwelling listed above, notwithstanding Turlock Municipal Code §§8-11-07 and 8-11-08 and pursuant to Government Code §66007(g).

5. OPENING OF ESCROW

The PROPERTY OWNER and any and all assignees or transferees as set forth in Paragraph 11, shall provide written escrow instructions to the escrow holder that the escrow holder shall provide 10 days' written notification to the City of Turlock, Development Services Building and Safety Division, subsequent to the opening of any escrow for the sale of the property for which a building permit was issued for the Property Affected and to provide in the escrow instructions that the fee or charge to be paid to the City imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

6. INTEREST AND FEES

No interest or processing fee shall apply if the deferred impact fees are paid in full when they become due. However, should the deferred fees not be paid when due and payable, or should the PROPERTY OWNER be in breach of any provision of this Agreement: (a) interest shall accrue on all unpaid fees from the date of issuance of the initial building permit until the deferred fees and all accrued interest is paid; and (b) an additional One Thousand Dollars ($1,000.00) shall be added to the unpaid amount to cover the initial administrative costs incurred in processing the fee deferral application. If assessed, interest shall be at the annual rate of interest which the City earns on its investment of pooled funds.

7. PRIORITY

The lien created hereunder shall have the same priority as property taxes.

8. RELEASE OF LIEN

Upon full payment of all deferred impact fees and accrued interest pursuant to paragraph 7, if applicable, to City and complete satisfaction of all terms and conditions of this Agreement by the PROPERTY OWNER, the City shall promptly release the lien created hereunder by executing a lien release in substantial form as shown in Exhibit C. Cost for recording said lien release shall be paid for by PROPERTY OWNER. This Agreement shall remain in full force and effect and continue as a lien on the Property Affected until the City of Turlock receives the full amount of the fees, which are the subject of this Agreement.

9. RELEASE OF CLAIMS

In consideration of the deferral herein granted by City, Undersigned hereby expressly waives and releases all claims and causes of action it now has or in the future may have against the City of Turlock, a municipal corporation (collectively, the "Released Parties") based on, or related directly or indirectly to capital facility fees charged by City for the project constructed on the property described on Exhibit A, including without limitation any and all claims that such fees are not reasonably related to the project's impacts or the cost of the services provided. To the extent of such waiver and release, Undersigned expressly waives its rights, if any, under California Civil Code Section 1542 which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

10. COLLECTION

The City may pursue collection through all available legal and administrative means including, but shall not be limited to, judicial or non-judicial foreclosure of the recorded lien against the Property Affected and/or civil judgment against the PROPERTY OWNER for breach of this Agreement. As part of the obligation secured hereby and in addition to the amount of the deferred fees stated above, there shall be included cost and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

11. ASSIGNMENT

This Agreement shall not be assigned or otherwise transferred to a person or entity not a party to this Agreement without the express prior written consent of the City. City's written consent will not be unreasonably withheld. Any person or entity seeking assignment or transfer of this Agreement shall execute a written assignment/transfer agreement agreeing to be legally responsible for meeting all of the terms and conditions under this Agreement, and the Resolutions of the City Council adopting standards for fee deferrals. Assignment shall not be effective until the proposed assignee/transferee executes an assignment and assumption agreement, in a form acceptable to the City Attorney, assuming all duties and obligations of the PROPERTY OWNER under this Agreement. Any assignment or transfer not in strict compliance with this provision shall: (a) be null and void; (b) constitute a material breach of this Agreement; (c) cause all impact fees deferred under this Agreement to become due and immediately payable at the time of the attempted assignment or transfer; and (d) cause any and all building permits issued related to the Property to automatically terminate and become null and void.

12. BUILDING PERMIT

PROPERTY OWNER shall ensure that any person or entity, of any kind, applying for a building permit for the Property is advised of this Agreement. The person or firm applying for a building permit for the property shall agree that the building permit is subject to the terms and conditions of this Agreement including, but not limited to, paragraph 12.

13. CONTRACT ADMINISTRATOR

City of Turlock Chief Building Official
156 S. Broadway, Suite 150
Turlock, California 95380-5456
(209) 668-5560

14. GOVERNING LAW

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Stanislaus.

15. WAIVER

In the event that either City or PROPERTY OWNER shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. INTEGRATION

This Agreement constitutes the complete, entire, exclusive, and final agreement and understanding between the parties as to the subject matter herein, superseding all negotiations, prior discussions, and preliminary agreements or contemporaneous understandings, written or oral.

17. MODIFICATION AND AMENDMENT

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

18. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

19. SEVERABILITY

If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

20. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

SIGNATURE PAGE FOLLOWS

CITY OF TURLOCK, a municipal corporation

By _____
Roy W. Wasden, City Manager

APPROVED AS TO FORM AND LEGALITY:

By _____
Phaedra A. Norton, City Attorney

APPROVED AS TO SUFFICIENCY:

By _____
Michael G. Pitcock, P.E., Director of
Development Services/City Engineer

ATTEST:

By _____
Kellie E. Weaver, City Clerk

PROPERTY OWNER

By _____

Print Name:_____

By _____

Print Name:_____

[the signature(s) above must be notarized below]

Name and Address

_____

_____

_____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Stanislaus)

On _____ before me, _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

Place Notary Seal above

EXHIBIT A

All that certain parcel(s) of land situated in the City of Turlock, County of Stanislaus, State of California, being known and designated as follows:

Parcel One:

Parcel Two:

Parcel Three:

Etc:

EXHIBIT B

IMPACT FEES
City of Turlock
County of Stanislaus
Turlock Unified School District

EXHIBIT C

RECORDED AT THE REQUEST OF:
CITY OF TURLOCK

WHEN RECORDED MAIL TO:
CITY OF TURLOCK
OFFICE OF THE CITY CLERK
156 S. Broadway, Suite 230
Turlock CA 95380-5454

NOTICE OF RELEASE OF LIEN
for
DEFERRED PAYMENT OF CAPITAL FACILITY FEES

WHEREAS, on _____, _____ ("Grantor") and the City of Turlock ("Grantee"), entered into an agreement Affecting Real Property and Creating a Lien to Secure Payment of Deferred Residential Development Impact Fees (the "Agreement"), which Agreement was recorded as Document No. _____ in the Official Records of Stanislaus County on _____; and,

WHEREAS, Grantor has satisfied the conditions for a release of lien encumbering certain parcels under said Agreement.

NOW, THEREFORE, the Grantee hereby releases all of its right, title, and interest to the lien in the real property described in Exhibit "A" attached hereto.

CITY OF TURLOCK, a municipal corporation

_____
MICHAEL G. PITCOCK, P.E.
CITY ENGINEER

State of California)
County of Stanislaus)

On _____ before me, _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

Place Notary Seal above

EXHIBIT A
to
NOTICE OF RELEASE OF LIEN
for
DEFERRED PAYMENT OF CAPITAL FACILITY FEES

LEGAL DESCRIPTION

NOTE TO STAFF: NOT ALL PARCELS MAY BE SUBJECT TO RELEASE.
RELEASE ONLY PARCELS THAT HAVE PAID THE DEFERRED IMPACT FEES.
PLEASE SPECIFY WHICH PARCEL IS TO BE RELEASED

ASSIGNMENT, TRANSFER AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

_____

_____

_____

Attn:_____

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

ASSIGNMENT, TRANSFER AND ASSUMPTION AGREEMENT RELATIVE TO THE AGREEMENT FOR THE PAYMENT OF RESIDENTIAL DEVELOPMENT IMPACT FEES PURSUANT TO GOVERNMENT CODE 66007 PARCEL NO. _____

THIS ASSIGNMENT, TRANSFER AND ASSUMPTION AGREEMENT (hereinafter the "Agreement") is entered into this ____ day of _____, 20__, by and between _____, a _____ (hereinafter "Property Owner"), and _____, a _____ (hereinafter "Assignee").

RECITALS

A. On _____, 2015, the City of Turlock and Property Owner entered into that certain agreement entitled "Agreement between the City of Turlock and _____ for the Payment of Residential Development Impact Fees Pursuant to Government Code §66007 for Parcel No. _____" (hereinafter the "Fee Deferral Agreement"). Pursuant to the Fee Deferral Agreement, Property Owner agreed to defer certain fees more particularly described in the Fee Deferral Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Fee Deferral Agreement. The Fee Deferral Agreement was recorded against the Subject Property in the Official Records of Stanislaus County on _____, 2015 [Instrument No. _____].

B. Property Owner intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel __, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel"), or all of the Subject Property, as defined in the Fee Deferral Agreement.

C. Property Owner desires to assign and Assignee desires to assume all of Property Owner's right, title, interest, burdens and obligations under the Fee Deferral Agreement with respect to and as related to the Assigned Parcel.

NOW, THERFORE, Developer and Assignee hereby agree as follows:

OK for Agenda

1. Property Owner hereby assigns, effective as of Property Owner's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Property Owner under the Fee Deferral Agreement with respect to the Assigned Parcel. Property Owner retains all the rights, title, interest, burdens and obligations under the Fee Deferral Agreement with respect to all other property within the Subject Property owned by Property Owner.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Property Owner under the Fee Deferral Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Property Owner under the Fee Deferral Agreement with respect to the Assigned Parcel, and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Property Owner as the "Property Owner" under the Fee Deferral Agreement with respect to the Assigned Parcel. Assignee acknowledges and agrees that the assumption of Property Owner's rights and obligations under the Fee Deferral Agreement includes, without limitation, the waiver by Assignee under Section 9 of the Fee Deferral Agreement of all claims against the City.

All of the covenants, terms and conditions set forth herein shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, successors and assigns.

3. Notification to the City of Turlock is required by the Fee Deferral Agreement. Property Owner shall provide notice, prior to the transfer, to:

City of Turlock
_____ Division
156 South Broadway
Turlock, California 95380

4. No assignment shall be permitted if there are any outstanding payment obligations to the City by the Property Owner until such delinquency is satisfied.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

DEVELOPER:	**ASSIGNEE:**
_____	_____
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____

CITY OF TURLOCK

FEES TO BE DEFERRED

1. Street Light Fee
2. Sewer Trunk Line Construction Fee
3. Sewer Capital Expansion Fee
4. Sewer Frontage Fee
5. Water Grid Fee
6. Water Frontage Fee
7. Water Meter
8. Master Storm Drainage Fee
9. Cap. Fac. Fee Road
10. Cap. Fac. Fee P.D.
11. Cap. Fac. Fee General Government
12. Cap. Fac. Fee Fire
13. Cap. Fac. Fee Administration
14. N.W.T.S.P. Fee Sewer
15. N.W.T.S.P. Fee Water
16. N.W.T.S.P. Fee Admin
17. North Area Master Plan Transp. Fee
18. North Area Master Plan Sewer Fee
19. North Area Master Plan Drainage Fee
20. North Area Master Plan Admin Fee
21. NE Trlk Master Plan Transportation Fee
22. NE Trlk Master Plan Sewer Fee

23. NE Trlk Master Plan Drainage Fee
24. NE Trlk Master Plan Water Fee
25. NE Trlk Master Plan Admin Fee
26. E. Tuolumne Master Plan Transp. Fee
27. E. Tuolumne Master Plan Sewer Fee
28. E. Tuolumne Master Plan Drainage Fee
29. E. Tuolumne Master Plan Water Fee
30. E. Tuolumne Master Plan Admin. Fee
31. W.I.S.P. Sewer Fee
32. W.I.S.P. Potable Water Fee
33. W.I.S.P. Administration Fee
34. Park Improvement Fee (Neighborhood)
35. Park Improvement Fee (Community)
36. GIS Development Charges