

**CITY OF VISALIA**  
**REIMBURSEMENT AGREEMENT**  
**FOR PRIVATELY CONSTRUCTED PUBLIC FACILITIES INCLUDED IN THE**  
**CITY'S IMPACT FEE PROGRAMS**

This Agreement, dated as of the \_\_\_\_ day of \_\_\_\_\_, 2024, is entered into by and between the City of Visalia, a municipal corporation (the "City") and Diamond Oaks Holdings, LLC (the "Developer").

**RECITALS:**

WHEREAS, Chapter 16.44 of the City of Visalia Municipal Code (the "Code") established development fees and special funds as part of the City's Transportation Fee Program (the "Transportation Fee Program"); and

WHEREAS, Section 16.44.150 of the City of Visalia Municipal Code authorizes the City to enter into reimbursement agreements for the construction of planned transportation facilities designated in the Transportation Fee Program upon application of property developers; and

WHEREAS, Chapter 16.40 of the City of Visalia Municipal Code establishes development fees and special funds as part of the City's Storm Drain System Fee Program (the "Storm Drain Development Fee Program"); and

WHEREAS, Section 16.40.070 of the City of Visalia Municipal Code authorizes the City to enter into reimbursement agreements for the construction of facilities designated in the Storm Drain Development Fee Program upon application of property developers;

WHEREAS, City and Developer, as a condition for approval of **Diamond Oaks Unit 1** subdivision, pertaining to real property identified therein (the property and entitlements so described hereafter referred to as the Project") have entered into a Subdivision Improvements Agreement that sets forth Developer's obligations regarding the dedication of right of way and construction of planned transportation facilities and other public improvements, according to improvement plans titled **Diamond Oaks Unit 1**, and approved by the City on June 3, 2016 (hereafter collectively referred to as the "Facilities"); and

WHEREAS, City and Developer desire to set forth their mutual understandings regarding the manner in which the City shall reimburse Developer for the Facilities that are non-supplemental transportation facilities and the related right-of-way under the City's Transportation Fee Program requirements.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Developer hereby agree as follows:

**Section 1. Construction of Facilities**

Developer shall complete construction of the Facilities in accordance with the terms of the Subdivision Improvements Agreement.

## **Section 2. Reimbursement Amounts**

The City shall reimburse, through fee credits or cash payments as provided herein, the Developer for the planned Facilities based on the schedule of costs and land values contained in the Traffic Impact Fee Update Nexus Study City of Visalia, dated March 16, 2015. Exhibit 1, attached hereto, lists the Programmed Costs, or the items that the City will reimburse the Developer for and lists the applicable unit costs and right of way values. Planned transportation facilities that are non-supplemental improvements to the Project, and for which the Developer is entitled to be reimbursed for, are separately identified in Exhibit 1 of this agreement.

If any items are not listed in the schedule of costs then the City and Developer must agree to an acceptable unit cost prior to this Agreement being signed. Changes or variations in the Programmed Costs may be requested by the Developer pursuant to Section 3 of this Agreement.

## **Section 3. Adjustment to Programmed Costs**

The Developer may request the City to adjust the Programmed Costs. In order to request an adjustment to the Programmed Costs, the Developer must provide the following:

- (1) Copies of the original contract with the contractor and any change orders that have been agreed to by the Developer, contractor, and the City. The portion of each change order associated with the Facilities must be itemized separately;
- (2) Copies of all invoices, with unconditional lien releases, submitted by the contractor;
- (3) Copies of all checks issued by the Developer with related invoices indicated; and
- (4) A summary tabulation of all contractor invoices and Developer payments.

If, when the final reconciliation of construction costs for the improvements to be reimbursed is conducted by the City, the actual construction costs for any of the Facilities so reimbursed exceeds the Programmed Costs for such Facilities, the City Engineer shall review the items described above and determine if the Programmed Costs that will be credited/reimbursed to the Developer should be increased above the amount shown in Exhibit 1 to fairly reflect change orders or other changed circumstances. The City Engineer shall determine in his/her reasonable discretion how much of the actual construction costs should be included in an increase to the Programmed Costs, and if acceptable, the parties shall execute an amendment to this Agreement setting forth the adjusted Programmed Cost.

## **Section 4. Right to Reimbursement**

Developer shall be reimbursed the final amount of the Programmed Cost in the manner as set forth in Section 5 below. Reimbursement payments by the City will not be made until all of the following requirements are met:

- (1) All Facilities are completed and formally accepted by the City as shown by the issuance of a Notice of Completion by the City; and
- (2) A reimbursement request is submitted to the City. The Developer must apply for reimbursement within four (4) years after the City has accepted the Facilities or within four years

of January 30, 2009, the effective date of Ordinance No. 2008-14, which modified Chapter 16.44 of the Visalia Municipal Code to contain this requirement, whichever is later. The Developer waives all right to reimbursement from the City if they do not request reimbursement within this four-year limitation; and

(3) Thirty (30) days have passed since the City accepted the facilities and no claims of nonpayment have been filed with the city. If such claims have been filed, then the City will not reimburse the Developer until the claims are resolved.

#### **Section 5. Reimbursement Method**

Upon issuance of a Notice of Completion for the Facilities, Developer shall be reimbursed the Programmed Costs in the following manner(s):

5.1 **Cash Reimbursement from Development Fees Collected City Wide.** City shall pay **\$1,042,494.51** of the Programmed Costs upon Developer's submittal of a reimbursement request in compliance with Section 4 after this Agreement is executed. This represents work that has already been completed in good faith prior to final execution of this agreement. The City will reimburse the Programmed Costs to the Developer without interest.

#### **Section 6. Transfer of Reimbursement Rights**

Rights to cash payment reimbursements or fee credits granted to Developer pursuant to this Agreement may be transferred to other owners, builders, or developers only with the written consent of City. The notice must be signed by the Developer and the City, and an executed copy of the form shall be kept on file at the City.

#### **Section 7. Limited City Obligation**

The obligations arising from this Agreement are neither a debt of the City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the fees collected for the Facilities. Neither the General Fund nor any other fund of the City, except the applicable fund(s) associated with the Transportation Impact Fee Program, shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. No Developer shall compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement.

#### **Section 8. Liens, Claims, and Encumbrances**

Prior to final acceptance and issuance of Notice of Completion for any Facilities by the City, the constructing Developer shall provide a written guarantee and assurance to the City that there are no liens, claims, or encumbrances on those Facilities, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which reimbursement is requested under this Agreement for the Facilities. Notwithstanding any other provision or term of this Agreement, the City shall have no obligation to make any reimbursement payments until the constructing Developer has cleared any and all liens, claims and encumbrances from the Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

**Section 9. No Third Party Beneficiary**

City does not assume any liability, duty or obligation to Developer's contractors, subcontractors or agents by execution or performance of this Agreement and no contractors, subcontractors, agents or any parties are third party beneficiaries of this Agreement.

**Section 10. Attorney's Fee**

If any suit, action or proceeding in law or equity is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable costs and attorneys' fees.

**Section 11. Notices**

Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services, each of which is hereinafter called an "Express Courier," shall be considered to be personal service) or by telephone facsimile or other electronic transmission (provided that the sender of a telephone facsimile or other electronic transmission has received confirmation of successful transmission by the sending fax machine), and upon receipt, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

City:

City of Visalia  
Community Development Department  
315 E. Acequia Ave.  
Visalia, CA 93291  
Attn: City Engineer

With a copy to:

City of Visalia  
Finance Department  
707 W. Acequia Ave.  
Visalia, CA 93291  
Attn: Finance Administrator

Developer:

Diamond Oaks Holdings LLC  
1441 S Mooney Blvd Ste D  
Visalia CA 93277  
Attn: Bob Ausherman

Either party may change its mailing address at any time by giving written notice of such changes to the other party in the manner provided herein.

**Section 12. Term**

The term of this Agreement shall start on the day and year duly executed by all parties and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.

**Section 13. Severability**

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

**Section 14. Binding on Successors and Assigns**

Each and every provision of this Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, in the same manner as if such parties had been expressly named herein.

**Section 15. Governing Law; Venue**

This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Tulare, State of California.

**Section 16. Exhibits**

The Exhibits attached hereto are hereby incorporated herein by this reference.

**Section 17. Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by all parties.



### EXHIBIT 1

Item		Quantity	Unit		Total Cost
<b>A.</b>	<b>Caldwell Avenue Improvements</b>				
1	HMA Pavement - 7"	2112	Ton	\$ 88.22	\$ 186,320.64
2	Class II Aggregate Baserock - 12"	3445	Ton	\$ 34.13	\$ 117,577.85
3	Street Excavation	3853	CY	\$ 18.54	\$ 71,434.62
4	Signage and Stiping	1	LS	\$ 6,647.22	\$ 6,647.22
5	Traffic Control	1	LS	\$102,000.56	\$ 102,000.56
6	Median Curb	1200	LF	\$ 10.00	\$ 12,000.00
7	Median Landscaping	1	LS	\$ 52,780.00	\$ 52,780.00
8	Median Stamped Concrete	1000	SF	\$ 6.65	\$ 6,650.00
<b>B.</b>	<b>Caldwell at Burke Street Traffic Signal &amp; Associated Work</b>				
1	Traffic Signal	1	LS	\$470,400.00	\$ 470,400.00
2	Grading, base rock, and pave at SW Corner	1	EA	\$ 14,293.14	\$ 14,293.14
3	Tree Removal at SW Corner	1	LF	\$ 5,225.00	\$ 5,225.00
4	Drive approach, curb, and gutter at SW Corner	1	EA	\$ 5,900.00	\$ 5,900.00
<b>Total Section A &amp; B</b>					<b>\$ 1,051,229.03</b>
	Design & Construction Management (12%)				\$ 126,147.48
<b>Total Amount Estimated for Reimbursement</b>					<b>\$ 1,177,376.51</b>
<b>Credits Already Applied to Building Permits</b>					
	Transportation Impact Fee (Phase 1 - 22 lots issued TIF Credits)	22.00	EA	\$ 6,131.00	\$ 134,882.00
<b>Cash Reimbursement</b>					
	Project Reimbursement Total				\$ 1,177,376.51
	Fee Credits Previously Applied to Building Permits				\$ (134,882.00)
	Balance to be Reimbursed in Cash				\$ 1,042,494.51