

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 **PRESIDIO JJR ARBOR GATES 89, 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 13.08 of the City of Visalia Municipal Code establishes development fees and special funds as part of the City's Sewer Service System Fee Program (the "Sewer Fee Program"); and

WHEREAS, Section 13.08.180 of the City of Visalia Municipal Code authorizes the City to oversize any sewer main as determined by the City Engineer, and in conformance with the City's Sanitary Sewer Master Plan, and shall reimburse for the additional oversizing construction costs upon application of property developers; and

WHEREAS, City and Developer, as a condition for approval of Caldwell & Demaree Garden Unit, 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 Caldwell & Demaree Garden Unit and approved by the City (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 eligible for reimbursement under the City's Transportation Fee Program requirements and Sewer Fee Program.

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 Facilities based on the schedule of costs and land values contained in Exhibit 1, attached hereto, which are referred to herein as the Programmed Costs. The Programmed Costs in Exhibit 1 describes the Facilities that are eligible for reimbursement and lists the applicable unit costs and right of way values for each of these items. The Programmed Costs are 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.

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 **\$198,813.04** 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:

PRESIDIO JJR ARBOR GATES 89, LLC
Attn Nicolas Peters
5607 Avenida de los Robles
Visalia, California 93291

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.

Section 18. Compliance with State Law.

Developer is aware of the requirements of California Labor Code Section 1720, et seq., 1770, et seq., and California Code of Regulations, Title 8, Section 1600, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements for work considered “public works” as that term is defined under Prevailing Wage Laws. Developer agrees that it shall comply with Prevailing Wage Laws and it is Developer’s sole responsibility to confirm whether Prevailing Wage Laws are applicable. City shall provide Developer with a copy of the prevailing rates of per diem wages in effect at the commencing of this Agreement upon request by the Developer. Developer agrees to hold the City harmless and to indemnify and defend the City, with legal counsel reasonably acceptable to City, from all claims arising from the potential application of Prevailing Wage Laws under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and the year first written above.

CITY OF VISALIA,
A municipal corporation

PRESIDIO JJR ARBOR GATES 89, LLC

Leslie B. Caviglia
City Manager/City Clerk Date

Signature Date

ATTEST:

Print Name

Deputy City Clerk Date

Title

APPROVED AS TO FORM:

City Attorney Date

EXHIBIT 1

<u>ITEM</u>	<u>QUANTITY</u>	<u>UNITS</u>	<u>UNIT COST</u>	<u>Reimbursement AMOUNT</u>
OFFSITE STREET IMPROVEMENTS				
<u>Packwood & Demaree Signal improvements</u>				
Traffic Light at Packwood and Demaree	1.0	LS	\$ 64,164.00	\$ 64,164.00
Striping at the intersection of Packwood and Demaree	1991.0	LF	\$ 6.37	\$ 12,682.67
<u>Chinowth street improvements</u>				
Paving Past 6' from Gutter (S. Chinowth St.) 5" AC, 8" AB, 6" Subgrade	23121.0	SF	\$ 2.73	\$ 63,120.33
<u>Engineering Reimbursement Fee</u>				
12% of the reimbursement amout	1.00	LS	\$ 139,967.00	\$ 16,796.04
<u>Chinowth street dedication</u>				
S. Chinowith St. Dedication	0.29	AC	\$ 145,000.00	\$ 42,050.00
TOTAL REIMBURSEMENT				\$ 198,813.04
Total Credits For Impact Fees				\$ -
Total Cash Reimbursement				\$ 198,813.04