

EXHIBIT

Pre-Annexation Agreement

This Pre-Annexation Agreement ("Agreement") is made and entered into this ____ day of _____, by and among the City of Visalia, a charter law city ("City") and Road 88 LLC, (hereinafter "Owner"):

RECITALS

WHEREAS, Owners are the record owners of the property, currently located in the unincorporated area of the County of Tulare, legally described in Exhibit A and depicted in Exhibit B, which are attached hereto and incorporated herein by reference (hereinafter referred to as the "Property"); and

WHEREAS, the Property is adjacent to and contiguous to the existing corporate boundary of the City, but is not situated within the limits of any municipality; and

WHEREAS, Owner desires to have the Property annexed to the City and to have the Property zoned as R-1-5 (Single-family Residential) and Q-P (Quasi-Public) which would permit the Property to be used for Low Density Residential and Parks/Recreation land uses in accordance with the General Plan; and

WHEREAS, the Property consists of approximately 40.46 acres, and no electors reside thereon; and

WHEREAS, proper applications have been filed with the City for approval of the annexation and for the legal subdivision of the lot, as may be required for the Property; and

WHEREAS, the City has, by a resolution requesting initiation of proceedings to annex territory ("Resolution") adopted on August 7, 2023, initiated proceedings to annex the Property; and

WHEREAS, in certain annexation proceedings Williamson Act issues arise which require indemnification of LAFCO, in said event, City requires indemnification from Developer; and

WHEREAS, finding __ of Resolution No. 2023-__ initiating annexation requires entry into this Annexation Agreement prior to the City submitting an application to the Local Area Formation Commission to commence the proposed annexation; and

WHEREAS, Owner acknowledges that during the term of this Agreement the Property will be subject to all ordinances, resolutions, and other regulations of

the City, as they may be amended from time to time, as well as state and federal statutes and regulations, as they may be amended.

WHEREAS, the City is authorized by its police powers to protect the health, safety and welfare of the community, and is entering into this Agreement and executing such authority for said purpose; and

WHEREAS, nothing contained in this Agreement shall constitute a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety and welfare of the City and its inhabitants, nor shall this Agreement prohibit the enactment or increase by town of any tax, fee, or charge.

NOW, THEREFORE, in consideration of the above Recitals and the following Covenants, it is agreed by and between the parties as follows:

I. AGREEMENT

- A. Parties. The parties to this Agreement are the City and Owner.
- B. Incorporation of Recitals. The parties confirm and incorporate the foregoing Recitals into this Agreement.
- C. Purpose/Limits of Agreement. A specific purpose of this Agreement is to set forth specific terms and conditions of annexation of the Property to City.

II. TERMS AND CONDITIONS OF ANNEXATION; PURPOSE OF AGREEMENT

Generally, each party to this Agreement is benefited and burdened by detachment from the County and annexation to the City. Owner will obtain a variety of services from City and City will obtain additional tax revenues. City has adopted ordinances, regulations, and policies concerning design, improvement, construction, development and use of property within the City. Nothing contained in this Agreement shall constitute a waiver of City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of City and its inhabitants, nor shall this Agreement prohibit the enactment or increase by City of any tax or fee. The purpose of this Agreement is to spell out additional conditions to which Owner will be subject following annexation and prior to development within the City due to the burden placed on City by Owner's desired annexation:

- A. Water Acquisition Policy: Although City's current water service provider, California Water Service, continues to issue will-serve letters, City's Council is aware of the steadily decreasing level of water in the City's underground water aquifers and has determined that increasing development is contributing to this serious problem. Therefore, City's Council has studied the issue and investigated possible solutions in order that it may continue to assure citizens that there will be water

available to serve the community's needs. City's Council is actively engaged in water replenishment activities with the Kaweah Delta Water Conservation District and it has adopted a policy, as set forth in Chapter 16.54 of the Visalia Municipal Code, which requires annexation applicants to convey title to water rights to City upon annexation and/or to pay a fee to City (pursuant to an adopted fee schedule) so that City may acquire water for groundwater replenishment and storage in order to serve new development that comes with annexation, including development of the Property (the "Water Acquisition Policy"). Therefore, Owner agrees that, at the time that LAFCO issues a Certificate of Completion finalizing the annexation (and upon the running of all applicable statutes of limitation related thereto), Owner will comply with the Water Acquisition Policy by entering into an agreement with City to either (i) convey to City those water rights vested in the Property, if any, (ii) agree to pay City a fee in lieu thereof, (iii) agree to some combination of an in lieu fee payment and water right conveyance, or (iv) to comply by any other method allowed by the Water Acquisition Policy, provided that such agreement includes a condition precedent requiring City's water supplier to agree to serve the Property with potable water in amount sufficient to meet Owner's reasonably anticipated total water demand for the Property, as determined by a valid water supply assessment prepared pursuant to California Water Code § 10910 *et seq.* No post-annexation permit or entitlement approvals concerning the Property will be issued by City unless and until Owner complies with the Water Acquisition Policy in a manner consistent with this subsection II(A). Owner agrees that it shall identify all water rights which, to the best of Owner's knowledge, have been used by Owner or its agents in connection with the Property, regardless of whether they are considered "vested" in the Property, and shall comply with the Water Acquisition Policy by entering into an agreement with City to convey such rights, if any, to City. City shall cooperate with Owner in valuing such water rights for the purposes of determining the amount of offset to be applied against the in lieu fee as required pursuant of the Water Acquisition Policy. Owner further agrees that City shall have first right of refusal in acquiring upon mutually acceptable terms any water rights that Owner owns that may be in addition to those required to meet Owner's obligations under the Water Acquisition Policy. City agrees that water rights need not be conveyed and in lieu fees shall not be made payable until City's issuance of one or more parcel maps or final subdivision maps covering the Property and, in the event Owner applies to City for its approval of multiple final maps covering the Property, City agrees such water rights conveyance or fee payment obligation shall be allocated on a pro rata basis to each phase of development covered by each final subdivision map, with conveyance of water rights or payment to be made on a per map basis upon City's issuance of each final subdivision map covering the Property.

- B. General Plan Maintenance Fee: On June 21, 2004, the City adopted (by Resolution 2004-63, as corrected) a General Plan Maintenance Fee. Owner agrees that, at the time LAFCO issues a Certificate of Completion finalizing the annexation (and upon the running of all applicable statutes

of limitation related thereto), Owner will enter into an agreement with City to pay the General Plan Maintenance Fee in an amount equal to \$427 per acre and no post-annexation permit or entitlement approvals concerning the Property will be issued unless and until said agreement is executed. City agrees that such fee shall not be made payable until City's issuance of one or more final subdivision maps covering the Property and, in the event Owner applies to City for its approval of multiple final maps covering the Property, City agrees such fee payment obligation shall be allocated on a pro rata basis to each phase of development covered by each final subdivision map, with payment to be made on a per map basis upon City's issuance of each final subdivision map covering the Property. Owner's satisfaction of its obligations under this Section II(B) will satisfy any and all of Owner's obligations related to and arising under the General Plan Maintenance Fee.

- C. Plan For Providing Services. The parties agree to cooperate in, and to take such actions as may be necessary to ensure, the diligent preparation of a Plan For Providing Services to the Property, to be submitted to LAFCO along with City's annexation application, in accordance with Cortese-Knox-Hertzberg Act requirements.

Developer understands and agrees that building permits and other entitlements for development on the Property will not be issued unless and until each and every condition herein is met.

III. TERM

The term of this Agreement shall become effective when fully executed by the parties hereto (the "Effective Date") and continue for a period of twenty (20) years. This Agreement shall terminate if (a) the annexation proceedings are terminated for any reason; or (b) the completion of the annexation (recording of a Certificate of Completion) does not occur on or before one (1) year from the Effective Date. Any indemnification provision included herewith shall survive termination and continue until expiration of the statute of limitations applicable to the subject matter thereof.

IV. DEFAULT, REMEDIES AND ENFORCEMENT

In the event of breach or default of any term, condition, covenant or obligation of this Agreement by either party, the other party may exercise any rights available at law or in equity, including an action for specific performance or other injunctive relief, and all such remedies shall be cumulative. This Agreement shall be enforceable, unless lawfully terminated or cancelled, by any party to the Agreement or any party's successor in interest, notwithstanding any subsequent changes in any applicable law adopted by the City which alters or amends the laws, ordinances, resolutions, rules or policies frozen by this Agreement.

V. INDEMNIFICATION

Owner agrees to indemnify and hold harmless City and the City's officers, employees, agents, and contractors, from and against all liability, claims, causes of actions, and demands, including attorney's fees and court costs, which arise out of or are in any manner connected with this Agreement or its operation, or with any other action annexation or other action determined necessary or desirable by the City in order to effectuate the annexation of Owner's property, or which are in any manner connected with the City's enforcement of this Agreement. Owner further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the City's option to pay the attorney's fees and court costs, which arise out of or are in any manner connected with this Agreement or its operation.

VI. MISCELLANEOUS

- a. Binding Effect/Covenants to Run With Land. The Parties hereto agree to be bound by this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the heirs, transferees, successors and assigns of the parties hereto. The terms and conditions stated herein shall constitute covenants running with the land.
- b. Assignment. Neither party shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- c. Authorized Signatory. The individuals executing this Agreement, by their signature hereto, declare that they are authorized to, and have the legal power, right and actual authority to bind the party to the terms and conditions of this Agreement.
- d. Notices. All notices under this Agreement shall be effective upon personal delivery to City, or Owner, as the case may be, three (3) business days after deposit in the United States Mail, postage fully prepaid, addressed to the respective parties as follows:

To the City: City Manager
 City of Visalia
 220 N. Santa Fe Street
 Visalia, CA 93292

With Copy to: Kenneth J. Richardson
 City Attorney
 Peltzer & Richardson
 3746 West Mineral King Avenue
 Visalia, CA 93291

To Owner: Road 88 LLC

Or such other address as the parties may from time to time designate by giving notice as required hereunder.

- e. Entire Agreement. This Agreement represents the entire agreement between the City and Owner as to its subject matter and no prior oral or written understanding shall be of any force or affect.
- f. Amendment. No part of this Agreement may be modified without the written consent of both parties.
- g. Headings. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the heading.
- h. No Third Party Beneficiaries Intended. Except as provided herein, the parties of this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- i. Exhibits and Recitals. The recitals and any exhibits to this Agreement are fully incorporated by reference and are integral parts of this Agreement.
- j. Conflict With Laws or Regulations/Severability. This Agreement is subject to all applicable laws and regulations. If any provision(s) of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing this subject, the conflicting provision(s) shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the effected party. In all other cases, the remainder of the Agreement shall continue in full force and effect.
- k. Waiver. A waiver of any breach of this Agreement by any party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.
- l. Choice of Law - Venue. This Agreement shall be governed by the laws of the State of California and any questions arising hereunder shall be construed or determined according to such law. Venue for any legal action arising from or in connection with this Agreement or the Property shall be in Tulare County, California.
- m. Attorneys Fees. In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recovery of its reasonable fees and costs, including attorneys fees, court costs and arbitration costs incurred in the action brought thereon.

- n. No Agency, Joint Venture or Partnership. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Owner and that Owner is not an agent of City. City and Owner hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection therewith shall be construed as making City and Owner joint venturers or partners.

- o. Excusable Delays; Extension of Time of Performance. In the event of delays due to strikes, inability to obtain materials, civil commotion, fire, war, terrorism, lockouts, third-party litigation or other legal challenges regarding the annexation, riots, floods, earthquakes, epidemic, quarantine, freight embargoes, failure of contractors to perform, or other circumstances beyond the reasonable control of the parties and which cause substantially interferes with the ability of either party to perform its obligations under this Agreement, then the time for performance of any such obligation shall be extended for such period of time as the cause of such delay shall exist but in any event not longer than for such period of time.

- p. Further Assurances. The parties will execute and deliver, upon demand by the other party, such further documents, instruments and conveyances, and shall take such further actions as such other party may request from time to time to document the transactions set forth herein.

- q. Recordation of Agreement; Counterparts. This Agreement, or an abstract of its material terms and conditions shall be recorded by either party in the Official Records of the Tulare County Recorder. This Agreement may be executed in counterparts and, when all counterparts are combined, shall constitute a single agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth next to their signature.

CITY

Date: _____

By: _____
Leslie Caviglia, City Manager

Attest:

Date: _____

By: _____
Michelle Nicholson, City Clerk

Approved as to Form:

Date: _____

By: _____
Kenneth J. Richardson,
City Attorney

OWNER

Date: _____

By: _____
Road 88 LLC