

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

This Agreement, dated as of _____, is entered into by and between the City of Visalia, a municipal corporation (the "City"), and Visalia Parkway Partners, LLC, a California limited liability company, (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, City and Developer, as a condition for approval of Parcel Map No. 2019-13 and Conditional Use Permit No. 2019-31, pertaining to real property identified therein (the property and entitlements so described hereafter referred to as the Project") have entered into a Project 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 Offsite Development Plans for Visalia Parkway (Phase 2) and approved by the City on December 10, 2023 (hereafter collectively referred to as the "Facilities"); and

WHEREAS, City and Developer have agreed that the Facilities shall be built in two separate phases and have by a separate reimbursement agreement agreed to terms over reimbursement for Facilities that were constructed with the first phase for the Project; and

WHEREAS, this reimbursement agreement is intended to set forth the terms of reimbursement between City and Developer for the second phase and final phase of the Facilities, which will widen a portion of Visalia Parkway to reach the Project; and

WHEREAS, the second phase of the Project consists of road construction of a planned transportation facility, specifically widening a portion of Visalia Parkway, the majority of which is eligible for reimbursement under the Transportation Fee Program, given these specific circumstances the City and Developer have agreed to the reimbursement terms specified in this Agreement, allowing the Developer to request reimbursement for the eligible Facilities as the work progresses and before it is completed.

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 transportation facilities and the related right-of-way under the City's Transportation Fee Program requirements but have been required as conditions of approval for Developer's private development project and City maintains no proprietary interest in the overall project except for these specified public improvements.

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 Project Improvements Agreement.

Section 2. Reimbursement Amounts

The City shall reimburse, through 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, as adjusted by the Parties through the date of this Agreement and attached hereto as Exhibit 1 ("Programmed Costs"), or the items that the City will reimburse the Developer for and lists the applicable unit costs and right of way values. A diagram showing the location of these public improvements is attached as Exhibit 2.

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 the actual construction costs for the Facilities 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 or Exhibit 2 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 Programmed Cost in the manner as set forth in Section 5 below. Reimbursements payments by the City will not be made until 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. As noted in Section 5, this Agreement allows the Developer to

seek reimbursement during construction of the Facilities. The Developer waives all right to reimbursement from the City if they do not request reimbursement within this four-year limitation; and

Section 5. Reimbursement Method

Developer shall be reimbursed the Programmed Costs, without interest, in the following manner(s):

- 5.1 Cash Reimbursement from Development Fees Collected City Wide.** Developer may submit reimbursement requests monthly as the work on the Facilities progresses. The reimbursement requests will be based on the amount of the work completed on the Facilities, minus a retention amount of five percent (5%) which will be withheld from each progress payments to Developer from City. Developer must provide City copies of invoices from subcontractors, conditional releases of any liens from contractors, and calculation of percentage of work completed on Facilities, to the reasonable satisfaction of the City on a monthly basis.

Developer acknowledges that work on improvements that are not subject to reimbursement by the City will not be reimbursed and that submitted invoices will need to separately identify items that are reimbursable under this Agreement and any items that are not reimbursable.

City shall review the invoices from Developer and has ten (10) calendar days from the date the invoices are submitted to dispute any charges by Developer. If the City does not dispute an item, then it will be considered approved by the City. Disputed amounts shall be reviewed between the City and the Developer and shall not be paid until the City is satisfied that only work on the reimbursable Programmed Costs is being sought for recovery.

Payment of all undisputed reimbursement amounts will be made by City within thirty (30) calendar days from approval.

If the progress payments exceed the Programmed Costs, then Developer must request an adjustment to the Programmed Costs under Section 3 of this Agreement prior to any additional reimbursement by the City.

The retention amount may be requested by Developer after the Facilities have been completed, formally accepted by City, and thirty-five (35) days have passed from a Notice of Completion having been filed for and no claim of nonpayment has been filed by any workers or material suppliers. If any claims have been filed, then City may withhold the reimbursement attributable to such nonpayment claim until the claim is resolved.

Developer acknowledges that performance and payment bonds in the amount of one hundred percent (100%) of the estimated Facilities cost have been issued and accepted by the City and a one-year maintenance/warranty bond on the Facilities will be provided in a form acceptable to City under the Project Improvements Agreement, and the term of this warranty bond will not begin until the Facilities have been completed and accepted by the City.

Section 6. Transfer of Reimbursement Rights

Rights to cash payment reimbursements 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. Developer shall not 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:

Visalia Parkway Partners, LLC
405 N. Palm Avenue
Fresno, CA 93701
Attn: James Shehadey

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 commencement 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

VISALIA PARKWAY PARTNERS, LLC,
a California limited liability company

Leslie Caviglia
City Manager/City Clerk

Date

James L. Shehadey, Manager

Date

ATTEST:

Deputy City Clerk

Date

APPROVED AS TO FORM:

City Attorney

Date

EXHIBIT 1

Visalia Parkway Reimbursement					
ITEM NO. & DESCRIPTION	Qty	UNIT	UNIT PRICE	TOTAL	
1 Install/Maint. Temp. Construction Traffic Control	1	LS	\$ 74,514.00	\$	74,514.00
2 Sawcut Asphalt Pavement	1265	LF	\$ 1.60	\$	2,024.00
3 Demo Asphalt Pavement	17286	SF	\$ 1.33	\$	22,990.38
4 Demo Curb and Gutter	1006	LF	\$ 4.46	\$	4,486.76
5 Mobilization	1	LS	\$ 11,880.00	\$	11,880.00
6 Rough Grading	8196	CY	\$ 9.02	\$	73,927.92
7 Clear & Grub Site	147140	SF	\$ 0.18	\$	26,485.20
8 Export Excess Material	3600	CY	\$ 4.58	\$	16,488.00
9 Grading & Compaction	8196	CY	\$ 15.40	\$	126,218.40
10 Pavement Base Rock & Fine Grading	116187	SF	\$ 8.62	\$	1,001,531.94
11 Pavement Markings	1	LS	\$ 51,425.00	\$	51,425.00
12 Pavement Markings, Temp Striping	1	LS	\$ 28,897.00	\$	28,897.00
13 Curb and Gutter	2530	LF	\$ 31.46	\$	79,593.80
14 Curb and Gutter @ Transition	320	LF	\$ 51.48	\$	16,473.60
15 Sidewalk (10' wide)	26300	SF	\$ 7.81	\$	205,403.00
16 Median Curb	4610	LF	\$ 30.91	\$	142,495.10
17 Median Curb (Dowel to AC)	720	LF	\$ 73.81	\$	53,143.20
18 Drive Approach	504	SF	\$ 16.74	\$	8,436.96
19 Curb Return	1632	SF	\$ 15.73	\$	25,671.36
20 Red Stamped Concrete in Median	14880	SF	\$ 15.18	\$	225,878.40
21 Removable Pipe Bollards	10	EA	\$ 600.00	\$	6,000.00
22 Pipe Bollard Footing	10	EA	\$ 709.50	\$	7,095.00
23 City Street Light Single Head	3	EA	\$ 10,202.50	\$	30,607.50
24 City Street Light Double Head	5	EA	\$ 10,681.00	\$	53,405.00
25 City Street Light-Relocate	1	EA	\$ 23,259.50	\$	23,259.50
26 Street Light Box	12	EA	\$ 1,952.50	\$	23,430.00
27 Street Light Conduit	2100	LF	\$ 46.20	\$	97,020.00
28 Adjust Manholes	22	EA	\$ 1,278.80	\$	28,133.60
29 New Manholes	2	EA	\$ 8,836.30	\$	17,672.60
30 18" SD Pipe	219	LF	\$ 259.73	\$	56,880.87
31 12" SD Pipe	59	LF	\$ 127.08	\$	7,497.72
32 Type GO Drain Inlets (City Standard)	5	EA	\$ 7,113.70	\$	35,568.50
33 Vee Gutter Drain Inlets	2	EA	\$ 2,638.79	\$	5,277.58
34 8" Sewer	55	LF	\$ 319.47	\$	17,570.85
35 Chain Link Gate	2	EA	\$ 1,540.00	\$	3,080.00
36 Chain Link Fence	340	LF	\$ 88.00	\$	29,920.00
37 Landscape and Irrigation	30743	SF	\$ 7.80	\$	239,795.40
38 SCE - Relocate Power Pole Allowance (Pending SCE)	1	LS	\$ 50,000.00	\$	50,000.00
Subtotal					\$2,930,178.14
Design & Construction Management (less Admin)			12%		\$351,621.38
Total					\$ 3,281,799.52

EXHIBT 2

