

PUBLIC FACILITIES IMPACT FEE CREDIT/REIMBURSEMENT AGREEMENT

THIS PUBLIC FACILITIES IMPACT FEE CREDIT/REIMBURSEMENT AGREEMENT ("Agreement"), made and entered into _____, 20__, between the City of Merced, a California Charter Municipal Corporation, hereinafter called "City," and 2980 East Yosemite, LLC, a Delaware limited liability company, hereinafter called "Developer," relating to the installation of a traffic signal at Yosemite Ave and Lake Road.

RECITALS

- A. Developer owns fee title to real property at and commonly known as 2980 East Yosemite Ave, Merced, California, APN 008-520-001 and more particularly described on attached Exhibit "A".
- B. Developer has an approved Planned Development per Planning Commission Resolution #3082, General Plan Amendment #16-06, Zone Change #424 and Establishment of Planned Development (P-D) #76 to construct apartment complexes and retail centers (the "Development") described on file at the City of Merced Planning Department, which requires the installation of the traffic signal at Yosemite Avenue and Lake Road.
- C. The construction of the traffic signal at Yosemite Avenue and Lake Road will, in part, benefit other properties due to the regional use of the roadway and traffic signal.
- D. As required by state law, in order for City to provide credit or reimbursement for these improvements, the contractors working on the improvements were paid prevailing wage rates.
- E. The developer installed a median and resurfaced portion of Yosemite Ave, installed roadway striping & signage, installed storm drains, and installed a traffic signal at the intersection of Yosemite Avenue (an arterial street – City Street) and Lake Road (a collector road – County Road) as identified on the Circulation Map of the *Merced Vision 2030 General Plan*.
- F. Developer is qualified to receive either a fee credit, a reimbursement, or a combination of fee credit and reimbursement from the City for the Improvements in an amount not to exceed the cost estimate approved by the City Engineer (Exhibit B) as provided in Chapter 17.62 of the Merced

Municipal Code and as provided for under the Policy A-32 of the City's Administrative Policy and Procedure.

- G. Security for the traffic signal shall be provided as part of the Planned Development for Merced Station.

Based on the foregoing recitals, and in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto mutually agree as follows:

1. INCORPORATION OF RECITALS

The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.

2. POLICIES, ORDINANCES, AND RESOLUTIONS

Fee credit or reimbursement for the Improvements shall be made only in accordance with policies, ordinances, and resolutions in effect at the time of execution of this Agreement. Such fee credit or reimbursement shall be limited to the items and quantities actually installed or constructed. Estimated items and quantities shall be listed in a schedule to be submitted and approved at the time of execution of this Agreement, and attached hereto as "Exhibit A". The burden of clearly establishing the actual costs of items and quantities installed rests on the Developer.

3. RESERVED

4. REIMBURSEMENT

If the actual cost of the Improvements is greater than the total amount of fees to be paid for the Development, a reimbursement shall be established hereunder:

- A. Developer shall be reimbursed on a first in time basis and based on the availability of public facility fee program funds. First in time shall be determined by when the public Improvement is completed and accepted by City.
- B. Reimbursement, if funds are available, shall be paid as prescribed in Chapter 17.62 of the Merced Municipal Code and related

Administrative Policy and Procedure A-32 following the recording of Notice of Completion by the City, and after correction of any and all deficiencies, assuming no labor and material claims are filed, and after Developer has filed a claim therefore, supported by itemized paid invoices for such work or materials.

- C. Reimbursements shall not bear interest but shall be owed indefinitely until paid in full.

The Developer is entitled to either fee credit or reimbursement, or a combination of both, in an amount not exceed the Engineer's Estimate approved by the City Engineer. No reimbursement shall be given until and unless the Improvements are constructed and accepted by City.

5. REIMBURSEMENT AMOUNT

The Developer is, therefore, entitled to a reimbursement in an amount not to exceed Seven Hundred Twenty-Seven Thousand Five Hundred and Twenty-Three Dollars and Sixty-Eight Cents (\$727,523.68) for the installation of the traffic signal and roadway improvements at Yosemite Avenue and Lake Road (see Exhibit B).

If the Developer elects to obtain the reimbursement through fee credits, the credit given shall be for a portion of the PFFP fee collected as part of the building permit process. The remaining portion of the PFFP fee would remain the Developer's responsibility. If the reimbursement amount exceeds the PFFP fees for which credits are provided, Developer shall remain entitled to a reimbursement for such difference in accordance with the terms of Section 4.

All of the Improvements shall be subject to the City's final inspection and approval, and in no event shall the reimbursement given hereunder be construed as acceptance of the Improvements, or any portion thereof, by the City.

6. NOTICE OF COMPLETION

Where applicable, City shall record a Notice of Completion with the Merced County Recorder following City's acceptance of the Improvements.

7. SUCCESSORS AND ASSIGNS

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

8. WAIVER

In the event that either City or Developer 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.

9. VENUE

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 Merced.

10. AMENDMENT

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

11. INTEGRATION

This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

12. 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.

13. COUNTERPARTS

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

14. CONSTRUCTION

The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Agreement. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

15. SECTION HEADINGS

The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 1/29/2024
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

DEVELOPER:
2980 EAST YOSEMITE AVENUE, LLC,
A Delaware Limited Liability Company

By: [Signature]
Matthew B. Duffield

Its: Manager

Tax ID No. 84 - 4498161

Address: 280 N. Old Woodward Avenue
Suite 220
Birmingham, Michigan 48009

Telephone: (248) 630-3167

ACKNOWLEDGMENT

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 _____

County of _____

On _____, 20__, before me, _____,
a Notary Public, 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 _____

Notary Public

(seal)

ACKNOWLEDGMENT

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 michigan

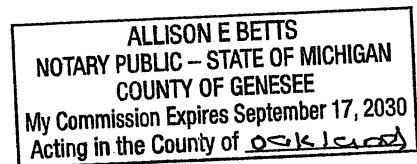
County of oakland

On February 13 2024, before me, Allison E. Betts,
a Notary Public, Personally appeared Matthew B. Duffield

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 Allison E. Betts

Notary Public

(seal)

EXHIBIT A

All that real property situated in a portion of Section 16, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, being more particularly described as follows:

Parcel 1 and Parcel 2 as delineated on that certain map entitled "LOT SPLIT APPLICATION #22-04 PARCEL MAP" recorded on August 24, 2023, in Book 121, of Parcel Maps, at Pages 46-48, Merced County Records.

EXHIBIT B

**Yosemite Avenue and Lake Road
Traffic Signal**

Project Cost

| City of Merced Portion Reimbursement | | | | | |
|--------------------------------------|--|-----------------|---------------|---------------------|-------------------------|
| Roadway | | UNIT OF MEASURE | TOTAL COST | AMOUNT REIMBURSABLE | REIMBURSABLE BEYOND 24' |
| NO. | ITEM | | | | |
| 1 | QK - Civil Roadway Design & Construction Engineering | LS | \$ 40,612.00 | \$ 8,122.40 | \$ 8,122.40 |
| 2 | Construction Management | LS | \$ 32,375.27 | \$ 6,475.05 | \$ 6,475.05 |
| 3 | Roadway Construction | LS | \$ 861,760.00 | \$ 204,465.00 | \$ 204,465.00 |
| | | | | Total | \$ 219,062.45 |

| Traffic Signal | | UNIT OF MEASURE | TOTAL COST | AMOUNT REIMBURSABLE | REIMBURSABLE at 50% |
|----------------|---|-----------------|---------------|---------------------|---------------------|
| NO. | ITEM | | | | |
| 1 | QK - Construction Staking | LS | \$ 59,166.00 | \$ 18,933.00 | \$ 9,466.50 |
| 2 | Jack Clapsaddle Construction Management | LS | \$ 32,375.26 | \$ 32,375.26 | \$ 16,187.63 |
| 3 | Traffic Signal Design QK | LS | \$ 33,228.00 | \$ 14,952.60 | \$ 7,476.30 |
| 4 | Traffic Signal Design JLB | LS | \$ 34,207.00 | \$ 34,207.00 | \$ 17,103.50 |
| 5 | Traffic Signal Construction | LS | \$ 916,454.59 | \$ 916,454.59 | \$ 458,227.30 |
| | | | | Total | \$ 508,461.23 |

Total \$ 2,010,178.12 \$ 1,235,984.90 \$ 727,523.68

Total **\$ 727,523.68**