

## REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Merced, a California Charter Municipal Corporation ("City") and the Board of Education of the County of Merced, acting as Trustee of the Testamentary Trust established by the Last Will and Testament of Virginia Smith, deceased, a California charitable trust, whose address of record is 623 13th Street, Merced, CA 93401 ("Virginia Smith Trust", "VST" or "Developer"), and collectively, "Parties".

WHEREAS, Developer desires to develop a Specific Plan for the development of the approximately 656 acres generally located east of Lake Road between Myers Gate Road and Cardella Road, also known as "Adjusted Parcel 2" by Certificate of Compliance No. 16009 for Property Line Adjustment No. 16014 recorded October 19, 2016 as Series No. 2016035817 of Official Records, Merced County, and as Assessor's Parcel Nos.: 060-010-004-000 and 060-020-048-000. Said Specific Plan is to implement the University Community Plan, ("Project" or "Project Site"), as illustrated on Exhibit A attached.

WHEREAS, the Project Site is located in the County of Merced. The City, County of Merced ("County"), and Developer have agreed that the County shall be the lead agency for the Project's entitlements and environmental review. The City will participate in the entitlement and environmental review process to facilitate development of a Project that meets the City's development policies and regulations, and in anticipation of eventual annexation of the Project Site into the City, in conformance with Policy 1.4 of the General Plans Urban Expansion policies.

WHEREAS, the City will incur certain fees, cost, including wages, and expenses, (collectively referred to as "Costs") for certain services including, but not limited to, project management, planning, engineer and other services to process the Project's entitlements and environmental review ("Project Related Services"). Project Related Services may be performed by a City employee, Contractor, or Consultant ("Service Provider"). Developer desires to reimburse City for all of the Costs provided by the Service Provider related to the Project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. REIMBURSEMENT. Without regard to the outcome or adequacy thereof, and without offset for any reason, Developer agrees to reimburse City for all Costs for any Project Related Services provided by the Service Provider including, but not limited to, the Project Related Services identified in Exhibit B attached. City and Developer shall select the Service Provider by mutual agreement for the necessary Project Related Services described in Exhibit B. It is understood that City would not have engaged the Service Provider had Developer not made an express promise and guarantee to pay all for Project Related Services and Costs performed by the Service Provider. The estimated cost of the Project Related Services shall not exceed One Hundred Thousand Dollars (\$100,000). Concurrent with the City employing or contracting with the Service Provider, Developer shall deposit with the City an amount equal to 50 percent of the total estimated Costs, and within 365 days of employing or contracting with the Service Provider, shall deposit the remainder of the estimated total Costs. In the event the aforementioned Service Provider services are amended, Developer and City agree to similarly amend Developer's reimbursement obligation hereunder with the intent that the City will at all times be reimbursed for any and all Costs for Project Related Services to be performed by the Service Provider. In the event the Service Provider is terminated, the Developer will only be responsible for its pro-rata share of the Service Providers Costs up to and including the date of termination.

2. In addition to the Project Related Services to be performed by the Service Provider, City staff will spend considerable time administering and/or overseeing the Project Related Services being performed by the Service Provider. As required by City Council Resolutions #98-31 and #09-74 and the most current version of the "Planning and Development Fee Schedule," ("Schedule") the City's management fee is estimated to be ten percent (10%) of the Service Provider's Costs. Pursuant to the Schedule, the Developer hereby agrees to deposit, upon the execution of this Agreement, the additional sum of Ten Thousand Dollars (\$10,000) for the management of the Service Provider by City. The Developer may request periodic statements from the City's Finance Department itemizing any and all charges applied against the deposit. All costs over and above the initial deposit are due and payable prior completion of the Project Related Services or prior to final Planning Commission/City Council action on the Project, if applicable, as determined in the City's sole and unfettered discretion.

3. The Developer acknowledges and agrees that nothing contained herein guarantees any particular result or outcome. The Developer further acknowledges and agrees that it shall have no control over the work product of the Service Provider and that its payment of the Costs and City's Management fee is not dependent thereon. The Developer also acknowledges and agrees that failure of the Developer to make payments when due shall be grounds for City to suspend work and/or terminate the work being performed by the Service Provider.

4. The Developer reserves the right to provide a performance bond on behalf of the Service Provider, subject to Service Provider's consent, and at the Developer's sole expense.

5. The Developer shall have the right to utilize the reports and work product of the Service Provider in connection with the proposed Project.

6. No application for any project from the Developer shall be considered for approval until the Project Related Services are completed by the Service Provider, as determined by the City. Nothing herein is intended to suggest any particular result related to any application related to the Project. The City retains its authority to grant, deny, or condition any and all projects and applications.

7. 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.

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

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

11. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

12. This Agreement constitutes the complete, entire, exclusive, and final agreement and understanding between the parties as to the subject matter herein, superseding all negotiations, prior discussions, and preliminary agreements or contemporaneous understandings, written or oral.

13. 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.

14. 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.

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: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Phedra C. Mm 6-25-2000  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

DEVELOPER  
VIRGINIA SMITH TRUST

BY: Steve M. Tietjen  
Steve M. Tietjen, Ed D.  
Advisor

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 623 13th Street  
Merced, CA 95340

TELEPHONE: (209) 381-6601

FAX: (209) 381-6767

E-MAIL: [stiejen@mcoe.org](mailto:stiejen@mcoe.org)

# **Exhibit A**

## **Project Site**

T.7S., R.14E., M.D.B. & M.

Tax Rate Area 83-02  
83-28

60-02

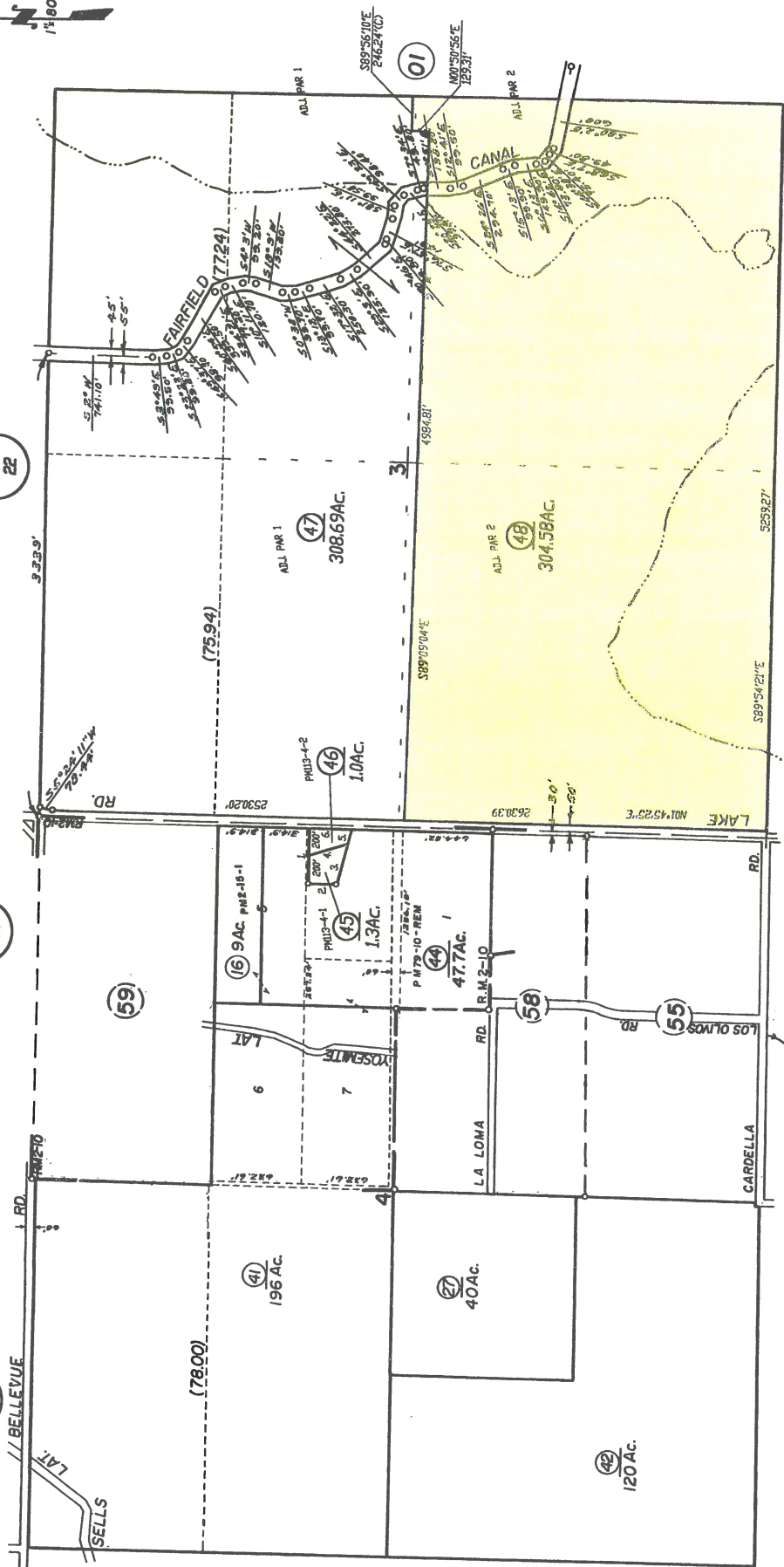
NOTE--  
This map is for Assessment purposes only.  
It is not to be construed as portraying  
legal ownership or divisions of land for  
purposes of zoning or subdivision law.

1. N89°52'23"V 400'
2. N11°42'05"E 200'
3. S74°46'15"E 299.85'
4. S74°46'15"E 299.85'
5. S74°46'15"E 111.43'
6. N11°42'05"E 299.85'

170  
22

170  
18

170  
21



Addition to Yosemite Colony R.M. Bk.2, Pg. 10 .

05 Assessor's Map Bk. 60-Pg. 02  
County of Merced, Calif.  
1959

NOTE--Assessor's Block Numbers shown in Ellipses  
Assessor's Parcel Numbers shown in Circles

REVISED 5-65  
8-67  
12-68  
7-73  
1-74  
8-81  
10-83-13  
12-31-16

10-09

**-NOTE-**



**Bk. 53**

90

**NOTE--Assessor's Block Numbers shown in Ellipses  
Assessor's Parcel Numbers shown in Circles**

Assessor's Map Bk.60-Pg.01  
County of Merced, Calif.  
1959

RECEIVED 8-67  
12-30-01  
12-30-16

## **Exhibit B**

### **Project Related Service- Scope of Work**

#### ***Task 1***

##### ***BACKGROUND RESEARCH***

Service Provider shall review all appropriate background materials and proposals for the University North Development including, but not limited to, the Merced City General Plan, University Community Plan, North Merced Annexation Feasibility Study, and other Technical Studies. Service Provider shall identify any necessary technical studies to complete the entitlements.

#### ***Task 2***

##### ***PROJECT KICK-OFF***

Service Provider shall attend the Project kick-off meeting with the Applicant and City Staff to refine the details of the scope of work and establish a definitive understanding of product delivery dates, including entitlement applications and exhibits, including but not limited to, the General and Community Plan Amendments, University North Specific Plan, Pre-zoning, Vesting Tentative Maps and Development Agreement (or Pre-Annexation Development Agreement or Out of Boundary Service Agreement). In addition, Service Provider will review the Specific Plan as the Project Description for the CEQA compliance including, but not limited to, items necessary for the Specific Plan to comply with City development regulations. Service Provider will attend the Project kick-off meeting with the Project's CEQA consultant and assist City Staff, the chosen CEQA consultant and the Project Proponent. The County of Merced is the Lead Agency for the entitlements, and the City of Merced is a Responsible Agency.

#### ***Task 3***

##### ***APPLICATION ASSESSMENT, ONGOING REVIEW, PROCESSING AND STATUS UPDATES***

Service Provider will work with City Departments (Public Works, Engineering, Planning, Merced Fire, Merced Police Services and City Administration) to review the application and submittals, including but not limited to the University North Specific Plan, Proposed General and Community Plan Amendments, Pre-zoning, and Vesting Tentative Subdivision Map. City Staff shall coordinate the review by all other City Departments who will be involved with the entitlements. Service

Provider shall provide the City and the City shall provide the Developer and County, a list of non-contradictory comments on the Project. Service Provider shall schedule and attend meetings with the Applicant, key City Departments, the County, stakeholders, and others as needed to review concerns and priority issues that need to be addressed in the entitlements to be processed by the County.

***Task 4***

***PROJECT REFERRALS***

The Service Provider shall prepare all Project Referral documents, including City Internal Department Referrals (Development Review Committee, etc.).

***Task 5***

***CEQA REVIEW***

The Developer will process a subsequent EIR through the County of Merced that builds on the certified EIR prepared for the University Community Plan (SCH# 2001021056). The Service Provider will review the subsequent environmental document on behalf of the City and provide comments thereon.

***Task 6***

***STUDY SESSIONS WITH Planning Commission/City Council***

Based on discussions with City Staff and the Applicant, the Project will include one (1) joint Planning Commission and City Council Study Sessions prior to formal action on the Project. The Applicant will prepare the necessary PowerPoint Presentation and materials (i.e. Staff Report, Maps, etc.). Service Provider's role will be to attend the meetings to answer questions from the audience and Planning Commission/City Council relating to processing, timing, and planning related matters.

***Task 7***

***PREPARE STAFF REPORTS AND CONDUCT PUBLIC HEARINGS***

Service Provider will prepare all Staff Reports, Resolutions, Ordinances and supporting documents to be presented at the Planning Commission and City Council meeting(s) for the City tasks associated with the Project. In addition, Service Provider will prepare the required Public Notices for Planning Commission and City Council and will transmit to Staff in a timely manner to be 1) reviewed by City Staff.