

SUBDIVIDER AGREEMENT

This agreement is dated October 8, 2019, and is between 3B Development, Inc., a California corporation doing business at 1396 W. Herndon Avenue, Suite 101, Fresno, California 93711 ("**Subdivider**"), and the County of Fresno, a political subdivision of the State of California ("**County**").

Recitals

On December 14, 2000, the Fresno County Planning Commission approved Tentative Tract Map No. 4968, subject to certain conditions. An application has been made for approval of the Final Map for Tract No. 6189, which is 133 lots ("**Tract 6189**"). Tract 6189 is Phase II of Tentative Tract Map No. 4968.

On October 8, 2019, the Fresno County Board of Supervisors ("**Board**") formed Zone G of County Service Area No. 34 ("**CSA 34G**") to provide water and sewer services, maintenance of roads and drainage, public right-of-way landscape maintenance, street lighting, and lake pump operation maintenance and water contract administration benefitting the 133 residential parcels to be created by Tract 6189.

Condition of approval 14.d. for Tentative Tract Map No. 4968, which applies to Tract 6189, requires that the developer shall enter into an agreement with the County on behalf of CSA 34G in which the developer is responsible for all costs associated with the operation, maintenance, and administration of CSA 34G until such time as these costs can be met by CSA 34G through assessments or fees.

The purpose of this agreement is to satisfy the requirement in condition 14.d. and to establish the duties and responsibilities of the Subdivider with respect to that requirement.

The parties therefore agree as follows:**Article 1****Definitions**

1.1 "**Consumer**" means any person, other than Subdivider, who is obligated under applicable ordinances or resolutions of the Board to pay taxes, benefit assessments, standby charges, property-related fees, or user fees for any services or facilities provided to or for the benefit of a developed residential parcel in CSA 34G, or who resides on any developed residential parcel in CSA

1 34G.

2 1.2 **"Fiscal Year"** means a period beginning on July 1 and concluding the next June 30.

3 1.3 **"Offsetting Revenue"** means revenue from taxes, benefit assessments, standby
4 charges, property-related fees, or user fees collected by the County from Consumers, or from
5 Subdivider as provided in Article 3 of this agreement.

6 1.4 The words **"services"** and **"facilities"** have the same meanings in this agreement as
7 they have in section 25213 of the Government Code, except that improvements that have not been
8 formally accepted by the County are not "facilities" for purposes of this agreement.

9 1.5 **"Total Zone G Cost"** means (a) the total cost, including all of the components described
10 in exhibit A to this agreement, to provide, operate, maintain, repair, and replace all CSA 34G services
11 and facilities; plus (b) an amount up to 10 percent of that total cost, excluding costs for road and bridge
12 maintenance, as needed to bring the general operating reserves to a minimum level in accordance with
13 the Board of Supervisors policy adopted November 7, 2006, and confirmed on November 10, 2009.

14 1.6 **"Day"** means calendar day unless otherwise specified.

15 1.7 **"Sales Complex"** means an area within CSA 34G that consists of up to three model
16 homes, an office trailer, and up to four off-market lots.

17 **Article 2**

18 **Subdivider's Base Payment Obligation**

19 2.1 **Base Obligation.** Subdivider shall pay to County the amount of the Total Zone G Cost,
20 less Offsetting Revenue, as provided in this agreement.

21 2.2 **Period of Obligation.** The period of Subdivider's obligation under section 2.1 of this
22 agreement begins with the formation of CSA 34G, and continues through the end of the first Fiscal Year
23 during which the total of (a) the number of residential parcels in CSA 34G occupied by Consumers, and
24 (b) the number of model homes, office trailers, and off-market lots in the Sales Complex, becomes
25 equal to 133 (the "Final Fiscal Year").

26 2.3 **Initial Period Estimated Payment.** Within 30 days after the formation of CSA 34G,
27 County shall determine the estimated Total Zone G Cost less estimated Offsetting Revenues for that
28 portion of the Fiscal Year remaining after the formation (the **"Initial Period"**) and shall give Subdivider a

1 written statement of that amount, together with its calculation. Within 30 days after receiving that
2 statement, Subdivider shall pay to County the total amount shown on the statement.

3 **2.4 Annual Estimated Payment.** Within 60 days after the beginning of each Fiscal Year
4 covered by section 2.2 of this agreement, beginning with the first full Fiscal Year after formation of CSA
5 34G, County shall determine the estimated Total Zone G Cost less estimated Offsetting Revenues for
6 the coming Fiscal Year, reduced by any amount determined under section 2.5(A) of this agreement,
7 increased by any amount under section 2.5(B) of this agreement, and including any other unpaid
8 amount of Subdivider's obligation under section 2.1 of this agreement, and shall give Subdivider a
9 written statement of that amount, together with its calculation. Within 30 days after receiving that
10 statement, Subdivider shall pay to County the total amount shown on the statement.

11 **2.5 Annual True-Up.** Within 60 days after the end of the Initial Period and each Fiscal Year
12 covered by section 2.2 of this agreement, except for the Final Fiscal Year, County shall invoice
13 Subdivider for the actual Total Zone G Cost less actual Offsetting Revenue for the prior Fiscal Year.

14 (A) If the amount of the invoice is less than the amount of Subdivider's estimated payment
15 for the Fiscal Year invoiced, then the difference shall be credited to Subdivider's obligation for
16 the next Fiscal Year.

17 (B) If the amount of the invoice is more than the amount of Subdivider's estimated payment
18 for the Fiscal Year invoiced, then the difference shall be added to the written statement for the
19 next Fiscal Year under section 2.4 of this agreement.

20 **2.6 Final True-Up.** Within 60 days after the end of the Final Fiscal Year, County shall submit
21 to Subdivider a final invoice for the actual Total Zone G Cost less actual Offsetting Revenue for the
22 Prior Fiscal year.

23 (A) If the amount of the invoice is less than the amount of Subdivider's estimated payment
24 for the Final Fiscal Year, then the difference shall be refunded to Subdivider within 45 days after
25 the invoice is sent.

26 (B) If the amount of the invoice is more than the amount of Subdivider's estimated payment
27 for the Final Fiscal Year, then the Subdivider shall pay the difference within 30 days after
28 receiving the invoice.

2.7 Statement and Invoice Contents. Each statement and invoice under this Article 2 shall include line items showing costs for all of the components described in exhibit A.

Article 3

Subdivider's Payment of Offsetting Revenues

3.1 **Taxes, Assessments, Charges, and Fees.** Notwithstanding section 2.1 of this agreement, if Subdivider becomes obligated under applicable ordinances or resolutions of the Board to pay CSA 34G taxes, benefit assessments, standby charges, or user fees for any services or facilities provided to or for the benefit of any parcels, improvements, or facilities belonging to Subdivider (such as developed and undeveloped residential parcels, model homes, and office trailers), then Subdivider shall timely pay such taxes, benefit assessments, standby charges, or user fees as billed. Subdivider shall pay all applicable installation and connection charges if Subdivider wishes to establish water and sewer service connections to any parcels, improvements, or facilities belonging to Subdivider.

3.2 Inclusion in Offsetting Revenues. Subdivider's payment of CSA 34G taxes, benefit assessments, standby charges, user fees, and installation and connection charges does not relieve Subdivider of its obligation under section 2.1 of this agreement, but all such payments shall be included in Offsetting Revenues for the purpose of determining the amount of that obligation.

3.3 **Ongoing Payments.** The office trailer in the Sales Complex may receive water and wastewater service through CSA 34G. Upon establishment of such services for the office trailer, Subdivider shall pay, under this agreement, all user fees that would apply to a Consumer receiving those services. Beginning July 1 following the end of the Final Fiscal Year, Subdivider shall pay monthly to the County an amount equal to a Consumer's base monthly fees for water and wastewater services for each of the off-market lots in the Sales Complex. Such payments shall continue for each lot until that lot is developed and ownership is transferred to a Consumer.

3.4 **Consequence for Failure.** If Subdivider does not timely pay CSA 34G taxes, benefit assessments, standby charges, or user fees that it becomes obligated under applicable ordinance or resolutions of the Board to pay, then, in addition to any other penalties for nonpayment or late payment that may apply under the Ordinance Code of Fresno County, Chapter 14.10, County shall suspend issuance of building permits and final occupancy notices in CSA 34G until the required payment is

1 made.

2 **Article 4**

3 **County's Responsibilities**

4 4.1 **Collection of Revenue.** County shall collect all CSA 34G taxes, benefit assessments,
5 standby charges, property-related fees, user fees, and installation and connection charges as adopted
6 by the Board.

7 4.2 **Allocation of Revenue.** All payments received by County from Subdivider under this
8 agreement shall be credited to the funds of CSA 34G and, except for payments under section 3.3 of
9 this agreement, shall be allocated proportionally as required by the "Engineer's Report for Tract 6189
10 and Tract 4934 on Proposed Water and Wastewater Service Fees and Proposed Infrastructure
11 Operations and Maintenance Benefit assessments for Fresno County Service Area 34 and its Zone G
12 (Granville) and Zone F (The Vistas)" prepared by Kheng Vang and dated August July 25, 2019, or any
13 other applicable fee study or assessment engineer's report.

14 4.3 **Recordkeeping.** County shall maintain records of its determinations of estimated and
15 actual Total Zone G Costs and Offsetting Revenues, and of all payments by Subdivider under this
16 agreement. Such records shall be sufficient to support the County's statements, invoices, and other
17 determinations under this agreement.

18 4.4 **No Limitation on Imposing Charges.** Nothing in this agreement limits the power of the
19 County to impose in accordance with applicable law, taxes, benefit assessments, standby charges,
20 property-related fees, and user fees, as appropriate, for CSA 34G services and facilities.

21 **Article 5**

22 **Notices**

23 5.1 **Contact Information.** The persons and their addresses having authority to give and
24 receive notices provided for or permitted under this agreement include the following:

25 **For the County:**

26 County Service Area 34G
27 Resources Division, Special Districts
28 Department of Public Works and Planning
COUNTY OF FRESNO
2220 Tulare Street, 6th Floor
Fresno, CA 93721

Telephone: (559) 600-4259
Fax: (559) 600-4552

For the Subdivider:

3B Development, Inc.
1396 W. Herndon Avenue, Suite 101
Fresno, California 93711
Telephone: (559) 436-0900
Fax: (559) 436-1659

5.2 **Method of Delivery.** All notices between County and Subdivider provided for or permitted under this agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission.

(A) A notice delivered by personal service is effective upon service to the recipient.

(B) A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient

(C) A notice delivered by an overnight commercial courier service is effective on County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

(D) A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery shall be deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission.

5.3 **Claims Presentation.** For all claims arising from or related to this agreement, nothing in this agreement establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

Article 6

General Terms

6.1 **Modification.** This agreement may not be modified, and no waiver is effective, except by written agreement signed by both parties.

1 6.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations under
2 this agreement without the prior written consent of the other party.

3 6.3 **Governing Law.** The laws of the State of California govern all matters arising from or
4 related to this agreement.

5 6.4 **Jurisdiction and Venue.** This agreement is signed and performed in Fresno County,
6 California. The Subdivider consents to California jurisdiction for actions arising from or related to this
7 agreement, and, subject to the Government Claims Act, all such actions must be brought and
8 maintained in the Fresno County Superior Court.

9 6.5 **Construction.** The final form of this agreement is the result of the parties' combined
10 efforts. If anything in this agreement is found by a court of competent jurisdiction to be ambiguous, that
11 ambiguity shall not be resolved by construing the terms of this agreement against either party.

12 6.6 **Headings.** The headings and section titles in this agreement are for convenience only
13 and are not part of this agreement.

14 6.7 **Severability.** If anything in this agreement is found by a court of competent jurisdiction
15 to be unlawful or otherwise unenforceable, the balance of this agreement remains in effect, and the
16 parties shall make best efforts to replace the unlawful or unenforceable part of this agreement with
17 lawful and enforceable terms intended to accomplish the parties' original intent.

18 6.8 **No Waiver.** Payment, change, waiver, or discharge by the County of any liability or
19 obligation of the Subdivider on any one or more occasions is not a waiver of performance of any
20 continuing or other obligation and does not prohibit enforcement by the County of any obligation on any
21 other occasion.

22 6.9 **Entire Agreement.** This agreement is the entire agreement between the Subdivider and
23 the County with respect to the subject matter of this agreement, and it supersedes all previous
24 negotiations, proposals, commitments, writings, advertisements, publications, and understandings of
25 any nature unless those things are expressly included in this agreement. If there is any inconsistency
26 between the terms of this agreement without its exhibits and the terms of the exhibits, then the
27 inconsistency will be resolved by giving precedence first to the terms of this agreement without its
28 exhibits, and then to the terms of the exhibits.

1 6.10 **Third-Party Beneficiaries.** This agreement does not and is not intended to create any
2 rights or obligations for any person or entity except for the parties.

3 6.11 **Authorized Signatures.** Subdivider represents and warrants to County that:

4 (A) Subdivider is duly authorized and empowered to sign and perform its obligations under
5 this agreement.

6 (B) The individual signing this agreement on behalf of Subdivider is duly authorized to do so
7 and his or her signature on this agreement will legally bind the Subdivider to the terms of this
8 agreement.

9 6.12 **Counterparts.** This agreement may be signed in counterparts, each of which is an
10 original, and all of which together constitute this agreement.

11 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and
12 year first hereinabove written.

13 **SUBDIVIDER**

14 3B Development, Inc., a California
15 corporation

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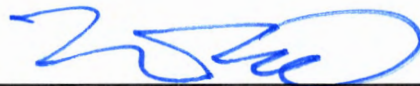
17 By: Darius Assemi, President

18 1396 W. Herndon Ave., Ste. 101

19 Fresno, California 93711

20 Mailing Address

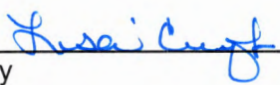
21 **COUNTY OF FRESNO**

22 

23 NATHAN MAGSIG, Chairman of the Board of
24 Supervisors of the County of Fresno

25 **ATTEST:**

26 Bernice E. Seidel, Clerk of the Board of Supervisors,
27 County of Fresno, State of California

28 By: 

Deputy

**CSA 34 Zone G Formation
EXHIBIT A**

TOTAL ZONE G COST COMPONENTS

County shall determine the Total Zone G Cost by including all of the following components:

1. **Water.** The cost to provide water services and facilities for CSA 34G includes a pro rata share of the cost for lake pump operation and maintenance and water contract administration, a pro rata share of the surface water treatment plant costs and all of the costs for the local water distribution system, as follows:
 - a. **Lake Pump Operation and Maintenance and Water Contract Administration.** The CSA 34G is a pro rata share, based on the annual volume, as measured in acre-feet, of surface water available to each of the five areas of service under the Surface Water Supply Contracts, of the cost of all services associated with the purchase and pumping of raw water from Millerton Lake, and administrative services associated with ensuring that the Millerton Lake raw water pumping facilities retain their standby, ready-to-serve status for the benefit of all the lots in CSA 34G, and including a special reserve for repairing the Lake Pumps in the event of a future failure of those facilities similar to the one that occurred in 2012, and a Capital Facilities Replacement Reserve Fund to provide for replacement of the Lake Pump facilities components at the end of the estimated useful life for each component. .
 - b. **Surface Water Treatment Plant.** The cost of producing potable water for distribution within CSA 34G is a pro rata share of the total cost of operating and maintaining the surface water treatment plant, including a capital replacement reserve and contingency, based on the volume of finished water delivered to CSA 34G as a percentage of the total volume of finished water produced by the plant.
 - c. **Local Water Distribution System.** The cost to operate and maintain, including a capital replacement reserve and contingency, CSA 34G's local water distribution system, including the water distribution piping system, fire hydrants, and water storage facilities, in a ready-to-serve status for all user classes.
2. **Sewer.** The cost to provide sewer services and facilities for CSA 34G includes a pro rata share of the wastewater treatment plant costs and all of the costs for the local wastewater collection system, as follows:
 - a. **Wastewater Treatment Plant.** The cost of providing wastewater treatment for CSA 34G is a pro rata share of the total cost of operating and maintaining the wastewater treatment plant, including a capital replacement reserve and contingency, based on number of 12-month equivalent connections (total number of connections each month divided by 12) in CSA 34G as a percentage of the total number of connections to the plant.

CSA 34 Zone G Formation EXHIBIT A

- b. **Local Wastewater Collection System.** The cost to operate and maintain, including a capital replacement reserve and contingency, the CSA 34G wastewater collection system, which includes all costs associated with the maintenance of the sewer pipeline system and the new lift station required for CSA 34G.
3. **Street Maintenance.** The cost to provide street sweeping, paving, striping, signage maintenance, repair, and reconditioning services, including maintenance of the in-tract and off-site streets, bridges, and culverts constructed pursuant to conditions of approval for Tract 6189, in ready-to-serve status for access to all of the parcels within CSA 34G, including funding at the minimum annual amount of the street pavement reconditioning and bridge replacement special reserve funds.
4. **Storm Drain Basin and Collection System.** The cost to provide storm drain services, including maintaining all of the in-tract and off-site drainage facilities constructed pursuant to the conditions of approval for the development of Tract 6189 in a ready-to-serve status for the benefit of all of the parcels within CSA 34G, and including periodic monitoring during and after storm events and operation of the basin outlet controls as needed to empty the basin between storm events, including providing funding at the minimum annual amount for the basin reconditioning reserves, together with the payment of administrative costs to support these on-going services needed to maintain the ready-to-serve status of the drainage facilities for the benefit of all of the parcels within CSA 34G.
5. **Landscape Maintenance.** The cost of all work and expenses associated with the maintenance of the landscaping and irrigation within public right-of-way and common area landscaping, required by the Millerton Specific Plan and the conditions of approval for the development of Tract 6189, to enhance the visual presentation of the community for the benefit of all the parcels within CSA 34G, including the cost to maintain and repair the monument signs, architectural features, and accent lighting system within public right-of-way and common areas.
6. **Street Lighting.** The cost to pay PG&E usage charges and all associated administrative costs, for operation and maintenance of PG&E owned street lights in CSA 34G, to provide year-round street safety lighting along all of the CSA 34G streets and to maintain the visual presentation of those streets in a ready-to-serve status for the benefit of all the parcels within CSA 34G.