

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is effective retroactively to October 1, 2016 and is made and entered into this 25th day of April 2017, by and between the County of Fresno, a political subdivision of the State of California ("COUNTY") and Friant Ranch, a Limited Partnership ("DEVELOPER") COUNTY and DEVELOPER are also referred to hereinafter individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, DEVELOPER plans to construct a subdivision (hereinafter, "the Subdivision") along the east side of Friant Road; and

WHEREAS, a condition of approval requires DEVELOPER to provide an access roadway (hereinafter, the "Access") to the Subdivision from Friant Road across from the existing entrance to Lost Lake Park; and

WHEREAS, the Access is depicted graphically on Exhibit 1, which exhibit is attached hereto and incorporated herein by this reference; and

WHEREAS, various actions are required to approve the Access and to establish requirements associated with its construction and maintenance, and such actions are hereinafter referred to collectively as "the Project;" and

WHEREAS, COUNTY owns a triangular-shaped property as shown on Exhibit 1 (hereinafter, "the Friant Triangle") the location of which coincides with the Access; and

WHEREAS, in order to allow construction of the Access, the County must dedicate an easement for public road purposes over the Friant Triangle; and

WHEREAS, DEVELOPER owns property (hereinafter, the "Frontage Property") between the Friant Road right-of-way and the northwestern side of the Friant Triangle as shown on Exhibit 1; and

WHEREAS, in order to allow construction of the Access, DEVELOPER must dedicate an easement over the Frontage Property to COUNTY for public road purposes; and

WHEREAS, the Developer will be required to construct the Access, which construction will be performed pursuant to a construction agreement; and

1 WHEREAS, DEVELOPER will be required to maintain the Access once constructed,
2 which maintenance will be performed pursuant to a maintenance agreement; and

3 WHEREAS, COUNTY requires reimbursement for its staff time and other expenses it will
4 incur associated with the planning and development of the Project; and

5 WHEREAS, DEVELOPER is willing to deposit funds and to compensate COUNTY for
6 such planning and development services as described in this Agreement.

7 NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions
8 herein contained, it is hereby agreed as follows:

9 I. GENERAL COVENANTS

10 A. This Agreement shall not be construed to create a principal-agent, master-
11 servant, employer-employee, partnership, joint-venture, or any other associational relationship
12 between COUNTY and DEVELOPER. Each Party and its respective officers, agents and
13 employees shall act in an independent capacity in all matters and correspondence between the
14 Parties in connection with the performance of this Agreement.

15 B. It is understood and agreed between the Parties that the execution of this
16 Agreement and COUNTY's acceptance of reimbursement hereunder do not constitute any
17 approval which will require action by the County Board of Supervisors or by any County
18 department. DEVELOPER understands and expressly agrees and acknowledges that this
19 Agreement does not obligate COUNTY to any discretionary approval by COUNTY or by its
20 departments, and that it is neither a representation nor a guarantee as to whether COUNTY or
21 its departments ultimately will approve such actions as are necessary to complete the Project.
22 Furthermore, this Agreement is not intended to prescribe the prospective terms associated with
23 any action that the COUNTY or its departments may take in furtherance of the Project.

24 C. Except as otherwise provided hereinafter, neither Party shall assign, transfer, or
25 sub-contract this Agreement or any of its respective rights or duties hereunder, without prior
26 written consent of the other Party's Point of Contact as specified in Article I, Section D
27 hereinafter; provided, however, that each Party may, in its own discretion, employ such
28 consultants as the Point of Contact for that Party, as such Party deems necessary for the

1 performance of its obligations hereunder.

2 D. All notices, consents, approvals, communications, and/or reports of any kind
3 whatsoever provided for or given under this Agreement shall be in writing and shall be
4 transmitted to each Party's Point of Contact at the address set forth hereinafter or to such other
5 address as a Party may designate by written notice to the other Party.

6 Friant Ranch Point of Contact

7 Friant Ranch, a Limited Partnership
8 c/o Bryan N. Wagner, Secretary
9 7110 N. Fresno Street, Suite. 340
10 Fresno, CA 93720
(559) 224-0871 phone
bryan@wagnerandwagner.com

11 With a copy to:

12 Dennis R. Bacopulos,
13 Friant Ranch L.P., Operating Manager
14 7110 N. Fresno Street, Suite. 340
Fresno, CA 93720
(949) 697-3566 phone
dennisbacopulos@cox.net

15 County Point of Contact:

16 Steven E. White, Director
17 Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, CA 93721
(559) 600-4078 phone
Attn: Division Manager, Development Services

19 Notices submitted to the Parties shall be sent to the address for such person(s) as
20 shown hereinabove. Such notices shall be considered given at the time of actual delivery, if
21 personally delivered; at the time of receipt, if electronically transmitted; on the third business day
22 after the date of mailing, when sent by certified mail, postage prepaid, or by U.S. express mail;
23 or on the first business day after the date of sending by recognized commercial overnight
24 delivery services, such as Federal Express.

25 II. DUTIES OF DEVELOPER

26 A. Upon request by the County Point of Contact, the DEVELOPER shall prepare
27 and provide such plans and specifications, other technical information, schedules, written
28 descriptions, and presentation graphics as may be required for the Project.

1 B. Upon request by the County Point of Contact, DEVELOPER shall prepare and
2 submit for County review a draft construction agreement and a draft maintenance agreement,
3 which, upon approval of County Point of Contact may comprise a single agreement prescribing
4 the terms of the design, construction, and maintenance of the Access.

5 C. Upon request by the County Point of Contact, DEVELOPER shall make available
6 a staff member with sufficient knowledge regarding the Project to attend Board of Supervisors
7 meetings and address questions pertaining thereto from the public and/or from the Board of
8 Supervisors.

9 D. DEVELOPER shall pay to the COUNTY the actual expenses incurred by the
10 COUNTY in connection with the Project, including expenses incurred prior to the date of
11 execution of this Agreement provided that such expenses were incurred on or after the effective
12 date of this Agreement.

13 E. DEVELOPER shall obtain such permits for the Project as may be required and
14 shall pay for such fees outside of this Agreement. However, in the event the County's expenses
15 associated with activities for which there is an established fee exceed the amount of such
16 established fees, the excess fees will charged to and paid by DEVELOPER in accordance with
17 this Agreement.

18 F. Within fourteen (14) calendar days of approval of this Agreement by the County's
19 Board of Supervisors, the Developer shall deposit with the COUNTY the sum of Twenty
20 Thousand Dollars (\$20,000.00), which is the current estimated cost of the COUNTY's
21 obligations hereunder. Such deposit is hereinafter referred to as the "Deposit."

22 G. The full amount of the Deposit shall be placed in a special revenue fund, and
23 shall be used to reimburse the COUNTY for actual expenses incurred during the course of the
24 COUNTY's performance under this Agreement.

25 H. If the actual expenses incurred by COUNTY exceed the full amount of the
26 Deposit, DEVELOPER agrees to pay any balance accrued before the Project is finished or this
27 Agreement is terminated, and DEVELOPER's obligation to do so shall survive the termination of
28 this Agreement.

I. DEVELOPER represents, warrants, and covenants that each person executing this Agreement for DEVELOPER is the duly authorized representative of DEVELOPER, and is fully authorized by DEVELOPER to legally bind DEVELOPER to this Agreement according to its terms and conditions, and to make on its behalf all of the representations, covenants, warranties, and agreements set forth herein.

III. DUTIES OF THE COUNTY

A. Except as otherwise provided hereinabove, COUNTY staff shall prepare and process all staff reports, notices, resolutions, and any other documents; and shall perform such additional work as is necessary or appropriate in connection with the Project.

B. The work to be performed by COUNTY shall include, but shall not be limited to:

1. Publish and distribute all notices, if any, required by law.
2. Prepare various documents necessary for the Board of Supervisors to consider approval of the establishment of an easement for public road purposes over the Friant Triangle.
3. Prepare various documents necessary for the Board of Supervisors to consider approval of dedication of an easement for public road purposes over the Frontage Property.
4. Review and process an agreement or agreements pursuant to which construction and maintenance of the Access will be performed.
5. Review the Developer's plans and specifications for construction of the Access.
6. Perform such inspection during construction of the Access as COUNTY, in its sole discretion, deems necessary to ensure that the Access is constructed in accordance with the plans and specifications approved by COUNTY.

C. COUNTY shall keep accurate records of its actual expenses incurred in processing and reviewing the Easement documents.

D. Upon request by the Developer Point of Contact, COUNTY shall provide to the Developer an accounting of time and expenses attributable to the performance of COUNTY's

1 obligations under this Agreement.

2 E. The Parties acknowledge that the actual cost of performance under this
3 Agreement may exceed the Deposit. If it becomes evident that the Deposit amount will be
4 insufficient, the County Point of Contact may request the deposit of additional funds and, at the
5 option of the County Point of Contact, COUNTY may either suspend work until such additional
6 funds are deposited, or it may continue with the work and bill the Developer on a monthly basis,
7 in which case the Developer shall make payment to COUNTY within ten (10) calendar days of
8 receipt of the invoice. Failure by the Developer to make any payment requested by the County
9 within the allotted time shall constitute sufficient grounds for the County to terminate this
10 Agreement.

11 F. It is expressly understood and agreed that if the actual cost exceeds the amount
12 of the Deposit, the County shall not be obliged to further performance unless and until the
13 Developer has remitted additional payment to the County, in such amount as is determined by
14 the County's Point of Contact, as a revised cost estimate, less any portion already paid by the
15 DEVELOPER. As provided in Article III, Section E hereinabove, at the option of the County
16 Point of Contact, the work may be continued and the DEVELOPER invoiced.

17 G. COUNTY shall refund any unused portion of funds deposited by DEVELOPER,
18 once a full accounting can be made, within forty-five (45) days after either completion of the
19 Project or the termination or expiration of this Agreement.

20 IV. TERM AND TERMINATION

21 A. This Agreement shall be deemed effective retroactively to October 1, 2016.
22 Unless this Agreement is earlier terminated pursuant to Article III, Section E, or in accordance
23 with the provisions of Article IV, Section B, it shall continue in full force and effect until the third
24 anniversary of its approval by the County Board of Supervisors. The term of this Agreement
25 may be extended by up to two years upon mutual written concurrence of the County's Director
26 of the Department of Public Works and Planning, or his designee, and the DEVELOPER.
27 DEVELOPER's obligation to pay COUNTY for all costs incurred by COUNTY for its
28 performance hereunder shall survive termination or expiration of this Agreement, and the

Developer shall pay outstanding charges, if any, within forty-five (45) days after termination or expiration of this Agreement. It is understood by the Parties that work begun prior to the execution of this Agreement, including the preparation hereof, shall be eligible for reimbursement under this Agreement.

B. COUNTY and DEVELOPER shall perform their respective obligations under this Agreement with due diligence. Either Party may terminate this Agreement without cause upon thirty (30) days written notice to the other; provided, that the DEVELOPER's obligation to pay the COUNTY for all costs incurred by the COUNTY for its performance hereunder through the date of its receipt of such notice, shall survive the termination of this Agreement, and all such outstanding charges shall promptly be paid in full to COUNTY.

V. MODIFICATION

This Agreement may be modified by the mutual written consent of the Parties.

VI. GOVERNING LAW

This Agreement shall be deemed to be performed only in Fresno County, California. Venue for any action which might arise out of or related to this Agreement shall only be in Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

VII. NO THIRD PARTY BENEFICIARIES

This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties hereto.

VIII. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between COUNTY and DEVELOPER with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings, of any nature whatsoever unless expressly included in this Agreement.

IX. SEVERABILITY

If any portion of this Agreement is declared invalid by a court of competent jurisdiction or

1 if it is found to be in contravention of any federal, state or county law, the remaining provisions
2 of this Agreement shall not be invalidated thereby and shall remain in full force and effect, and
3 to this end the provisions of this Agreement are hereby declared to be severable.

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1 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be
2 executed as of the day and year first above written.

3 DEVELOPER COUNTY OF FRESNO

4 Friant Ranch, A Limited Partnership
5 By: SWD Investments -
6 Friant Ranch Inc., General Partner

7 By: Bryan N. Wagner
8 Bryan N. Wagner, Secretary

Brian Pacheco
Brian Pacheco, Chairman
Board of Supervisors

9
10 REVIEWED AND RECOMMENDED
11 FOR APPROVAL

12 By: Steven E. White
13 Steven E. White
Department of Public Works and
Planning

ATTEST
Bernice E. Seidel, Clerk
Board of Supervisors

By: Aileen C. Seidel
Deputy

14
15 APPROVED AS TO LEGAL FORM
Daniel C. Cederborg
County Counsel

16
17 By: Daniel C. Cederborg
18 Deputy

19 APPROVED AS TO ACCOUNTING
20 FORM
Oscar J. Garcia, C P A
21 Auditor-Controller / Treasurer-Tax
Collector

22
23 By: Oscar J. Garcia
Deputy

24
25 For Accounting Use Only
Fund: 0085
26 Subclass: 17406
Org. No. 1186

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28

FRIANT RANCH
ENTRANCE INTERSECTION
WITH LOST LAKE PARK
ROAD

