

18-0411

Recording Requested for the  
Benefit of the County of Fresno,  
Department of Public Works  
And Planning

When Recorded Return To:  
Department of Public Works  
And Planning  
Development Services  
Division Stop 214  
Attn: Development Engineering

## AGREEMENT

## TRACT 4968 TRAFFIC IMPACT FEES

THIS AGREEMENT is made and entered into this 1<sup>st</sup> day of  
May, 2018, by and between the COUNTY OF FRESNO, a political subdivision  
of the State of California (hereinafter "COUNTY") and JPJ, INCORPORATED, a  
California Corporation located at 7030 N. Fruit Avenue, Suite 101, Fresno CA, 93711,  
the subdivider of Tract No. 4968 (hereinafter "SUBDIVIDER").

## WITNESSETH

WHEREAS, on December 14, 2000 the Fresno County Planning Commission  
approved Initial Study Application No. 4665 and Classified Conditional Use Permit No.  
2956 related to Vesting Tentative Subdivision Map No. 4968; and

WHEREAS, on December 14, 2000 the Fresno County Planning Commission  
approved Vesting Tentative Subdivision Map No. 4968, Classified Conditional Use  
Permit Application No. 2956, Site Plan Review Application No. 7082, and Mitigation  
Measures adopted and/or approved through the associated Initial Study Application  
subject to certain conditions; and

WHEREAS, said Initial Study Application contained a Transportation Impact  
Analysis (TIA) that identified mitigation measures related to traffic impacts; and

WHEREAS, the Millerton Specific Plan, most recently amended on December 7,  
2004, requires that each development project proponent in the Millerton New Town area  
pay the project's pro-rata share of the cost of traffic improvements to mitigate traffic

1 impacts, including improvements to four-lane roadway projects and traffic signal  
2 installation as described in the TIA; and

3 WHEREAS, the Millerton Specific Plan also provides that each development  
4 project proponent in the Millerton New Town area shall enter into an agreement with the  
5 County to provide for the funding of the traffic impact fees, which fees shall be payable  
6 on a per-unit basis as set forth in the TIA at the time of issuance of a building permit;  
7 and

8 WHEREAS, Mitigation Measure No. 2.i of the Mitigation Monitoring and  
9 Reporting Program also requires the SUBDIVIDER to pay a pro-rata share of the cost of  
10 improvements for four-lane roadways and traffic signal projects as described in the TIA:  
11 and

12 WHEREAS, Mitigation Measure No. 2.i also requires that the SUBDIVIDER shall  
13 enter into an agreement with the COUNTY to provide for funding of the traffic impact  
14 fees prior to recording a Final Map for Tract No. 4968; and

15 WHEREAS, the Board of Supervisors, as required by Fresno County Ordinance  
16 Code section 17.88.120, has by resolution on May 1, 2018, after noticed public hearing  
17 and following all other procedures required by law, established the amount of the traffic  
18 impact fees for Tract No. 4968 ("Traffic Impact Fee"); and

19 WHEREAS, SUBDIVIDER will be required to pay the Traffic Impact Fee for each  
20 lot when building permits are issued; and

21 WHEREAS, the SUBDIVIDER desires to record a Final Map for Tract No. 4968.

22 NOW THEREFORE, the parties hereto agree as follows:

- 23 1. SUBDIVIDER shall pay the Traffic Impact Fee for Tract No. 4968 in the amounts  
24 shown in Exhibit A to this Agreement.
- 25 2. In addition to the amount in Paragraph 1, SUBDIVIDER shall pay three percent  
26 (3%) of the amount shown in Exhibit A to the COUNTY for administration of the  
27 Public Facilities Fund.

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3. If payment of the Traffic Impact Fee is not made at the time of issuance of building permits, payment shall be made prior to occupancy of the project improvements. In that case, as a condition of issuance of building permits without payment of the pro-rata mitigation fee, SUBDIVIDER shall execute a separate covenant with the COUNTY acknowledging the requirement for payment of the mitigation fee as a condition of occupancy.
4. The amount of fee shall be adjusted on January 15 annually beginning in 2019 by a percentage equal to the change in the Engineering News Record Construction Cost Index for 20 Cities for the preceding year as published in the Fourth Quarterly Cost Issue in the preceding December.
5. The Traffic Impact Fee shall be imposed and collected in accordance with Section 66000 et seq. of the California Government Code and Chapter 17.88 of the Fresno County Ordinance Code.
6. The Millerton Specific Plan requires that the developers who are developing property within the Millerton Specific Plan improve certain parts of Millerton Road and install the traffic signal at the intersection of Millerton Road and Marina Drive, or pay their pro-rata share of the cost of that project through a "Development Fee," which is established separately from the Traffic Impact Fee. The traffic signal is also identified in the TIA as an improvement necessary to mitigate specific traffic impacts of Tract No. 4968. SUBDIVIDER understands and acknowledges that to the extent the Development Fee and the Traffic Impact Fee cover improvements of Millerton Road and the traffic signal at the intersection of Millerton Road and Marina Drive, those fees cover different components of those improvements and both fees shall be paid in full.
7. The developers wish to provide that the developer who installs the traffic signal will be able to recover part of the cost of the installation of the traffic signal once installed by claiming reimbursement from the Traffic Impact Fee. To that end, if the SUBDIVIDER installs the traffic signal, the COUNTY shall allow



1 SUBDIVIDER to claim reimbursement for the cost of that installation from  
2 proceeds of the Traffic Impact Fee.

- 3 8. If the COUNTY adopts a regional traffic impact fee for a larger region that  
4 includes Tract No. 4968, other than the Development Fee, the SUBDIVIDER  
5 agrees that the regional fee shall apply in lieu of the Traffic Impact Fee to units  
6 within Tract No. 4968, if the Traffic Impact Fee is not already paid for such units  
7 and if the regional traffic impact fee is not more than the Traffic Impact Fee.
- 8 9. Under the conditions described below, COUNTY shall recalculate the Year 2025  
9 traffic volumes for the roads impacted by Tract No. 4968 and the pro-rata share  
10 of the cost of improvements for Tract No. 4968, and may reduce the amount of  
11 the Traffic Impact Fee. Those conditions include the following:
- 12 a. A traffic impact analysis or traffic study is prepared for a new project  
13 generating more than 1,000 trips per day that impact any of the roads or  
14 traffic signals impacted by Tract 4968; and
  - 15 b. The new project requires a General Plan Amendment and was not  
16 included in the TIA for Tract 4968; and
  - 17 c. The new project is approved by the COUNTY (approved Tentative Map or  
18 Conditional Use Permit.) or begins construction through sovereign (tribal)  
19 right within two years after final occupancy is granted or within five years  
20 from the first building permit, whichever is greater.
- 21 10. Recalculation of the Traffic Impact Fee as stated in Paragraph 9 above shall be  
22 considered a redefinition of the Traffic Impact Fee imposed on each lot in Tract  
23 No. 4968. Refunds of overpayments for parcels on which the Traffic Impact Fee  
24 has been collected, but which have not yet been sold by the SUBDIVIDER, may  
25 be provided in a separate Reimbursement Agreement for Traffic Impact Fees for  
26 Tract No. 4968, as may later be executed between COUNTY and SUBDIVIDER.
- 27 11. NOTICES. The persons and their addresses having authority to give and receive  
28 notices under this Agreement include the following:

COUNTY OF FRESNO

SUBDIVIDER

Director of Public Works and Planning

John A. Bonadelle, President

County of Fresno

JPJ, INCORPORATED, a California

2220 Tulare Street, 6<sup>th</sup> Floor

Corporation

Fresno, CA 93721

7030 N. Fruit Ave., Suite 101

Fresno, CA 93711

All notices between the 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 notice delivered by personal service is effective upon service to the recipient. 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. A notice delivered by an overnight commercial courier service is effective one 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. 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. For all claims arising out of or related to this Agreement, nothing in this section 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).

12. VENUE AND GOVERNING LAW. Venue for any action arising 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



1 Agreement shall be governed in all respects by the laws of the State of  
2 California.

3 13. SEVERABILITY. In the event any provisions of this Agreement are held by a  
4 court of competent jurisdiction to be invalid, void, or unenforceable, the Parties  
5 will use their best efforts to meet and confer to determine how to mutually amend  
6 such provisions with valid and enforceable provisions, and the remaining  
7 provisions of this Agreement will nevertheless continue in full force and effect  
8 without being impaired or invalidated in any way.

9 14. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES. The headings of  
10 the sections and paragraphs of this Agreement are for convenience only and  
11 shall not be used to interpret this Agreement. This Agreement is the product of  
12 negotiation between the Parties. The language of this Agreement shall be  
13 construed as a whole according to its fair meaning and not strictly for or against  
14 any Party. Any rule of construction to the effect that ambiguities are to be  
15 resolved against the drafting party shall not apply in interpreting this Agreement.  
16 All references in this Agreement to particular statutes, regulations, ordinances or  
17 resolutions of the United States, the State of California, or the County of Fresno  
18 shall be deemed to include the same statute, regulation, ordinance or resolution  
19 as hereafter amended or renumbered, or if repealed, to such other provisions as  
20 may thereafter govern the same subject.

21 15. LEGAL AUTHORITY. Each individual executing or attesting this Agreement  
22 hereby covenants, warrants, and represents to the other Party: (1) that he or she  
23 is duly authorized to execute and deliver this Agreement on behalf of his or her  
24 respective Party in accordance with the following: for the SUBDIVIDER, its  
25 articles of organization and operating agreement; and for COUNTY, its governing  
26 legal authority; (2) that this Agreement is binding upon his or her respective  
27 Party; and (3) that his or her respective Party is duly organized and legally  
28 existing in good standing in the State of California.

1 16. BINDING EFFECT. This Agreement shall be binding upon, and inure to the  
2 benefit of, the successors and assigns of the Parties.  
3 17. NO THIRD PARTY BENEFICIARIES. Notwithstanding anything else to the  
4 contrary herein, the Parties acknowledge and agree that no other person, firm,  
5 corporation, or entity shall be deemed an intended third-party beneficiary of this  
6 Agreement.  
7 18. COUNTERPARTS. This Agreement may be executed in two or more  
8 counterparts, each of which shall be deemed to be an original, and all of which  
9 taken together shall constitute one and the same instrument.  
10 19. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement  
11 between the SUBDIVIDER and COUNTY with respect to the subject matter  
12 hereof and supersedes all previous Agreement negotiations, proposals,  
13 commitments, writings, advertisements, publications, and understanding of any  
14 nature whatsoever unless expressly included in this Agreement.  
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1 IN WITNESS WHEREOF, the parties have executed this Agreement on the date set  
2 forth above.

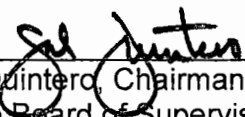
3  
4 **SUBDIVIDER:**

JPJ, INCORPORATED, a California  
5 Corporation

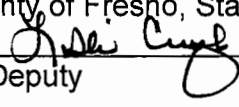
6 By:   
Dean H. Pryor, CFO

7 JPJ, INCORPORATED, a California  
8 Corporation  
7030 N. Fruit Ave., Suite 101  
9 Fresno, CA 93711

**COUNTY OF FRESNO:**

By:   
Sal Quintero, Chairman  
of the Board of Supervisors of the  
County of Fresno

**ATTEST:**

Bernice E. Seidel  
Clerk to the Board of Supervisors  
County of Fresno, State of California  
12 By:   
13 Deputy

23 **FOR ACCOUNTING USE ONLY:**

24 **ORG:** 1301-1306, 1329, 1336-1338, 1346-1356

**FUND:** 088

**SUBCLASS:** 34201-34207, 34235, 34245-34247, 34257-34264

25 **ACCOUNT:** 1450

26 G:\4360Devs&Pin\ADMIN\BOARD\Board Items\2010-2019\2018\5-1-18\Tract 4968\Tract 4968 Final Map\T4968 Agreement Traffic  
27 Impact Fees.docx



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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 California )SS  
COUNTY OF Fresno )

APN No:

On April 17, 2018 before me, Anna M. Renna, Notary Public, personally appeared  
Dean H. Pryor

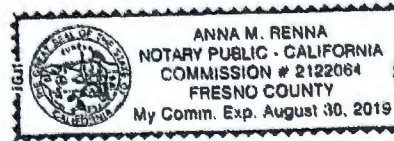
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument 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

Anna M. Renna



This area for official notarial seal.

### OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER(S) TITLE(S)  
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

### OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

**THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW**

TITLE OR TYPE OF DOCUMENT: \_\_\_\_\_

NUMBER OF PAGES \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

# EXHIBIT A

## TRACT 4968 TRAFFIC IMPACT MITIGATION COSTS MARCH 2018

TRACT 4968 (106 Units)											
MITIGATION IMPROVEMENTS	UNIT CONSTRUCTION COST	PROJECT TRAFFIC	2020 CUMULATIVE TRAFFIC	TOTAL PROJECT PERCENT SHARE (1125 UNITS)	PROJECT PERCENT SHARE FOR TRACT 4968	LENGTH IN FEET	CONSTRUCTION COSTS	10% DESIGN ENGINEERING	15% CONSTRUCTION ENGINEERING	PROJECT SHARE ROW Acquisition	TOTAL PROJECT SHARE
<b>SIGNAL LOCATION</b>											
FRONT AT COPPER/MILLBROOK*	\$ -	295 per pm pk hour	2512 per pm pk hour	11.23%	1.06%	N/A	\$0				
FRONT AT WILLOW	\$ 1,000,000	311 per pm pk hour	2500 per pm pk hour	12.44%	1.17%	N/A	\$11,721	\$1,170	\$1,755		\$14,651
FRONT AT NORTH FORK RD.*	\$ 148,500	334 per pm pk hour	2847 per pm pk hour	11.73%	1.11%	N/A	\$1,861	\$160	\$250		\$2,271
WILLOW AT COPPER	\$ 750,000	66 per am pk hour	2361 per am pk hour	2.64%	0.34%	N/A	\$2,572	\$260	\$300		\$3,132
MILLERTON AT AUBERRY	\$ 750,000	70 per am pk hour	1479 per am pk hour	2.84%	0.25%	N/A	\$1,860	\$180	\$286		\$2,326
MILLERTON AT SKY HARBOR	\$ 750,000	116 per am pk hour	1849 per am pk hour	6.29%	0.59%	N/A	\$4,445	\$440	\$670		\$5,555
MILLERTON AT BRIGHTON CREST	\$ 900,000	117 per am pk hour	1513 per am pk hour	7.25%	0.68%	N/A	\$3,416	\$340	\$510		\$4,266
MILLERTON AT MARINA	\$ 500,000	459 per am pk hour	2296 per am pk hour	21.80%	2.00%	N/A	\$10,317	\$1,030	\$1,550		\$12,897
MILLERTON AT TABLE MOUNTAIN*	\$ -	47 per am pk hour	852 per am pk hour	5.52%	0.52%	N/A	\$0	\$0	\$0		\$0
AUBERRY AT COPPER**	\$ 210,000	256 per am pk hour	2462 per am pk hour	10.31%	0.97%	N/A	\$2,040	\$200	\$310		\$2,550
AUBERRY AT MARINA DRIVE/MICHEL COVE	\$ 750,000	318 per am pk hour	1899 per am pk hour	16.75%	1.58%	N/A	\$11,837	\$1,180	\$1,780		\$14,797
<b>ROAD IMPROVEMENTS</b>											
<b>FRONT ROAD</b>											
Copper River Drive to Willow* (2 lane to 4 lane expressway)	\$ 158,500	2778 per day	18,430	15.03%	1.42%	1.00	\$5,050	\$510	\$760		\$6,320
Willow to Bugg* (2 lane to 4 lane expressway)	\$ 198,500	2925 per day	24,340	12.02%	1.13%	4.30	\$9,067	\$910	\$1,450		\$12,387
Bugg to North Fork Rd* (2 lane to 4 lane arterial)	\$ 158,500	2925 per day	21,800	13.42%	1.26%	0.88	\$2,225	\$220	\$320		\$2,759
<b>MILLERTON ROAD</b>											
North Fork Rd. to Marina Drive*** (2 lane to 4 lane arterial)	\$ 5,481,700	3290 per day	29,440	16.16%	1.52%	3.15	\$280,696	\$28,075	\$39,148		\$321,013
Marina Drive to Sky Harbor Rd*** (2 lane to 4 lane arterial)	\$ 5,481,700	1097 per day	15,370	7.14%	0.67%	1.13	\$40,418	\$3,233	\$6,063		\$49,714
Sky Harbor to Auberry Rd (2 lane to 4 lane arterial)	\$ 4,599,500	396 per day	7,430	4.83%	0.46%	1.50	\$32,548	\$3,205	\$4,807		\$42,060
Total Right-of-Acquisition Cost	\$ 880,000				0.83% (average of three)					\$7,304	\$7,304
<b>WILLOW AVENUE</b>											
Front Rd to Copper Ave. (add 2-lanes)	\$ 1,737,000	146 per day	7,620	2.88%	0.23%	1.85	\$6,298	\$630	\$945		\$7,873
Total Right-of-Acquisition Cost	\$ 600,000				0.23%					\$1,200	\$1,200
<b>AUBERRY ROAD</b>											
Copper to Marina Drive (2 lane to 4 lane arterial)	\$ 4,183,000	3557 per day	21,220	17%	2%	7.50	\$492,082	\$49,269	\$73,934		\$618,116
Total Right-of-Acquisition Cost	\$ 700,000				2.80%					\$14,000	\$14,000
											\$1,140,780
											\$ 10,782
											\$ 10,782

\*Improvements are unimproved. The fees are being collected until County's share has been met.

\*\*Improvements are being designed by County.

\*\*\*FE estimated at \$/ft.

per unit cost (106 units)