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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
TRAFFIC IMPACT FEES
TRACT NO. 6189

THIS AGREEMENT is made and entered into this 16th day of November 2021, by and between the County of Fresno, a political subdivision of the State of California hereinafter referred to as "COUNTY", and 3B Development Inc., a California corporation located at 1396 W. Herndon Avenue, Fresno CA, 93711, the subdivider of Tract No. 6189 hereinafter called "SUBDIVIDER." COUNTY and SUBDIVIDER may be referred to individually as a "Party," or collectively as "Parties," to this AGREEMENT.

WITNESSETH

WHEREAS, on December 14, 2000 the Fresno County Planning Commission approved Initial Study Application No. 4665, Classified Conditional Use Permit No. 2956 and Site Plan Review No. 7082 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 subject to certain conditions; and

WHEREAS, a Traffic Impact Analysis was prepared as part of the environmental documentation for Vesting Tentative Subdivision Map No. 4968, which 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

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

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

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

10 WHEREAS, Mitigation Measure No. 2.i requires that SUBDIVIDER shall enter into an
11 AGREEMENT with COUNTY to provide for funding of the Traffic Impact Fees prior to recording a Final
12 Map for Tract No. 6189; and

13 WHEREAS, the Board of Supervisors, as required by Fresno County Ordinance Code Section
14 17.88.120, has by resolution on July 9, 2019, after noticed public hearing and following all other
15 procedures required by law, established the amount of the Traffic Impact Fees for Tract No. 6189 ("Traffic
16 Impact Fee"); and

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

19 WHEREAS, SUBDIVIDER desires to record a Final Map for Tract No. 6189.

20 NOW THEREFORE, the Parties hereto agree as follows:

21 1. SUBDIVIDER shall pay Traffic Impact Fees for Tract No. 6189 in the amounts shown in Exhibit A
22 of this AGREEMENT.

23 2. In addition to the amount in Paragraph 1, SUBDIVIDER shall pay three percent (3%) of the
24 amount shown in Exhibit A, to COUNTY for administration of the Public Facilities Fund.

25 3. If payment of Traffic Impact Fees is not made at the time of issuance of building permits, payment
26 shall be made prior to occupancy of project improvements. As a condition of issuing building permits
27 without payment of pro rata fees, SUBDIVIDER shall execute a separate covenant with COUNTY
28 acknowledging the requirement to pay Traffic Impact Fees as a condition of occupancy.

1 4. The amount of fee shall be adjusted on January 15 annually beginning in 2021 by a percentage
2 equal to the change in the Engineering News Record Construction Cost Index for 20 Cities for the
3 preceding year as published in the Fourth Quarterly Cost Issue in the preceding December.

4 5. Traffic Impact Fees shall be imposed and collected in accordance with Section 66000 et seq. of
5 the California Government Code and Chapter 17.88 of the Fresno County Ordinance Code.

6 6. The Millerton Specific Plan requires that subdividers who are developing property within the
7 Millerton Specific Plan improve certain parts of Millerton Road and install a traffic signal at the intersection
8 of Millerton Road and Marina Drive, or pay their pro rata share of the cost of the project through a
9 "Development Fee," which is established separately from the Traffic Impact Fee. The traffic signal is also
10 identified in the TIA as an improvement necessary to mitigate specific traffic impacts of Tract No. 6189.
11 SUBDIVIDER understands and acknowledges that to the extent the Development Fee and the Traffic
12 Impact Fee cover improvements of Millerton Road and the traffic signal at the intersection of Millerton
13 Road and Marina Drive, these fees cover different components of said improvements and both fees shall
14 be paid in full.

15 7. The SUBDIVIDER wish to provide that the subdivider who installs the traffic signal will be able to
16 recover part of the cost of the installation of the traffic signal once installed by claiming reimbursement
17 from the Traffic Impact Fee. To that end, if SUBDIVIDER installs the traffic signal, COUNTY shall allow
18 SUBDIVIDER to claim reimbursement for the cost of that installation from proceeds of the Traffic Impact
19 Fee.

20 8. In the event COUNTY adopts a regional traffic impact fee for a region that includes Tract No.
21 6189, other than the Development Fee, SUBDIVIDER agrees that the regional fee shall apply in lieu of
22 the Traffic Impact Fees to units within Tract No. 6189. This will apply if the Traffic Impact Fee has not
23 been paid for said units and the regional traffic impact fee is not more than Traffic Impact Fee.

24 9. Under the conditions described below, COUNTY shall recalculate the Year 2025 traffic volumes
25 for the roads impacted by Tract No. 6189 and the pro rata share of the cost of improvements for Tract
26 No. 6189. This may reduce the amount of the Traffic Impact Fee. Those conditions are as follows:

27 A. A traffic impact analysis or traffic study is prepared for a new project generating more than
28 1,000 trips per day that impact any of the roads or traffic signals impacted by Tract No.

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6189; and

B. The new project requires a General Plan Amendment and was not included in the TIA for Tract No. 4968; and

C. The new project is approved by COUNTY (approved Tentative Map or Conditional Use Permit) or begins construction through sovereign (tribal) right within two years after final occupancy is granted or within five years from the first building permit, whichever is later.

10. Recalculation of fees as stated in Paragraph 9 above shall be considered a redefinition of the Traffic Impact Fees imposed on each lot in Tract No. 6189. Refunds of overpayment for parcels on which Traffic Impact Fees has been collected, but which have not yet been sold by SUBDIVIDER, may be provided in a separate reimbursement agreement for Traffic Impact Fees for Tract No. 6189, which may later be executed between COUNTY and SUBDIVIDER.

11. NON-ASSIGNMENT.

THIS AGREEMENT shall not be assignable by SUBDIVIDER without the prior written consent of COUNTY. Any assignee shall take this AGREEMENT, in its entirety, subject to the covenants and conditions set forth herein.

12. NOTICES.

The persons and their addresses having authority to give and receive notices under this AGREEMENT include the following:

<u>COUNTY OF FRESNO</u>	<u>SUBDIVIDER</u>
Director of Public Works and Planning	Darius Assemi, CEO, Director
County of Fresno	3B Development Inc.
2220 Tulare Street, 6 th Floor	a California Corporation
Fresno, CA 93721	1396 W. Herndon Ave.
	Fresno, CA 93711

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 notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class

1 United States mail is effective three (3) COUNTY business days after deposit in the United States mail,
2 postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier
3 service is effective one (1) COUNTY business day after deposit with the overnight commercial courier
4 service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the
5 recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is
6 completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery
7 shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the
8 sender maintains a machine record of the completed transmission.

9 For all claims arising out of or related to this AGREEMENT, nothing in this section establishes,
10 waives, or modifies any claims presentation requirements or procedures provided by law, including but
11 not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with
12 section 810).

13 13. VENUE AND GOVERNING LAW.

14 Venue for any action arising out of or related to this AGREEMENT shall only be in Fresno County,
15 California. The rights and obligations of the Parties and all interpretation and performance of this
16 AGREEMENT shall be governed in all respects by the laws of the State of California.

17 14. SEVERABILITY.

18 In the event any provisions of this AGREEMENT are held by a court of competent jurisdiction to
19 be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine
20 how to mutually amend such provisions with valid and enforceable provisions, and the remaining
21 provisions of this AGREEMENT will nevertheless continue in full force and effect without being impaired
22 or invalidated in any way.

23 15. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES.

24 The headings of the sections and paragraphs of this AGREEMENT are for convenience only and
25 shall not be used to interpret this AGREEMENT. This AGREEMENT is the product of negotiation
26 between the Parties. The language of this AGREEMENT shall be construed as a whole according to its
27 fair meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities
28 are to be resolved against the drafting party shall not apply in interpreting this AGREEMENT. All

1 references in this AGREEMENT to statutes, regulations, ordinances or resolutions of the United States,
2 the State of California, or the County of Fresno shall be deemed to include the same statute, regulation,
3 ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as
4 may thereafter govern the same subject.

5 16. LEGAL AUTHORITY.

6 Each individual executing or attesting this AGREEMENT hereby covenants, warrants, and
7 represents to the other Party: (1) that he or she is duly authorized to execute and deliver this
8 AGREEMENT on behalf of his or her respective Party in accordance with the following: for SUBDIVIDER,
9 its articles of incorporation and bylaws; and for COUNTY, its governing legal authority; (2) that this
10 AGREEMENT is binding upon his or her respective Party; and (3) that his or her respective Party is duly
11 organized and legally existing in good standing in the State of California.

12 17. BINDING EFFECT.

13 This AGREEMENT shall be binding upon, and inure to the benefit of, the successors and assigns
14 of the Parties.

15 18. NO THIRD-PARTY BENEFICIARIES.

16 Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree that no
17 other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this
18 AGREEMENT.

19 19. COUNTERPARTS.

20 This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed
21 to be an original, and all of which taken together shall constitute the same instrument.

22 20. ENTIRE AGREEMENT.

23 This AGREEMENT constitutes the entire AGREEMENT between SUBDIVIDER and COUNTY
24 with respect to the subject matter hereof and supersedes all previous agreement negotiations, proposals,
25 commitments, writings, advertisements, publications, and understanding of any nature whatsoever
26 unless expressly included in this AGREEMENT.

27 21. INDEPENDENT CAPACITY.

28 This AGREEMENT is not intended to and will not be construed to create the relationship of

1 principal-agent, master-servant, employer-employee, partnership, joint venture or association between
2 the COUNTY and the SUBDIVIDER; neither Party is an officer of the other. Each of the Parties to this
3 AGREEMENT, their respective officers, agents and employees, in the performance of this AGREEMENT
4 shall act in an independent capacity, as independent contractors, between each other.

5 **(Signature page follows.)**

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1 IN WITNESS WHEREOF, the Parties have executed this AGREEMENT on the date
2 set forth above.

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SUBDIVIDER AND/OR CONSULTANT



(Authorized Signature)

Darius Assemani, CEO

Print Name and Title

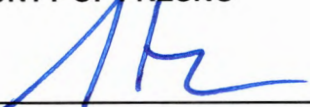
1390 W. Herndon Ave, Ste 101

Mailing Address

Fresno, CA 93711


City, State, and Zip Code

COUNTY OF FRESNO



Steve Brandau, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By 

Deputy

FOR ACCOUNTING USE ONLY:
ORG: 1301-1306, 1329, 1336 - 1338, 1346 - 1356
FUND: 0088
SUBCLASS: 34201 - 34207, 34235, 34245 - 34247, 34257 - 34267
ACCOUNT: 1450

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.

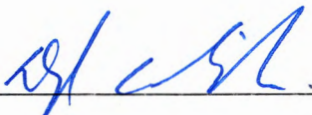
State of California
County of Fresno)

On November 8, 2021 before me, Daryl C. Gagliardi, a notary public,
(insert name and title of the officer)

personally appeared Darius Assemi
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 

(Seal)

