

**MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF FRESNO
AND CENTRAL VALLEY TRAILER REPAIR, INC.**

This MEMORANDUM OF UNDERSTANDING is entered into this ___ day of November, 2016, and between the CITY OF FRESNO, a municipal corporation, (City) and MICHAEL SHUEMAKE dba CENTRAL VALLEY TRAILER REPAIR, INC. (collectively Developer).

RECITALS

- A. This Agreement pertains to Parcels B, C, and D of Parcel Map No. 2006-27 as recorded in Book 67 of Parcel Maps at Page(s) 72 and 73, Fresno County Records, located in the City of Fresno, County of Fresno, State of California (the Project).
- B. Parcel Map 2006-27 was to be developed by 1240 Palmetto, LLC., a Nevada limited liability company, (Palmetto), which entered into a Subdivision Agreement with the City on August 2, 2007, related to all four parcels comprising the parcel map.
- C. Pursuant to the Subdivision Agreement, certain public improvements were to be installed concurrent with development, including widening East Avenue and installing curb, gutter, and sidewalk adjacent to the development.
- D. Subsequent to parcel map approval and executing the Subdivision Agreement, Palmetto transferred ownership of the Project (Parcels B, C, and D) to Developer, together with liability for completing the related improvements. Palmetto remains responsible for Parcel A and related public improvements.
- E. As Developer prepared to perform its obligations as provided in the Subdivision Agreement, the City determined the existing travel lanes of East Avenue also required repair (the Additional Street Work). The City appropriated funding for the Additional Street Work and Developer agreed to perform the work at City's expense, in conjunction with its development.
- F. The Parties now desire to memorialize their Agreement regarding the Additional Street Work along East Avenue adjacent to the Project area.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

- 1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
- 2. Completion of Additional Street Work. The Additional Street Work shall be completed in accordance with plans and specifications approved by the City Public Works Department. The foregoing plans and specifications shall meet the City Public Works Department's standards for the construction of street improvements. The Additional Street Work shall be subject to the conditions and standards, including inspection, acceptance,

and warranty, and insurance and indemnity requirements as the related conditions for Parcel Map 2006-27 and provided for in the Subdivision Agreement.

3. Cost of Construction. City shall reimburse Developer for actual costs associated with the Additional Street Work only, to the extent that such additional costs are beyond the costs associated with fulfilling the conditions of approval for the Project. Reimbursement in accordance with this Section shall not exceed \$189,970.66. Developer shall remain obligated for payment of fulfilling its condition of approval related to the Parcel Map 2006-27 as governed by said parcel map.

4. Indemnity. To the furthest extent allowed by law including California Civil Code section 2782, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Developer should subcontract all or any portion of the work to be performed under this Contract, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

5. Attorneys Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

6. Binding Effect. This agreement shall be binding upon the parties and upon their heirs, administrators, successors and assigns.

7. Effective Date of Agreement. This Agreement shall become effective upon execution of said agreement by all parties shown below.

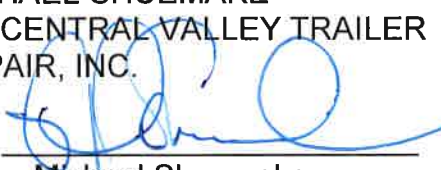
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have entered into this Memorandum of Understanding on the date and year first written above.

CITY OF FRESNO, a Municipal corporation

MICHAEL SHUEMAKE
dba CENTRAL VALLEY TRAILER REPAIR, INC.

By: _____
Scott Mozier
Director of Public Works

By:  _____
Michael Shuemaker
President

Approved as to Form:
DOUGLAS T. SLOAN
City Attorney

ATTEST:
YVONNE SPENCE
City Clerk

By: _____
Raj Singh Badhesha
Deputy City Attorney

By: _____
Deputy

RSB:nd (72943nd/rsb)