

INFRASTRUCTURE REIMBURSEMENT AGREEMENT

THIS AGREEMENT (Agreement) for reimbursement for water main replacements in East Ventura Boulevard and South Tenth Street is made and entered into _____, 2022 (Effective Date), by and between the City of Fresno, a California municipal corporation (City) and Fresno Unified School District, a California public school district (Developer).

RECITALS

1. As a part of its expansion activities, Developer is constructing an Alternative Education Campus and Administrative Building located at 3920 East Ventura Avenue (Project).
2. The existing water distribution systems serving the Project were constructed in 1934 and 1951 and were determined, by City, to be inadequate to support the Project.
3. City conditioned approval of the Project on the requirement that Developer shall construct a 16-inch replacement water main in East Ventura Avenue from South Tenth Street west across the project frontage.
4. City further conditioned approval of the Project on the requirement that Developer construct an 8-inch replacement water main in South Tenth Street between East Ventura Boulevard and East Lane Avenue.
5. City further conditioned approval of the Project on the requirement that Developer shall include an additional 16-inch replacement water main in East Ventura Boulevard between South Cedar Avenue and South Tenth Street.
6. The requirements provided that one hundred percent (100%) of the cost for the construction of the water mains including fire hydrants and appurtenances (Improvements) shall be reimbursed through progress payments under a separate reimbursement agreement to be approved by the Fresno City Council.
7. The Department of Public Utilities - Water Division supports reimbursement of Developer, out of enterprise funds, for the Improvements as the existing water distribution system infrastructure is at the end of its service life and does not meet today's standards for adequate level of service and fire suppression flows.

AGREEMENT

In consideration of the foregoing recitals and the obligations undertaken by the parties as hereinafter set forth, the parties agree as follows:

1. Obligations of the Developer

1.1 Developer shall construct the Improvements which will be accepted by the City upon completion.

1.2 The Scope of this Agreement is the City's obligation to reimburse the Developer for the cost of constructing the Improvements, subject to the terms and limitations set forth in this Agreement. Nothing in this Agreement is intended

to alter or waive any obligations or duties of the Developer to comply with existing City ordinances, policies, procedures, plans and specifications related to the construction of the Improvements, including any requirements to obtain approval of construction plans or obtain necessary building, street-work, encroachment or other permits or to comply with any requirements or conditions placed on the issuance of those permits (e.g. insurance, improvement security, etc.).

1.3 As the City is reimbursing the Developer the Eligible Construction Costs to construct the Improvements, the Improvements are a "Public Work" as defined by California Labor Code, section 1720(a). Developer agrees (a) to pay, and shall cause its contractors and subcontractors to pay, prevailing wages for the construction of the Improvement and (b) comply with the other applicable provisions of Labor Code, section 1720 et seq., and implementing regulations of the Department of Industrial Relations, necessary to determine that prevailing wages have been paid as required by law. During the construction of the Improvement, Developer shall, or shall cause its contractor, to post at the Project area the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with legal counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code sections 1720 et seq., and/or the implementing regulations of the Department of Industrial Relations in connection with construction of the Improvement.

1.4 To the furthest extent allowed by law, 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 and any costs or fees to enforce this agreement), arising or alleged to have arisen directly or indirectly out of this Agreement. Developer's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the negligence, or caused by 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 Agreement, 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 Agreement.

1.5 Developer shall maintain written documentation evidencing the Eligible Construction Costs the Developer incurred in constructing the Improvements for submittal to the City at the time Developer seeks reimbursement for the eligible costs of constructing the Improvement. Developer's failure to provide the necessary

documentation evidencing certain eligible construction costs will result in the City not reimbursing the Developer for those otherwise Eligible Construction Costs.

1.6 "Eligible Costs" or "Eligible Construction Costs" means actual costs incurred by the Developer for construction of the 16-inch and 8-inch water mains and related improvements as required by the conditions of development. Acceptable documentation of Eligible Construction Costs includes invoices for construction materials used to construct the Improvement and invoices from contractors clearly identifying the labor and materials expended to construct the Improvement. A preliminary engineer's estimate of the Eligible Costs is presented in Exhibit A. Invoicing must clearly identify each specific line item as presented in Exhibit A for which a reimbursement is being claimed.

1.7 Within 60 days of the City's acceptance of the Improvement, Developer shall submit to Department of Public Utilities - Utilities Planning and Engineering all documentation evidencing the eligible costs of constructing the Improvement. If the Developer fails to submit the documentation evidencing the eligible construction costs by this deadline, City shall have the option of refusing to reimburse Developer for any of the otherwise eligible costs of construction.

2. City's Obligations

2.1 The Engineer's Estimate of the Eligible Construction Costs of constructing the Improvement is \$770,655.00. An itemization of the individual Eligible Construction Costs is attached hereto as Exhibit "A." Upon Developer's compliance with Section 1.4 to the reasonable satisfaction of the Director of Public Utilities (Director), and upon confirmation of the Eligible Construction Costs, the City shall reimburse 100% of actual costs incurred for construction of the 16-inch and 8-inch water mains by the Developer.

2.2 If the amount of the Eligible Construction Costs exceeds the Engineer's Estimate by an amount less than or equal to 10 percent, the Director may authorize payment of all or a portion of the excess amount upon Developer demonstrating to the reasonable satisfaction of the Director that the amount incurred in excess of the Engineer's Estimate resulted from circumstances not caused by the Developer, its contractors or subcontractors and beyond their control.

2.3 Reimbursement of any Eligible Construction Costs in excess of 10 percent of the Engineer's Estimate shall require the approval of the City Council, subject to the Developer demonstrating to the reasonable satisfaction of the Director that the amount incurred in excess of the Engineer's Estimate resulted from circumstances not caused by the Developer, its contractors or subcontractors and beyond their control, and is justifiable. Should the Director find the excess amount(s) unjustifiable, the City reserves the right to deny the excess amount of the claim for reimbursement and will only pay the amount identified in the Engineer's Estimate of Eligible Construction Costs for each individual line item.

2.4 City shall use its best efforts to review the documentation of Eligible Construction Costs, and if the documentation is determined to be sufficient, issue the reimbursement check within 30 days of receiving from the Developer all of the documentation of Eligible Construction Costs required by the City.

3. **Miscellaneous Terms**

3.1 Entire Agreement. This Agreement (including the Exhibits hereto) contains the entire Agreement between City and Developer in regard to the subject matter hereof, and no oral statements or prior written documents not specifically incorporated into this Agreement shall be any force or effect.

3.2 Assignment. Neither party hereto shall assign this Agreement, or any interest therein, without the prior written consent of the other. Any such attempted assignment in violation of this Agreement shall be null and void.

3.3 Notices. All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this subparagraph 3.3. The addresses noted below shall be that party's address for delivery or mailing of notices. Either party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, two (2) days after the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received after 4:00 p.m. in the time zone in which the party is located or on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

City of Fresno

2600 Fresno Street
Fresno, CA 93721-3623
Fax Number: 559-488-1045
Attn: Brock D. Buche, PE, PLS

Fresno Unified School District

4600 North Brawley Avenue
Fresno, CA 93722
559-457-3074
Attn: Santino Danisi

3.4 **Binding upon Successors**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors; assigns; present, or future affiliated and related entities; officers; members; agents; employees; and representatives.

3.5 **Integration**. This Agreement constitutes the complete and final agreement of the parties with respect to the subject matters referred to in the Agreement.

3.6 **Modification.** Any modifications of the Agreement must be in writing and signed by all parties. No oral modifications shall be effective to vary or alter the terms of this Agreement.

3.7 **Severability.** If any provision or any part of any provision of the Agreement shall, for any reason, be held invalid, unenforceable, or contrary to public policy or law, the remainder of the Agreement shall not be affected thereby, and shall continue to be valid and enforceable.

3.8 **Counterparts.** This Agreement may be executed in counterparts, including true and accurate copies of the original, all of which, when taken together, shall be deemed an original agreement. Any executed copy shall not be binding upon any party until all parties have duly executed a copy of this Agreement.

3.9 **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the party its reasonable attorney's fees and legal expenses.

3.10 **Waiver of Terms.** No failure or delay by a party to insist on the strict performance of any provision of this Agreement, or to exercise any right or remedy consequent on a breach thereof, shall constitute a waiver of any breach or subsequent breach of such provision. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

3.11 **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for the purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be in Fresno County, California.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

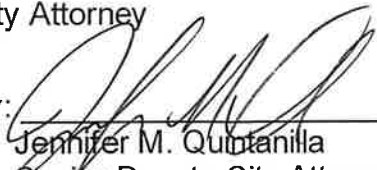
CITY OF FRESNO,
A California municipal corporation

FRESNO UNIFIED SCHOOL DISTRICT
A California public school district

By: _____
Brock D. Buche, PE, PLS
Interim Director
Department of Public Utilities

By:  _____ Apr 26, 2022
Santino Danisi
Chief Financial Officer
Administrative Services

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ 4/28/22
Jennifer M. Quintanilla Date
Senior Deputy City Attorney

APPROVED AS TO FORM
 4/22/2022
Andrew De La Torre, Executive Director
Benefits & Risk Management

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Date
Deputy

Attachment:
Exhibit A – Eligible Construction Costs

Exhibit A – Eligible Construction Costs
VENTURA ALTERNATIVE EDUCATION CAMPUS AND ADMINISTRATIVE BUILDING
PROJECT

DESCRIPTION	UNIT	QUANTITY	UNIT \$	TOTAL
Mobilization	LS	1	\$30,000.00	\$30,000.00
1" Water Services	EA	4	\$2,500.00	\$10,000.00
1.5" PVC Water Services	EA	3	\$3,000.00	\$9,000.00
2" Water Services	EA	2	\$3,500.00	\$7,000.00
4" Water Service	EA	2	\$5,500.00	\$11,000.00
6" Water Service	EA	1	\$7,000.00	\$7,000.00
Fire Hydrant	EA	1	\$7,500.00	\$7,500.00
6" Fire Service	EA	1	\$6,500.00	\$6,500.00
8" C900 PVC Water Main	LF	1195	\$70.00	\$83,650.00
8" Class 350 Ductile Iron Pipe	LF	167	\$85.00	\$14,195.00
16" Class 250 Ductile Iron Water Main	LF	1592	\$150.00	\$238,800.00
16-inch Butterfly Valve	EA	3	\$6,000.00	\$18,000.00
6-inch Gate Valve	EA	1	\$1,200.00	\$1,200.00
8-inch Gate Valve	EA	10	\$2,000.00	\$20,000.00
Water Service Transfers	EA	13	\$1,000.00	\$13,000.00
Traffic Control	LS	1	\$15,000.00	\$15,000.00
Temporary Trench Resurfacing	LF	3034	\$15.00	\$45,510.00
Permanent Trench Resurfacing	LF	3034	\$50.00	\$151,700.00
8x6 Tie	EA	5	\$5,600.00	\$28,000.00
16x6 Tie	EA	1	\$7,000.00	\$7,000.00
16x8 Tie	EA	1	\$7,000.00	\$7,000.00
16x12 Tie	EA	1	\$7,500.00	\$7,500.00
Misc. Facilities and Operations	LS	1	\$22,000.00	\$22,000.00
Traffic Loops	EA	6	\$850.00	\$5,100.00
Worker Protection from Caving Ground in Excavations	LS	1	\$5,000.00	\$5,000.00
			TOTAL	\$770,655.00






City of Fresno_ Ventura Infrastructure MOU

Final Audit Report

2022-04-26

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