

**CITY OF CHULA VISTA  
REIMBURSEMENT AGREEMENT  
WITH MILLENIA 2022, LLC  
FOR CONSTRUCTION OF PEDESTRIAN BRIDGE AND TRAFFIC SIGNALS**

This REIMBURSEMENT AGREEMENT ("Agreement") is entered into as of this 23<sup>rd</sup> day of May, 2023 (the "Effective Date") by and among the City of Chula Vista, a chartered municipal corporation ("City") and Millenia 2022, LLC, a Delaware limited liability company ("Developer") (collectively, the "Parties" and, individually, a "Party") with reference to the following Recitals:

**RECITALS**

A. WHEREAS, Developer and its predecessors have been developing the master planned Millenia project ("Millenia"), formerly known as the Eastern Urban Center (the "EUC"), in the Otay Ranch area of the City; and

B. WHEREAS, City required Developer to construct a pedestrian bridge known as Eastlake Parkway Pedestrian Bridge ("Pedestrian Bridge") and various traffic signals; and

C. WHEREAS, the City Council, by Ordinance No. 2013-3273, established the Eastern Urban Center Pedestrian Development Impact Fee ("EUC PBDIF") program to provide half (50%) of the funding for the Pedestrian Bridge to connect Millenia to Otay Ranch Village 11; and

D. WHEREAS, the other half of funding for the Pedestrian Bridge will come from the Otay Ranch Village 11 Pedestrian Bridge DIF ("Village 11 PBDIF") established by Ordinance No. 2003-2898 and amended by Ordinance No. 2005-3017; and

E. WHEREAS, both of these ordinances provide for Fee Credits to developers who construct all or part of the identified pedestrian bridges to apply against their PBDIF obligations, and reimbursement to the extent the cost of construction exceeds the developer's obligations; and

F. WHEREAS, City Council Policy 478-1, as adopted and amended by Resolutions 9221 and 13857, established a fee ("Traffic Signal Fee") and reimbursement program in the form of Fee Credits and reimbursement for the construction of certain traffic signals to the extent the cost of construction exceeds the Developer's Traffic Signal Fee obligation; and

G. WHEREAS, Developer has constructed the Bridge and certain traffic signals (all together, "Subject Facilities"), City has reviewed and approved the design, inspected and accepted Subject Facilities and determined that they were constructed in such a manner as to qualify for reimbursements and/or credits pursuant to the above authorities;

H. WHEREAS, Developer has submitted a Reimbursement Request and provided the City with the required documentation for City to determine the actual and Eligible Expenses (defined below) incurred by Developer to construct the Subject Facilities; and

I. WHEREAS, City staff has reviewed Developer's Reimbursement Request and determined the amount of Eligible Expenses for the Subject Facilities; and

J. WHEREAS, Developer has requested, and City has already issued Fee Credits against the EUC PBDIF and Traffic Signal Fees for a portion of the cost of the Subject Facilities; and

K. WHEREAS, Developer now seeks partial reimbursement for Reimbursable Costs (defined below) for the Subject Facilities exceeding Millenia's EUC PBDIF and Traffic Signal Fee obligations, all as shown in Exhibit "A" hereto Developer will be eligible for an additional reimbursement of up to \$318,813.90 in Reimbursable Costs for the Subject Facilities from the EUC PBDIF funds when remaining units within the EUC are constructed by another developer(s) and sufficient monies in the Fund are available. The City will disburse such funds annually.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the above Recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Developer agree as follows:

### **ARTICLE 1. DEFINITIONS**

In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings:

- 1.1. Agreement. "Agreement" means this Reimbursement Agreement between the City and the Developer. The term "Agreement" shall include any amendment(s) to the Agreement properly approved and executed pursuant to the terms of this Agreement.
- 1.2. City. "City" means the City of Chula Vista. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City representative designated by the Agreement.
- 1.3. Developer. "Developer" has the meaning given to such term in the Recitals.
- 1.4. Fee Credits. "Fee Credits" means credits against EUC PBDIFs, Village 11 PBDIFs, and Traffic Signal Fees that Developer has received or may receive in the future from the City for Eligible Costs Developer incurred in designing and/or construction the Subject Facilities.
- 1.5. Director of Development Services. "Director of Development Services" means the director of Development Services of City or his or her designee.

- 1.6. Eastern Urban Center. “Eastern Urban Center” or “EUC” means the master-planned community, sectional planning area located in Otay Ranch in the eastern portion of Chula Vista.
- 1.7. Eligible Expenses. “Eligible Expenses” means the total costs of design and construction expended by Developer and determined by the Director of Development Services to be eligible for Fee Credits or reimbursement for costs of the Subject Facilities.
- 1.8. Holiday. “Holiday” means the City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal Holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

<u>Holiday</u>	<u>Observed On</u>
New Year’s Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Caesar Chavez Day	March 31
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veteran’s Day	November 11

- 1.9. Millenia. “Millenia” is the property located within the EUC being developed by Developer.
- 1.10. Eastlake Parkway Pedestrian Bridge Fund. “Eastlake Parkway Pedestrian Bridge Fund” is the separate fund established to collect EUC PBDIF pursuant to Ordinance No. 3273.
- 1.11. Payment Date. “Payment Date” means twenty (20) Working Days following the date of this agreement.
- 1.12. Reimbursement Request. “Reimbursement Request” means a reimbursement request package submitted to the City containing the items requested by the City to adequately determine Eligible Expenses.
- 1.13. Reimbursable Costs. “Reimbursable Costs” means the amount of Eligible Expenses of Pedestrian Bridge and traffic signals less Millenia’s EUC PBDIF obligation and Traffic Signal Fee obligation.
- 1.14. Traffic Signal Fees Fund. “Traffic Signal Fees Fund” is the separate fund established to collect Traffic Signal Fees pursuant to City Council Policy 478-1 as adopted and amended by Resolutions 9221 and 13857.
- 1.15. Village 11 Pedestrian Bridge Fund. “Village 11 Pedestrian Bridge Fund” is the separate fund established to collect Village 11 PBDIF pursuant to Ordinance No. 2898

- 1.16. Working Day(s). “Working Day(s) means Monday through Friday, excluding Holidays

## **ARTICLE II. SUBJECT OF THE AGREEMENT**

The above-listed Recitals are true and correct and are hereby incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

- 2.1. City shall reimburse Developer for Reimbursable Costs of the Subject Facilities subject to the following terms:
- 2.2. City shall only be obligated to use funds existing in the Eastlake Parkway Pedestrian Bridge Fund, Village 11 Pedestrian Bridge Fund and Traffic Signal Fees Fund. City shall have no obligation to pay funds to the extent the request exceeds the available funds.
- 2.3. Reimbursable Costs for Bridge:

Within twenty (20) working days of the date hereof, City shall pay Developer three hundred eighty-eight thousand seventy-seven dollars and ninety-five cents (\$388,077.95) from the EUC PBDIF program established by Ordinance No. 2013-3273.

Within twenty (20) working days of the date hereof, City shall pay Developer one million six hundred twenty-two thousand four hundred fifty-two dollars and thirteen cents (\$1,622,452.13) from the Village 11 PBDIF program established by Ordinance No. 2003-2898.

In addition to this cash reimbursement, the City has previously granted Developer seven hundred ninety-six thousand six hundred four dollars and thirty-five cents (\$796,604.35) in EUC PBDIF credits which have been applied to building permits.

Developer and City agree that Developer and its guest builders will use EUC PBDIF credits for future remaining permits within Millenia.

- 2.4. Reimbursable Costs for Traffic Signals:

Within twenty (20) working days of the date hereof, City shall pay Developer seven hundred forty-four thousand seven hundred thirty-six dollars and eighty-three cents (\$744,736.83) from the Traffic Signal Fee program.

In addition to this cash reimbursement, the City has granted Developer four hundred ninety-eight thousand seven hundred sixty dollars and seventeen cents (\$498,760.17) in Traffic Signal Fee credits and three hundred thirteen thousand three hundred eighty-one dollars (\$313,381.00) in Eastern Transportation Development Impact Fees (“ETDIF”) which have been applied to building permits.

Developer and City agree that Developer and its guest builders will pay cash for Traffic Signal Fees for future remaining permits within Millenia.

- 2.5. The amounts above shall be the maximum amount of Reimbursable Costs for the Subject Facilities based on currently available monies in the subject funds. Developer will be eligible for an additional reimbursement up to three hundred eighteen thousand eight hundred thirteen dollars and ninety cents (\$318,813.90) in Reimbursable Costs for the Subject Facilities from the EUC PBDIF funds, when the remaining units within the EUC are constructed by another developer(s) and sufficient monies in the Fund are available. Developer acknowledges that this reimbursement is based on a maximum 699 multi-family units and will be reimbursed based on the actual number of units constructed multiplied by the EUC PBDIF rate of \$456.10 per multi-family dwelling unit. The City will disburse such funds annually as they are available.

### **ARTICLE III. DURATION OF AGREEMENT**

- 3.1. Term of Agreement. This Agreement shall be effective on the Effective Date following City Council approval by resolution, and the term shall extend until such time as all executory terms have been completed.

### **ARTICLE IV. INDEMNITY AND DUTY TO DEFEND**

- 4.1. Third Party Litigation Concerning the Agreement. Developer shall fully and timely defend, at its sole expense and with counsel approved by the City in writing, including attorneys' fees, and fully and timely indemnify, reimburse, protect, and hold harmless City, its employees, agents, officers and employees from any claim, demand, liability, damages, costs, expenses, fees, award, decree, judgment, action or proceeding against City, its employees, agents, officers or employees to attack, set aside, void or annul the approval of this Agreement. City shall promptly notify such Owner of any such claim, action or proceeding, and City shall reasonably cooperate in the defense.
- 4.2. Indemnity. In addition to the provisions of Section 4.1 above, Developer shall fully and timely indemnify, protect, defend (with counsel approved by the City in writing ), pay, reimburse, and hold City, its officers, agents, employees, subcontractors and independent contractors free and harmless from any liability, damages, costs, expenses, fees, award, decree, or judgment whatsoever, based or asserted upon any act or omission of Developer, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (that of Developer's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated by this Agreement, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of private or public improvements for Millenia, save and except for liability or claims arising through the active negligence or willful misconduct of City. Developer shall fully and timely defend, at its sole expense and with counsel approved by the City in writing, including attorneys' fees, City, its officers, agents, employees, subcontractors and independent contractors in any

legal or equitable action based upon such alleged acts or omissions, save and except liability or claims arising through the active negligence or willful misconduct of City.

- 4.3. Survival. Developer's obligations under this Article IV shall survive the expiration and/or termination of this Agreement.

## **ARTICLE V. MISCELLANEOUS PROVISIONS**

- 5.1. Notices. All notices and demands given pursuant to this Agreement shall be written. They shall be deemed served (i) immediately, upon personal delivery; (ii) the next Working Day, or sent prepaid by recognized overnight service such as FedEx for delivery the next Working Day; or (iii) three (3) Working Days after deposit in the United States mail, certified or registered mail, return receipt requested, first-class postage prepaid. Until notice of a change of address is properly given, notice shall be given:

If to City:                      City of Chula Vista  
   Attn: City Manager  
   276 Fourth Avenue  
   Chula Vista, CA 91910

With a copy to:                City Attorney  
   276 Fourth Avenue  
   Chula Vista, CA 91910

If to Developer:                Todd Galarneau  
   Executive Vice President  
   Meridian Development  
   9988 Hibert Street, Suite 210  
   San Diego, CA 92131  
   [TGalarneau@meridiandevelopment.com](mailto:TGalarneau@meridiandevelopment.com)

With a copy to:                Richard A. Schulman  
   Richard A. Schulman, A Professional Corporation  
   9834 Apple Tree Drive, Unit C  
   San Diego, CA 92124  
   [Richard@SchulmanAtLaw.com](mailto:Richard@SchulmanAtLaw.com)

- 5.2. Captions. Captions in this Agreement are inserted for convenience of reference. They do not define, describe, or limit any term of this Agreement.
- 5.3. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties regarding the subject matter hereof. No prior or contemporaneous oral or written representations, agreements, understandings and/or statements regarding its subject matter shall have any force or effect. This Agreement is not intended to supersede or amend any other agreement between the parties unless expressly noted. However, all

previous written agreements remain in full force and effect except to the extent they conflict with this Agreement.

- 5.4. Severability. If any provision of this Agreement or its particular application is held invalid or unenforceable, the remaining provisions of this Agreement, and their application, shall remain in full force and effect, unless a party's consideration materially fails as a result.
- 5.5. Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a party or its attorney drafted this Agreement. It shall be conclusively presumed that all parties participated equally in drafting this Agreement.
- 5.6. Authority. Each party warrants and represents that it has the necessary legal authority and capacity to enter into this Agreement, and that it has taken all necessary action to authorize its entry into this Agreement. Each individual signing this Agreement on behalf of an entity warrants that his/her principal has duly authorized him/her to sign this Agreement on its behalf so as to bind his/her principal.
- 5.7. Modification. This Agreement may not be modified, terminated, or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the parties hereto, their successors or assigns.
- 5.8. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement and performance hereunder shall be the City of Chula Vista.
- 5.9. Administrative Claims. *Requirements and Procedures*. No suit or arbitration shall be brought arising out of this Agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the CVMC, as same may from time to time be amended (the provisions of which are incorporated by this reference as if fully set forth herein), and such policies and procedures used by City in the implementation of same.
- 5.10. Non-liability of City Officials and Employees. No member, official, employee or consultant of the City shall be personally liable to Developer in the event of any default or breach by City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement.
- 5.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.

**[End of page. Signature page follows this page.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first set forth above.

**CITY**

CITY OF CHULA VISTA, a California  
charter city and municipal corporation

By: \_\_\_\_\_

Maria V. Kachadoorian, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

Jill D. S. Maland, Acting City  
Attorney

**DEVELOPER**

Millenia 2022, LLC  
a Delaware limited liability company

By: Meridian Communities, LLC,  
a Delaware limited liability company,  
its sole member

By: \_\_\_\_\_

Guy Asaro

Its: Manager



## EXHIBIT A

### Approved Eligible Expenses and Reimbursable Costs

Millenia Traffic Signal Reimbursement	
Eligible Expenses	\$ 1,243,497.00
Less EUC PBDIF Credits previously applied:	\$ (498,760.17)
<b>Total Reimbursement:</b>	<b>\$ 744,736.83</b>
<b>Note</b>	
ETDIF credits previously applied:	\$313,381.00

Millenia Pedestrian Bridge Reimbursement	
Eligible Expenses	\$ 3,244,904.25
Village 11 50%	\$ 1,622,452.13
Available Cash in EUC PBDIF	\$ 388,077.95
<b>Total Reimbursement</b>	<b>\$ 2,010,530.08</b>
<b>Notes</b>	
Maximum future reimbursement from EUC PBDIF if all 699 multi-family units are built by other developer:	\$ 318,813.90
EUC PFDIF credits previously applied:	\$ 796,604.35