

9:30 am - A
5/05/11

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT No. _____

**REIMBURSEMENT AGREEMENT FOR CONSTRUCTION
OF PUBLIC IMPROVEMENTS**

THIS AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS (this "Agreement"), is made and entered into this 22nd day of ~~May~~ ^{June}, 2011, by and between the CITY OF FRESNO REDEVELOPMENT AGENCY, a Public Body, Corporate and Politic, ("RDA") and Irritec USA, Inc., ("Developer")

RECITALS

WHEREAS, the RDA has adopted and is responsible for implementing its Airport Area Revitalization Redevelopment Project Area Plan ("Plan"); and

Whereas, The Plan provides for public improvements including, without limitation, water, sewer, storm drain, street, and traffic signal improvements. Constructing these public improvements will help eliminate blighting influences in the Project Area by doing the following: Encouraging existing businesses to remain or expand, attracting new businesses, thus stimulating employment and economic growth, and strengthening the economic base of the Project Area; and

Whereas, The Agency is responsible for and is engaged in redevelopment activities to carry out the Plan; and

WHEREAS, under the authority provided by the Ordinance Code of the City of Fresno, the City has required Developer to construct certain off-site public improvements ("Improvements"), as depicted in Exhibit 1 and hereto and incorporated herein by this reference, as part of the development of Irritec USA, Inc. Expansion ("Project"); and

WHEREAS, the RDA desires the Developer to construct the Project as depicted in Exhibit No. 1, attached; and include within the Project, the construction of the Improvements also as depicted in Exhibit No. 1; and

WHEREAS, the RDA desires to reimburse the Developer for the cost of constructing the Improvements to further the elimination of blighting influences in the Project Area;

NOW, THEREFORE, in consideration of the recitals set forth above, which are herein incorporated by this reference, and the mutual covenants and undertakings set forth herein, the mutual receipt and sufficiency of which is hereby acknowledged, the RDA and the Developer agree as follows:

1. The Developer shall locate and expand its North American operations within the Project Area and construct the Improvements in accordance with all City of Fresno approved plans, entitlements, drawings, standards and specifications pursuant to the terms of this Agreement.
2. The RDA shall reimburse the Developer for the cost of constructing the phased Improvements for an amount up to but not to exceed the Preliminary Estimate of Construction Costs provided to the RDA. A description of the Improvements, phases of development and a preliminary estimate of their costs is described in Exhibit No. 2, attached hereto and incorporated herein by this reference. The total of all progress payments and final payment to the Developer shall be based on the Developer's actual cash expenditures for the Improvements but will not exceed the original agreed to and attached Preliminary Estimate of Construction Costs.
3. Developer understands and agrees that construction of the Improvements is subject to the prevailing wage requirements contained in California Labor Code §§ 1720

et seq. It is Developer's sole responsibility to comply with the requirements of that section.

4. Developer agrees to dedicate all required rights-of way to the City of Fresno as required for the completion of all project phases.

5. The RDA shall retain the right to periodically inspect as it deems appropriate and approve or disapprove the construction of the Improvements prior to the Developer's final acceptance of the Improvements from the construction contractor. Upon completion of construction by Developer of the Improvements, and within ten (10) calendar days after receipt of the notification of completion, RDA or its' designee, shall inspect the Improvements and (i) accept, in writing, those facilities so constructed which conform in all material respects to the Project Plans, and (ii) notify the Developer in writing of any portion of the Improvements which do not conform to the Project Plans, and the specific respects in which they do not conform. In the event that any of the Improvements so constructed do not conform in all material respects to the Project Plans, the RDA shall cause such nonconformity to be corrected, at no additional cost to the RDA, prior to the RDA's acceptance of those Improvements. If the nonconformity cannot be corrected within a reasonable time, not less than sixty (60) calendar days, after receipt of such written notice by the RDA, the RDA may reject the nonconforming Improvements, or may accept them in writing. If the RDA accepts any such nonconforming Improvements, the reimbursement required pursuant to Paragraph No. 2 hereof may be adjusted as mutually determined by the RDA and the Developer to reflect the reduced value of the accepted nonconforming Improvements. Those Improvements that do not conform to the Project Plans and are not accepted by the RDA shall not be subject to any reimbursement.

6. Subsequent to Developer's completion of all its obligations hereunder, (which

obligations are conditions precedent to all of RDA's rights hereunder) final reimbursement shall be made to Developer by the RDA for an amount not to exceed the Preliminary Estimate of Construction Costs as delineated in Exhibit 2 herein, subject to the presentation to the RDA of a copy of the Notice of Completion and evidence of construction costs from Developers contractor.

7. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend RDA 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 RDA, 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 Agreement or the construction of any Improvements as described in Exhibit No. 2 as attached to this Agreement. Developer's obligations under the preceding sentence shall apply regardless of whether RDA 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 RDA or any of its officers, officials, employees, agents or volunteers.

This section shall survive termination or expiration of this Agreement

8. Miscellaneous.

(a) Entire Agreement. This Agreement (including the Exhibits hereto) contains the entire agreement between RDA 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.

(b) Modifications. This Agreement may be modified only by a written document executed by both parties hereto.

(c) Notice. 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 Paragraph 8(c). 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 4:30 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 Redevelopment Agency

2344 Tulare Street, Suite 200

Fresno, CA 93721

Attn: Marlene Murphy

DEVELOPER

Irritec USA, Inc.

4450 North Brawley, #126

Fresno, CA 93722

Attn: Mike Glassberg

(d) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any such illegal, invalid, or unenforceable provision herein, there shall be automatically added as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(e) Construction. The parties hereto acknowledge that each party has, or has had the opportunity to have, counsel of its own choosing review and revise this Agreement, such that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

(f) 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 Fresno County, California.

(g) Waiver. 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.

(h) 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.

(i) Binding. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, contractors, subcontractors, transferees, agents, servants, employees, and representatives.

IN WITNESS WHEREOF, the parties hereto have executed this DRA on the day and year set out below.

Dated: June 22, 2011.

REDEVELOPMENT AGENCY OF THE
CITY OF FRESNO

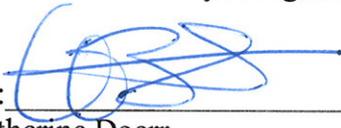
By: 
Marlene Murphey
Executive Director

Dated: June 22, 2011.

Irritec USA, INC.

By: 
Name: Mike Glassberg
Title: President

APPROVED AS TO FORM
City Attorney's Office
Ex Officio Attorney to Agency

By: 
Katherine Doerr
Deputy City Attorney

ATTEST
REBECCA E. KLISCH
Ex Officio Clerk for the Agency

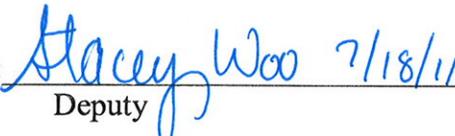
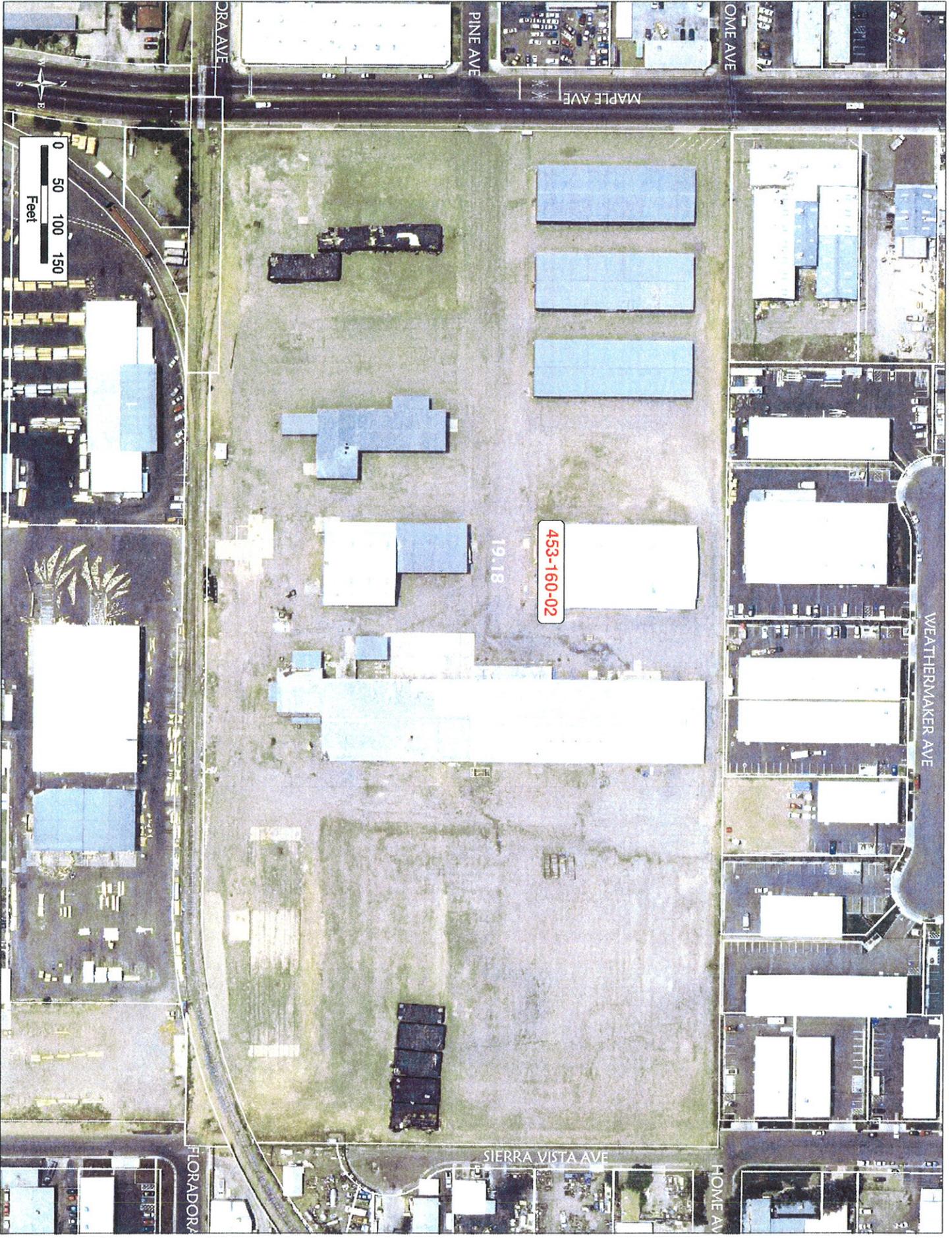
By:  7/18/11
Deputy

Exhibit 1.
Project Description

See Attached Reference Map



MAPLE AVE

PINE AVE

HOME AVE

FLORIDA AVE

WEATHERMAKER AVE

SIERRA VISTA AVE

HOME AV

FLORADORA

453-160-02

19.18

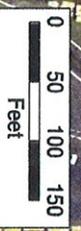


Exhibit 2.

**PRELIMINARY COST ESTIMATE FOR
IMPROVEMENTS ELIGIBLE FOR
REIMBURSEMENT TO DEVELOPER BY RDA**

OFFSITE IMPROVEMENTS

Exhibit No. 2

Preliminary Cost Estimate For Improvements Eligible for Reimbursement
to Developer by RDA
1420 N. Maple Project Improvements

Sierra Vista Avenue

<i>Item</i>	<i>Description</i>	<i>Cost</i>
1	Surveying	\$ 2,500
2	Demolition, Clearing and Grading	\$ 15,083
3	Erosion Control	\$ 1,875
4	Concrete Improvements	\$ 16,500
5	Street Lighting	\$ 22,500
6	Pavement Improvements	\$ 69,745
7	R/R Street Approach	\$ 50,000
Subtotal Offsite Cost		\$ 178,203
8	A&E Design Fees	\$ 4,500
9	Construction Staking	\$ 3,500
10	City Inspection Services & Plan Check	\$ 7,702
11	Street Encroachment Permits	\$ -
12	Insurance, Taxes, GC's, Bonds, & Fee	\$ -
Total Sierra Vista Cost		\$ 193,905

Maple Avenue

<i>Item</i>	<i>Description</i>	<i>Cost</i>
1	Surveying	\$ 2,500
2	Demolition, Clearing and Grading	\$ 6,125
3	Erosion Control	\$ 1,875
4	Traffic Control	\$ 6,250
5	Concrete Improvements	\$ 72,000
6	Sanitary Sewer Improvements	\$ 19,703
7	Utility Pole Removal & Underground	\$ 33,125
8	Street Lighting	\$ 42,500
Subtotal Offsite Cost		\$ 184,078
9	A&E Design Fees	\$ 6,500
10	Construction Staking	\$ 3,500
11	City Inspection Services & Plan Check	\$ 8,548
12	Street Encroachment Permits	\$ -
13	Insurance, Taxes, GC's, Bonds, & Fee	\$ -
Total Maple Avenue Cost		\$ 202,626

On-site Road & Utility Improvements

<i>Item</i>	<i>Description</i>	<i>Cost</i>
1	Surveying	\$ 5,750
2	Demolition, Clearing and Grading	\$ 19,786
3	Erosion Control	\$ 4,025
4	Concrete Improvements	\$ 93,725
5	Pavement Improvements	\$ 230,263
6	Street Lighting	\$ 62,100
7	Water Services (Irrigation, Domestic & Fire & BFP)	\$ 207,230
8	Fire Hydrants	\$ 21,850
10	8" Domestic Water Distribution	\$ 160,655
11	Sanitary Sewer Laterals	\$ 15,640
12	8" Sanitary Sewer Collection	\$ 79,695
13	Storm Water Collection	\$ 97,549
14	Elec, Gas, Telephone Distribution	\$ 97,750
Subtotal Offsite Cost		\$ 1,096,018
15	A&E Design Fees	\$ 22,000
16	Construction Staking	\$ 12,500
17	City Inspection Services & Plan Check	\$ 47,921
18	Street Encroachment Permits	\$ -
19	Insurance, Taxes, GC's, Bonds, & Fee	\$ -
Total On-site Road & Utility Cost		\$ 1,178,439



**REPORT TO THE
REDEVELOPMENT AGENCY
AND CITY COUNCIL**

AGENDA ITEM NO. 9:30am "A"
BOARD MEETING: 05/05/11

APPROVED BY

[Signature]
(Executive Director)

DATE: May 5, 2011
FROM: Marlene Murphey, Executive Director
BY: John Quiring, Project Manager

SUBJECT: Consider approval of the following actions relating to reimbursement of costs incurred within the Airport Area Revitalization Redevelopment Project Area for the installation of public improvements on North Sierra Vista, North Maple and East Pine Avenues:

1. Adopt Findings of Categorical Exemption pursuant to Sections 15301 (Existing Facilities), Section 15303 (New Construction or Conversion of Small Structures) and 15304 (Minor Alterations to Land) of the CEQA Guidelines, related to the construction of publically owned improvements in a targeted area generally described as North Maple Avenue, North Sierra Vista Avenue and subdivision interior streets (unnamed).
2. JOINT RESOLUTION - Making certain findings pursuant to Section 33445 of the Community Redevelopment Law, authorizing the Agency's reimbursement of costs incurred within the Airport Area Revitalization Redevelopment Project Area for the installation of public improvements on North Sierra Vista, North Maple and subdivision interior streets
3. Authorize Developer Reimbursement Agreement (DRA) between the Redevelopment Agency and Irritec USA, Inc. and authorize the Executive Director to execute the Developer Reimbursement Agreement

RECOMMENDATION

Presented to Fresno Redevelopment Agency
Date 5/5/11
Disposition For approval
at the 2011 05/1790
adopted

It is recommended that the Agency Board and City Council:

1. Adopt findings of Categorical Exemption as specified in Sections 15301, 15303 and 15304 of the CEQA Guidelines.
2. Pass the joint resolution making certain findings pursuant to Section 33445 of the Community Redevelopment Law, authorizing the Agency's reimbursement of costs for the installation of public improvements on North Sierra Vista, North Maple and subdivision interior streets
3. Approve the Developer Reimbursement Agreement (DRA) between the Redevelopment Agency and Irritec USA, Inc. and authorize the Executive Director to execute the Developer Reimbursement Agreement.

EXECUTIVE SUMMARY

The Redevelopment Agency has been working with Irritec USA, Inc. (IUI) for more than two years as they sought to establish a permanent North American manufacturing presence and headquarters. Irritech is one of the top four manufacturers of drip irrigation systems and products in the world.

The evolution of this industry is reaching well beyond its initial base of San Joaquin Valley Agriculture. The growing cluster of local water technology companies, along with Fresno State University's program, has established Fresno as the world's water technology center. Water technology and irrigation is one of Fresno's leading industrial clusters. IUI has entered into escrow to purchase and redevelop a blighted 20 acre site located on the east side of Maple Avenue between Olive and McKinley Avenues into a 10 acre site for their North American operations and the additional 10 acres as a small-lot industrial park. The company will relocate their current temporary warehouse operation located in leased space in NW Fresno to the new site, and expand with a major capital investment in renovation of an existing building, add new manufacturing capacity, add railroad access, install capital equipment to produce drip irrigation products and extensive related public improvements.

The site is located within the Airport Area Revitalization Redevelopment Project Area as well as the City of Fresno's Enterprise Zone. It is zoned M-1 and is appropriate for all planned industrial uses. It was previously used for a variety of industrial uses and has become blighted over numerous years of vacancy and neglect. The company will utilize one existing building through renovation, but will have to demolish numerous other onsite blighted structures in order to utilize the site. The proposed acquisition and expansion will require extensive public facilities including roads, off-site improvements and related infrastructure. The proposed infrastructure will support the revitalization of the subject site as well as the surrounding industrial neighborhood and improve access within the Airport Area Revitalization Redevelopment Project Area.

The company has met with Agency staff regarding mutual goals for development that may be advanced by the Agency, including the reduction of blight and enhancing public infrastructure for the area. These public infrastructure measures would provide IUI the means to increase the scope of its business by locating and expanding its operations and adding new jobs. The discussions with IUI resulted in the attached Developers Reimbursement Agreement (DRA). The resulting public improvements will help retain IUI in Fresno at its new permanent location and induce expansion of its sales, service, manufacturing and distribution operations. The company's expansion is expected to grow 75 new basic industry jobs, increase private investment and increase sales, property and business license tax revenue to the City of Fresno.

Pursuant to the Developer Reimbursement Agreement (DRA) between the Agency and IUI, the Agency will reimburse the Developer for the cost of constructing the improvements along Maple Avenue, Sierra Vista Avenue and internal subdivision streets for an amount up to but

not to exceed the Preliminary Estimate of Construction Costs of \$1,574,970. The Agency's investment in public infrastructure improvements will allow IUI to locate and expand their North American operations to this site, hire an additional 75 workers at this company site, and develop and sell parcels to other industrial users in the adjacent industrial subdivision that will generate an estimated additional 162 jobs.

BACKGROUND

IUI has had a North American presence through a previous industrial joint venture in the drip irrigation business located in Fresno. Two years ago they established their own company, Irritec USA, Inc. as a separate entity and opened a leased distribution center in northwest Fresno. This center sold products produced at Irritec plants in Mexico, Europe and Asia. During this time they have been actively searching for a site that would accompany their long range expansion plans for North America and have entered escrow on the 20 acre parcel identified on the attached location map. The expansion will allow all products sold in North America to be produced and distributed from the new Fresno site.

Irritec is a privately held manufacturer based in Italy that has an extensive history of leading technology development in the irrigation industry. They have numerous plants in Europe and South America and are expanding rapidly into North America and Asia. Their expansion into the identified site in Fresno will be accomplished in two components.

The first is the immediate use of the Eastern half of the identified site as the location for their North American operations. This will include the renovation of an existing 47,000 sq. ft. industrial building into a manufacturing and distribution center, extension of a rail siding, addition of an office structure, construction of product silos, installation of extensive production machinery and general demolition of various on-site blighted structures. Extensive public infrastructure is required on Sierra Vista and Maple Avenues to support this component.

The second component will be the creation of a 14 parcel industrial small lot subdivision on the remaining westerly 10 acres. These parcels will be made available to the general industrial market and also targeted to support business related to the water technology industry that IUI has already identified with potential interest in expansion near the IUI facility. These additional businesses will also add investment, jobs and tax revenue to the Project Area.

The expansion of IUI and additional creation of the small lot industrial subdivision is anticipated to produce the following benefits to Fresno:

Component 1

Irritec Site – 10 acres

Initial Investment Years 1-2 – (Building and Equipment) \$10.5 million

Years 3-4 Investment - \$5.1 million

Jobs – 75 by year 3

Component 2

Industrial Park – 10 acres – 8.5 acres retained after ROW dedications.

Predevelopment and sales of 14 lots = \$1.5 million in land sales value (at \$4 sf)

Building Development 3-5 years = \$13,500,000 investment

Jobs – 162 after 3 years of build out of the industrial subdivision

The total projected on-site taxable investment would be approximately \$30,600,000 over four years. This would result in new tax increment of approximately \$244,800 annually. Based upon projected tax increment alone, the investment of approximately \$1.6 million would be returned in about 6 years following project completion.

Public improvements required for this investment are expected to take about 24 months and include Sierra Vista and Maple Avenues and internal streets in the industrial sub-division. Engineering estimates have been developed for the project that estimate these public improvements will cost:

Hard Costs:	\$1,458,299
Soft Costs:	116,671
<u>TOTAL:</u>	<u>\$1,574,970</u>

Following the Developer's completion of construction of the designated phased off-site public improvements, the Agency will reimburse the Developer for an amount up to but not to exceed the Preliminary Estimate of Construction Costs of \$1,574,970. All off-site improvements will be constructed at prevailing wage rates.

This project is consistent with the goals and objectives in the Airport Area Revitalization Redevelopment Area plan. Staff performed a preliminary environmental assessment of this project and has determined that it falls within the Categorical Exemption set forth in CEQA Guidelines, Sections 15301 (Existing Facilities), Section 15303 (New Construction or Conversion of Small Structures), and Section 15304 (Minor Alterations to Land). Furthermore, Staff has determined that none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

This item was unanimously approved at the regularly scheduled meeting of the Housing and Community Development Commission on April 27, 2011.

Attachments:

1. Resolution
2. Draft Reimbursement Agreement
3. Engineer's Estimate
4. Map