

**REIMBURSEMENT AGREEMENT FOR CONSTRUCTION
OF PUBLIC IMPROVEMENTS**

THIS AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS (this "Agreement"), is made and entered into this 29th day of July, 2010, by and between the CITY OF FRESNO REDEVELOPMENT AGENCY, a Public Body, Corporate and Politic, ("Agency") and Chau Trang and Sylvia S. Kor, individually and doing business as Triple A Burger ("Developer").

RECITALS

WHEREAS, the Agency has adopted and is responsible for implementing its Southwest Fresno General Neighborhood Renewal 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, the Developer is nearing completion of a new 5,000 square foot commercial building (the "Project"). The new commercial building replaces an over 30 year old structure which operated continuously as Triple A Burger serving the Southwest Fresno community. The completion of the Project will provide reconstruction of public improvements on Fresno and 'A'

Street, increase the size of the current Triple A Burger from 750 square feet to 1,500 square feet and will provide four leasable retail and commercial spaces for new and expanding businesses seeking space in southwest Fresno; 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 the Project; and

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

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

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 Agency and the Developer agree as follows:

1. The Developer shall construct the Improvements in accordance with all City of Fresno approved plans, drawings, standards and specifications pursuant to Section 3 and 4, below (the "Improvement Plans").
2. The Agency shall reimburse the Developer for the cost of constructing the Improvements for an amount up to but not to exceed the preliminary cost estimates provided to the Agency. A preliminary cost estimate for improvements eligible for reimbursement to Developer by Agency is described in **Exhibit No. 2**, attached hereto and incorporated herein by this reference. 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 Preliminary Estimate set forth in Exhibit No. 2.

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, and with all other federal, state and local laws.

4. The Agency 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, Agency or its' designee shall inspect the Improvements and (i) accept, in writing, those facilities so constructed which conform in all material respects to the Improvement Plans, and (ii) notify the Developer in writing of any portion of the Improvements which do not conform to the Improvement 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 Improvement Plans, the Agency shall cause such nonconformity to be corrected, at no additional cost to the Agency, prior to the Agency'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 Agency, the Agency may reject the nonconforming Improvements, or may accept them in writing. If the Agency accepts any such nonconforming Improvements, the reimbursement required pursuant to Paragraph No. 2 hereof may be adjusted as mutually determined by the Agency and the

Developer to reflect the reduced value of the accepted nonconforming Improvements. Those Improvements that do not conform to the Improvement Plans and are not accepted by the Agency shall not be subject to any reimbursement.

5. Subsequent to Developer's completion of all its obligations hereunder, which obligations are conditions precedent to all of Agency's rights hereunder, reimbursement shall be made to Developer by the Agency for an amount not to exceed the Preliminary Estimate delineated in Exhibit 2 herein, subject to the presentation to the Agency of a copy of the Notice of Completion and evidence of construction costs from Developer's contractor.

6. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend Agency 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 Agency, 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 Exhibits Nos. 1 and 2 as attached to this Agreement. Developer's obligations under the preceding sentence shall apply regardless of whether Agency 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 Agency or any of its officers, officials, employees, agents or volunteers.

This section shall survive termination or expiration of this Agreement

7. Miscellaneous.

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

Fax Number: 559-498-1870

Kearney Center – Triple A Burger

1014 Fresno Street

Fresno, CA 93706

Attn: Chau Trang & Sylvia S. Kor

Fax Number: 559-324-8758

(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.

(j) Attorney's Fees. If either party brings any action, in law or in equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to

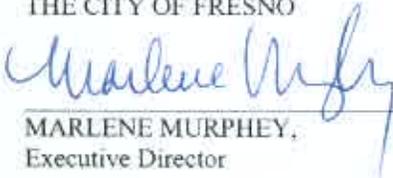
recover from the other party reasonable attorney's fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 30th day of July, 2010,

"AGENCY"

"DEVELOPER"

REDEVELOPMENT AGENCY OF
THE CITY OF FRESNO


MARLENE MURPHEY,
Executive Director

Dated: _____, 2010


Chau Trang, individually and
d/b/a Triple A Burger

Dated: 7/22, 2010


Sylvia S. Kor, individually and
d/b/a Triple A Burger

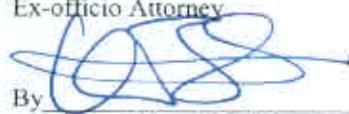
Dated: 7/22, 2010

The Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted by the Redevelopment Agency Board on July 29, 2010.

ATTEST:
REBECCA E. KLISCH
Ex-officio Clerk

APPROVED AS TO FORM:
Ex-officio Attorney

By Cindy Bruer
Deputy


By _____
Deputy/Sr. Deputy/Assistant

Dated: 7/30, 2010

Dated: 7/22, 2010

Exhibit 1.
Description of Improvements

Public improvements including, design, installation and repair of 1950 square feet of curb, gutter, and sidewalk on Fresno Street ("A" Street to the Alley); 1250 square feet of curb, gutter and sidewalk on "A" Street (Fresno Street to property line); 2 ADA ramps and 2 driveway approaches.

Exhibit 2.
PRELIMINARY COST ESTIMATE FOR
IMPROVEMENTS ELIGIBLE FOR
REIMBURSEMENT TO DEVELOPER BY RDA

Kearney Center - Triple A Burger
1014 Fresno Street
Fresno, California 93706

OFFSITE CONSTRUCTION COSTS

<u>Description</u>	<u>Amount</u>
Removal and new installation of sidewalk on Fresno Street approximately 1950 square feet	\$ 19,500.00
Removal and new installation of sidewalk on A Street approximately 1250 square feet	6,300.00
Removal and installation of wheelchair ramp to ADA code	5,500.00
Easement, Engineering and deed dedication for ramp	1,500.00
Removal 3 existing approaches and installation of 2 new approaches	15,000.00
Traffic control	3,200.00
Repair existing curb and gutters	<u>6,000.00</u>
Total Cost	\$ 57,000.00



REPORT TO THE CITY COUNCIL AND THE REDEVELOPMENT AGENCY BOARD

ITEM NO.	1:35 pm "A"
MEETING:	7/29/10
APPROVED BY	
EXECUTIVE DIRECTOR	

DATE: July 29, 2010

FROM: Marlene Murphey, Executive Director

BY: Terry Cox, Project Manager

SUBJECT: Recommend the Agency Board approve a reimbursement agreement between the Redevelopment Agency of the City of Fresno and Triple 'A' Burger for the construction of public improvements at 1014 Fresno Street.

RECOMMENDATIONS

It is requested that the Agency Board approve a reimbursement agreement between the Redevelopment Agency of the City of Fresno and Triple 'A' Burger for the construction of public improvements at 1014 Fresno Street within the Southwest Fresno General Neighborhood Renewal Area (GNRA).

EXECUTIVE SUMMARY

The owners of a Southwest Fresno business (Triple 'A' Burger) have requested Agency assistance with costs for construction of public improvements. The required improvements, in addition to serving the businesses at 1014 Fresno Street, will provide safe walking paths for the neighboring businesses and residences in the Kearney Palms area.

The Redevelopment Agency Project Area plan authorizes the Agency to engage in activities such as install, construct or reconstruct public improvements to eliminate blight and improve the quality of life for residents, visitors and businesses in the Project Area. The request is consistent with the Agency's goals and objectives for implementation of the Southwest Fresno General Neighborhood Renal Area (GNRA).

BACKGROUND

Triple 'A' Burger is currently completing construction of a new commercial building on Fresno Street across from the Kearney Palms Shopping Center. The owners/operators of this business have owned and operated this Southwest Fresno icon for 16 years. The restaurant dba Triple 'A' Burger has been in continuous operation at this location over 30 years. This

Presented to Fresno Redevelopment Agency
 Date 7/29/10
 Disposition For approval

project will double the operating site of the Triple 'A' Burger restaurant, add an additional 3,500 square feet of retail space, and replace deteriorated and non-compliant ADA curb, gutter and sidewalk along Fresno and 'A' streets. The new facility will provide up to 25 new jobs.

On May 18, 2004 the Agency Board received and adopted the West Fresno Community Vision that included recommendations for needed infrastructure improvements in Southwest Fresno General Neighborhood Renewal Area (GNRA). To assist in meeting the set goals, the Redevelopment Agency continues to budget for and implement the identified needs.

Since the adoption of the vision plan the Agency has completed over \$11 million dollars of infrastructure including the rehabilitation of 12.5 miles of neighborhood and commercial alleyways, reconstruction of the Elm Avenue Business Corridor, reconstruction of Whitesbridge Road, California Avenue reconstruction and widening, realignment and widening of the new Walnut Avenue, reconstruction of the old Walnut Avenue, and construction of Tulare Street median islands.

Based on findings on December 14, 2006 by the City of Fresno Planning and Development Department, this project is categorically exempt under section 15332/Class32 of the California Environmental Act (CEQA).

The preliminary cost estimate for the improvements eligible for reimbursement to the developer is \$57,000. Funding for the reimbursement is included the Agency's approved FY 10/11 annual budget. Payment to the developer will be based on the submittal and approval of the actual cash expenditures but will not exceed the original cost estimate.

At their regularly scheduled meeting of July 28, 2010, the HCDC Commission considered this item.

Attachment 1: Reimbursement Agreement
Attachment 2: Categorical Exemption Environmental Assessment