

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL DOCUMENT  
TO:**

CITY OF KERMAN  
Attn: Marci Reyes, City Clerk  
850 S. Madera Avenue  
Kerman, CA 93630

NO FEE – Government Code Sections 6103 and 27383

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Space Above This Line for Recorder's Use Only

**CITY OF KERMAN  
SUBDIVISION AGREEMENT  
FINAL MAP OF TRACT NO. 6293**

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**EXHIBIT "A" LEGAL DESCRIPTION OF PROPERTY  
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**CITY OF KERMAN  
SUBDIVISION AGREEMENT  
FINAL MAP OF TRACT NO. 6293**

THIS SUBDIVISION AGREEMENT (the "Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2023, (the "Effective Date") by and between CITY OF KERMAN, a municipal corporation, hereinafter referred to as "CITY," and JOSEPH CROWN CONSTRUCTION AND DEVELOPMENT, INC., hereinafter referred to as "OWNER," without regard for number or gender (individually a "Party," and collectively, the "Parties").

**RECITALS**

A. OWNER has filed with CITY the Final Map of Tract No. 6293 constituting a proposed division of land (the "Property") owned by OWNER and located within the corporate limits of CITY, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. A copy of said Final Map is on file with the City Clerk.

B. Pursuant to Chapter 16.28 and other applicable provisions of the Kerman Municipal Code, CITY has conducted the appropriate environmental review of the proposed subdivision, the Planning Commission of CITY has determined that the proposed subdivision is consistent with CITY'S General Plan in that the proposed land use is compatible with the objectives, policies, land uses, and programs specified in the General Plan. The City Council of CITY, on January 13, 2021, with the adoption of Resolution No. 21-04, approved Vesting Tentative Tract Map No. 6293.

C. Pursuant to Section 16.36.010 of the Kerman Municipal Code, after approval or conditional approval of the tentative map, the subdivider may cause a final map to be prepared in accordance with a completed survey of the division of land and in substantial compliance with the approved tentative map, and in full compliance with the Subdivision Map Act and Title 16 of the Kerman Municipal Code. The final map shall meet the requirements and specifications set forth in Title 16 and Government Code Section 66433 of the Subdivision Map Act.

D. CITY requires the dedication of all areas delineated on the Final Map of Tract No. 6293 for public street and other public purposes consistent with provisions of the Kerman Municipal Code, this Agreement, and Vesting Tentative Map No. 6293.

E. OWNER is required to construct and install Improvements (defined below), including sewer; water; storm drainage; concrete curbs, gutters, sidewalks and driveway approaches; street lighting; street paving; walls and fences; landscaping; irrigation; traffic signals; and other improvements; and perform grading; all as shown on the Improvement Plans for Tract No. 6293, prepared by Landdesign Consulting, the engineer of record for Tract No. 6293, and approved by CITY, which Improvement Plans are on file with the City Engineer.

F. OWNER desires to develop the Property by constructing and installing the Improvements and performing said work consistent with the Improvement Plans.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals, which are made a substantive part of this Agreement, and for other good and valuable consideration, including approval of the Final Map of Tract No. 6293 by CITY, and the recording thereof as provided by law, the receipt and adequacy of which are hereby acknowledged, OWNER and CITY do hereby mutually agree as follows:

### **ARTICLE I. GENERAL PROVISIONS**

#### **A. DEFINITIONS**

Wherever hereinafter used in this Agreement, the following words and phrases shall have the meaning herein given, unless the context requires a different meaning:

1. "City Clerk" shall mean the City Clerk of CITY, or his or her duly authorized representative.

2. "City Council" shall mean the City Council of the CITY.

3. "City Engineer" shall mean the City Engineer of CITY, or his or her duly authorized representative.

4. "Inspector" shall mean the City Engineer of CITY, or his or her duly authorized representative.

5. "Development Impact Fees" shall mean the development impact fees set forth in Exhibit "B" of this Agreement.

6. "Final Acceptance of Improvements" shall mean acceptance of the Improvements (defined below), with the exceptions provided in Section F.3, by CITY.

7. "Final Map" shall mean the Final Map of Tract No. 6293 as being divided into parcels, including street areas of adjacent existing public streets to the center lines thereof.

8. "Improvements" shall mean all works of improvement, including those depicted on or required by the Improvement Plans (defined below) and the provisions of this Agreement, and may include, but not necessarily be limited to, sewer, water, street pavement, storm drainage, street lighting, concrete, fence, landscape, irrigation, grading, and traffic signal improvements.

9. "Improvement Plans" shall mean the Improvement Plans for the Final Map approved by CITY and on file with the City Engineer.

10. "Planning Commission" shall mean the Planning Commission of CITY.

11. "Standard Specifications" shall mean CITY'S Standard Specifications, including attached details and amendments thereto.

12. "Subdivision" shall mean the Final Map and/or the land described by the Final Map.

13. "Vesting Tentative Tract Map No. 6293" shall mean the Vesting Tentative Map of Tract No. 6293 approved by the City Council, with its adoption of Resolution No. 21-04, on January 13, 2021.

#### B. LEGAL FOUNDATION OF AGREEMENT

This Agreement is entered into pursuant to California Government Code Section 66410 et seq. (the "Subdivision Map Act") and Title 16, Subdivisions, of the Kerman Municipal Code. The provisions of this Agreement and the Improvements to be constructed and installed pursuant to the requirements of the Subdivision Map Act, the Kerman Municipal Code, and this Agreement are necessary and proper to safeguard and serve the public health, safety and welfare.

#### C. DEVELOPMENT IMPACT FEES

1. Impact Fees. OWNER and CITY hereby agree that OWNER is obligated to pay Development Impact Fees for sewer and water, storm drainage, parks, and other public facilities as shown in Exhibit "B" attached hereto and incorporated herein by reference. In addition, OWNER agrees that OWNER is obligated to pay plan check, inspection, grading permit, building permit, encroachment permit, and similar fees as required under the Kerman Municipal Code and other applicable law. The fees set out in Exhibit "B" are based upon the development of the number of residential units presently proposed by OWNER. If a different number of residential units is developed, CITY reserves the right to adjust the amount of the fees to correspond to the number of residential units actually developed by OWNER, and OWNER agrees that OWNER shall be obligated to pay fees corresponding to the number of residential units OWNER, or its successors, actually develops. Fees set forth in Exhibit "B," Part I, shall be due and payable for each residential unit on the date of final inspection or the date certificate of occupancy is issued, whichever is issued first, for each residential unit unless otherwise agreed by Owner and CITY. If said fees are not paid in full at the time of the issuance of a building permit, OWNER shall enter into a covenant consistent with Government Code section 66007(c), and in a form acceptable to the CITY, to pay said fees. Such covenant shall be recorded against the property for which the building permit is being issued, and shall constitute a lien on the property for the unpaid fee. Owner shall be responsible for the costs of the same, including reimbursing CITY for its actual costs of processing, and subsequently releasing, the covenant. If OWNER instead elects to pay said fees at the time of issuance of a building permit, then no covenant will be required. OWNER agrees that the fee amounts set forth in Exhibit "B" are based upon the best information available

upon the Effective Date of this Agreement, and that the final fee amounts may be greater or less than the amounts set forth in Exhibit "B" due to adjustments in construction costs, testing and inspection, or other unforeseen events. Final fee amounts, regarding each residential unit, will be determined by CITY prior to issuance of an occupancy permit for each residential unit.

2. Impact Fee Adjustments. CITY agrees to the fee adjustments set forth in Exhibit "B," Part II, provided that OWNER constructs and installs the Improvements described in Exhibit "B," Part II. In the event OWNER fails to construct any of the Improvements described in Exhibit "B," Part II, on or before the "Completion of all Improvements" date, as set forth in Article II, Section D, of this Agreement, or any agreed extension of such date, CITY, in its sole discretion, and in addition to any other remedy provided in this Agreement or by law, may enter the Subdivision and construct or complete construction of the Improvements. In such event, CITY shall determine whether OWNER shall pay the construction cost or fee prevailing at the time of construction, and CITY will pursue reimbursement from OWNER, or from securities held to secure the performance of this Agreement. In addition, OWNER hereby consents to the recordation of a lien or liens against the Subdivision in an amount to secure reimbursement to CITY for amounts expended to enforce this Agreement, including, but not limited to, the costs incurred to construct the Improvements designated in this Agreement.

3. Impact Fee Reimbursements. Where OWNER has constructed facilities, or paid CITY for the construction of facilities that are over-sized, or that are constructed as master-planned facilities that are not primarily for the benefit of OWNER or the Subdivision, OWNER shall be eligible to receive reimbursement as indicated in Exhibit "B," Part II, from development impact fee funds, subject to availability of such funds. The source of the reimbursement shall be selected by CITY, but in no event shall CITY be responsible for reimbursement from any source or sources other than the source or sources identified in this paragraph.

#### D. INDEMNIFICATION

To the greatest extent permitted by law, OWNER shall indemnify, hold harmless, and defend CITY and its officers, officials, agents, employees, consultants and volunteers from any and all claims, demands, costs, losses, damages, or liability whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage incurred by CITY, OWNER, or any other person, and from any and all claims, demands and actions in law or equity (including attorneys' fees, litigation, and legal expenses incurred by CITY or held to be the liability of CITY, including plaintiff's or petitioner's attorneys' fees if awarded in connection with CITY'S defense of its actions in any proceeding) arising or alleged to have arisen directly or indirectly from (a) the performance of, or in any way connected with, this Agreement; (b) the performance or installation of the work or Improvements by OWNER and its principals, officers, employees, agents, contractors and subcontractors; (c) the design, installation, operation, removal or maintenance of the work and Improvements; or (d) CITY'S approval of the design, installation, operation, removal or maintenance of the work and Improvements, save and except for the sole negligence of CITY. Pursuant to Government Code Section

66474.9, OWNER shall defend, indemnify, and hold harmless CITY and its officers, officials, agents, employees, consultants and volunteers from any claim, action or proceeding against CITY and its officers, officials, agents, employees, consultants and volunteers to attack, set aside, void, or annul, an approval of CITY, the Planning Commission, or the City Council concerning the Subdivision or this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and shall cooperate fully in the defense thereof. The Parties intend that this indemnity provision shall be broadly construed to the greatest extent permitted by law.

E. INSURANCE

Prior to the commencement of any work pursuant to this Agreement, each of OWNER'S contractors shall furnish to CITY satisfactory evidence of an insurance policy written upon a form and by a company that meets with the approval of CITY insuring CITY and its officers, officials, agents, employees, consultants and volunteers against loss or liability which may arise during the work or which may result from any of the work herein required to be performed, including all costs of defending any claim arising as a result thereof. The minimum limits of such policy shall be in the amount of One Million Dollars (\$1,000,000.00) for the death of or injury to any person in any one accident, Two Million Dollars (\$2,000,000.00) for the death of or injury to more than one person in any one accident, and Three Hundred Thousand Dollars (\$300,000.00) for property damage in any one accident. Any policy required by any CITY agreement or permit shall include coverage for underground explosion and collapse. Said policy shall be in favor of OWNER and its principals, officers, employees, agents, contractors and subcontractors, and shall be maintained in full force and effect during the life of this Agreement. The insurance policy shall name the CITY and its officers, officials, agents, employees, consultants, and authorized volunteers as additional insureds, and shall waive all rights of subrogation against the same. The insurance coverage shall also be primary insurance as respects the CITY, its officers, officials, employees, consultants, and authorized volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, or employees shall be excess of the Consultant's insurance and shall not contribute with it. Said policy shall state by its terms and by endorsement that said policy shall not be canceled until CITY shall have had at least thirty (30) days' notice in writing of such cancellation.

G. RECORDING OF FINAL MAP AND NOTICE OF COMPLETION OF IMPROVEMENTS; INSTALLATION OF SIDEWALKS AND DRIVEWAY APPROACHES

1. Final Map. The offers of dedication of lands, rights-of-way, or easements made on the Final Map shall remain open and will not be accepted by CITY until the City Council accepts the Improvements and authorizes the recording of the Notice of Completion with the Fresno County Recorder. CITY may accept such offers in its sole discretion at any later date without further notice to OWNER.

2. Notice of Completion of Improvements. The conditions and obligations of this Agreement shall remain in full force and effect until such time as the CITY issues a written release finding that the conditions and obligations of this Agreement have been fully satisfied and are no longer required for public health and safety reasons



and thereafter records such release with the Fresno County Recorder. Until Final Acceptance of Improvements, and acceptance of any lands, rights of way, and easements, OWNER shall be responsible to maintain the Improvements in a safe condition and good repair. OWNER agrees that the use of any or all Improvements specified in this Agreement shall be, at all times prior to Final Acceptance of Improvements, at the sole and exclusive risk of OWNER, and the issuance of any occupancy permit by CITY for any dwelling unit completed on a Subdivision lot shall not be construed in any manner to constitute Final Acceptance of Improvements. Upon Final Acceptance of Improvements, CITY shall cause a Notice of Completion of the Improvements to be recorded in the Official Records of the County of Fresno.

3. Installation of Sidewalks, Driveway Approaches, and Street Trees. OWNER agrees to construct and install concrete sidewalks and driveway approaches and install street trees incrementally, excepting sidewalks and street trees along boundary streets and non-residential lots, upon the completion of each dwelling unit on each Subdivision lot. Sidewalks and street trees along boundary streets and non-residential lots shall be installed prior to Final Acceptance of Improvements. The City Engineer shall determine which segments of sidewalk and street trees shall be installed prior to Final Acceptance of Improvements. CITY agrees to Final Acceptance of Improvements and a Notice of Completion of Improvements, absent concrete sidewalks and driveway approaches. OWNER and CITY agree that CITY may withhold the certificate of occupancy for a dwelling unit constructed on a Subdivision lot until the concrete sidewalk and driveway approach associated with the lot are completed by OWNER to the satisfaction of the City Engineer.

#### G. BONDS AND OTHER SECURITY

Prior to the City Council's approval of the Final Map, or unless otherwise indicated, OWNER shall furnish to CITY performance guarantees as provided herein. Bonds or other security instruments shall be maintained in full force and effect during the term of this Agreement and may be released, in whole or in part, only upon the written approval of the CITY, whose actions shall be reasonable and consistent with the provisions of this Agreement. OWNER shall provide the following as security:

1. Performance Security. OWNER shall provide to CITY performance security in the amount of four million two hundred and ninety-five thousand five hundred and two dollars (\$4,295,502), which amount is equal to one hundred percent (100%) of the estimated total cost of the Improvements, as approved by the City Engineer. Said performance security shall be in the form of (a) a bond, issued by a surety authorized to conduct business in the State of California; (b) an irrevocable letter of credit issued by a bank authorized to conduct business in the State of California and insured by the Federal Deposit Insurance Corporation; (c) cash; or (d) other security acceptable to CITY. All required securities must be in a form approved by CITY'S attorney.

2. Payment Security. OWNER shall provide to CITY payment security in the amount of two million one hundred and forty-seven thousand seven hundred and fifty-one dollars (\$2,147,751), which amount is equal to fifty percent (50%) of the

estimated total cost of the Improvements, as approved by the City Engineer. Said payment security shall be in the form of (a) a bond, issued by a surety authorized to conduct business in the State of California; (b) an irrevocable letter of credit issued by a bank authorized to conduct business in the State of California and insured by the Federal Deposit Insurance Corporation; (c) cash; or (d) other security acceptable to CITY. All required securities must be in a form approved by CITY'S attorney.

3. Warranty Security. OWNER shall remedy any defective work, labor or materials related to the Improvements, and shall pay CITY for any damage to the Improvements resulting therefrom, which occurs within a period of one (1) year from the date of Final Acceptance of Improvements. To insure OWNER complies with its obligations hereunder, upon Final Acceptance of Improvements, OWNER shall provide to CITY warranty security in the amount of four hundred and twenty-nine thousand five hundred and fifty dollars (\$429,550), twenty percent (20%) of which shall be in the form of cash deposited with CITY prior to final inspection of the Improvements by the City Engineer and Final Acceptance of the Subdivision by CITY. The balance of the warranty security shall be in the form of (a) a bond, issued by a surety authorized to conduct business in the State of California; (b) an irrevocable letter of credit issued by a bank authorized to conduct business in the State of California and insured by the Federal Deposit Insurance Corporation; (c) cash; or (d) other security acceptable to CITY. All required securities must be in a form approved by CITY'S attorney. The warranty security shall be released to OWNER, less any amount required to be used for fulfillment of the warranty, one (1) year after Final Acceptance of Improvements.

4. Cash Deposit to Secure Durable Monuments. OWNER shall deposit with CITY the amount of Two Thousand Dollars (\$2,000.00) in cash as security for placing all durable monuments as specified by Kerman Municipal Code Sections 16.36.090 and 16.52.010. CITY shall release such cash deposit to OWNER upon determination by the City Engineer that OWNER has satisfied the provisions of Kerman Municipal Code Sections 16.36.090 and 16.52.010.

5. Cash Deposit to Secure Penalties. OWNER shall deposit with CITY the amount of Five Thousand Dollars (\$5,000.00) in cash to be drawn against by CITY for recovering costs resulting from any failure, as described below, on the part of OWNER. Upon determination by the City Engineer that OWNER has satisfactorily completed and/or complied with the matters described below, CITY shall release such cash deposit, or any portion thereof remaining, to OWNER.

a. Failure by OWNER to obtain an encroachment permit prior to beginning construction within CITY right-of-way shall cause CITY to draw a penalty of One Hundred Fifty Dollars (\$150.00).

b. Failure by OWNER to comply with any of the completion dates set forth in this Agreement shall cause CITY to draw a penalty of One Hundred Fifty Dollars (\$150.00) for every day OWNER is not in compliance with a completion date;

provided, however, that CITY has not granted an extension in writing of the relevant completion date.

c. OWNER shall meet with CITY at a preconstruction meeting, at which time OWNER shall receive a list of required inspections. OWNER or its authorized representative or agent shall contact CITY and request an inspection twenty-four (24) hours in advance thereof. OWNER'S failure to do so shall cause CITY to draw a penalty of One Hundred Fifty Dollars (\$150.00) for each occurrence. Said penalty shall not release OWNER from responsibility to obtain inspection and approval of any work by CITY.

d. In the event CITY is required to re-inspect work that failed a CITY inspection or that was not ready for inspection when an inspection was called for by OWNER or its authorized representative or agent, CITY shall draw a penalty of One Hundred Fifty Dollars (\$150.00) for the first time the same work must be re-inspected, and an additional One Hundred Dollars (\$100.00) for each additional re-inspection thereafter of the same work.

e. Failure by OWNER to provide street sweeping services as set forth in this Agreement shall cause CITY to draw a penalty equal to the actual cost incurred by the CITY to remedy non-compliance by Owner.

f. Failure by OWNER to provide dust control as set forth in this Agreement shall cause CITY to draw a penalty equal to the actual cost incurred by the CITY to remedy non-compliance by OWNER.

#### H. MATERIALS AND LABOR

OWNER and its contractors and subcontractors shall pay for any materials, provisions and other supplies or items used in, upon, for or about the performance of the work contracted to be done pursuant to this Agreement, and for any work or labor thereon of any kind and for amounts due under the California Unemployment Insurance Code (Stats. 1953, Ch. 308) with respect to such work or labor, and shall file with CITY, pursuant to California Labor Code Section 3800, a valid workers' compensation insurance certificate, and shall maintain a valid policy of workers' compensation insurance for the duration of the period of construction, or provide under penalty of perjury a satisfactory demonstration of exemption from coverage.

#### I. LIGHTING AND LANDSCAPING DISTRICT

OWNER agrees to complete annexation to or establishment of a landscaping and lighting district pursuant to the Landscaping and Lighting Act of 1972, as amended (California Streets and Highways Code Section 22500 et seq.), and to maintain lighting and publicly landscaped areas until the Final Acceptance of Improvements.

J. EASEMENTS

OWNER shall grant CITY an easement for maintenance, repair or reconstruction of any water main or sewer main or other CITY-operated improvement which is constructed outside a dedicated public street.

K. FAILURE OF PERFORMANCE

In addition to any other remedies provided in this Agreement or by law, in the event OWNER fails to perform one or more of the covenants or conditions of this Agreement, CITY shall have recourse to the security given to guarantee the performance of such acts. CITY may do, or cause to be done, those acts required of OWNER, and shall have recourse against so much of the security as is necessary to discharge the responsibility of OWNER. In the event CITY seeks recourse against a security, CITY shall also have recourse against OWNER for any and all amounts necessary to complete the obligations of OWNER in the event the security is insufficient to pay such amounts. All administrative costs, including reasonable attorneys' fees pursuant to Government Code Section 66499.4 incurred by the City, in addition to the costs of the Improvements, shall be a proper charge against the security and OWNER.

L. TIME OF THE ESSENCE

The work and improvements required under this Agreement shall be performed on or before completion date set forth in Article II, Section D. Time is of the essence of this Agreement, and the same shall bind and inure to the benefit of the Parties hereto, their successors and assigns.

M. COVENANT RUNNING WITH LAND; SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective Parties. This Agreement shall be recorded in the Official Records of the County of Fresno concurrent with the recording of the Final Map, and shall constitute a covenant running with the land and an equitable servitude upon the Subdivision. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and OWNER. No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by OWNER without the written consent of CITY. Successors in Interest to any portion of the Subject Property shall comply with all terms and conditions of this Agreement. In particular, they shall provide all required insurance, bonds, and security to the City for that portion of any remaining Improvements which may yet to be completed at time of transfer. Said insurance, bonds, and security must be provided to the City within 30 days of obtaining a fee interest in a portion of the Subject Property.

N. INTEGRATION; INCORPORATION OF DOCUMENTS AND EXHIBITS

Each Party acknowledges that it has read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, and includes all

documents referenced herein, including Exhibit "A," Legal Description of Property, and Exhibit "B," Development Impact Fees. The Final Map has been recorded separately, and a copy thereof is on file with the City Clerk.

O. CONDITIONS OF APPROVAL

OWNER shall comply with all conditions of approval set forth in Resolution No. 21-04, adopted by the City Council on January 13, 2021, the Standard Specifications, and the notes and requirements set forth on the Final Map, all of which are on file with the City Clerk.

P. APPLICABLE LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. In performing the obligations set forth in this Agreement, OWNER shall comply with applicable laws, regulations, and rules of all local, State and federal governmental agencies having jurisdiction, including, without limitation, applicable federal and State labor standards and environmental laws and regulations. OWNER shall comply with the codes and ordinances of CITY including the Kerman Municipal Code and CITY'S building codes, as well as all regulations of the North Central Fire Protection District. Venue for 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.

Q. PREVAILING WAGES

OWNER shall:

1. Pay, and cause its contractors and subcontractors to pay, prevailing wages for the construction of those specific Improvements for which OWNER receives credits or reimbursements, if any, identified in Exhibit "B," and those Improvements, if any, that are "public works" under Chapter 1, Part 7, Division 2 of the California Labor Code, including Section 1720(a)

2. Comply with any applicable provisions of California Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. OWNER shall, and shall cause its contractors and subcontractors to, keep and retain such records as are necessary to determine that prevailing wages have been paid as may be required by law. During the construction of the Improvements, if any, that are public works, OWNER shall, and shall cause its contractors to, post at the Property the applicable prevailing rates of per diem wages. As required by Article I, Section D of this Agreement, OWNER shall indemnify, hold harmless and defend (with counsel reasonably acceptable to CITY) 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 OWNER, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of California Labor Code Sections 1720

et seq. and the implementing regulations of the Department of Industrial Relations in connection with construction of Improvements, if any, that are public works.

R. ENFORCEMENT OF OBLIGATIONS

CITY may enforce this Agreement in any manner available at law or in equity, including, but not limited to, reversion to acreage.

S. LIMITATIONS OF LEGAL ACTS

Except as provided in Article I, Section T of this Agreement, in no event shall CITY, or its officers, officials, agents, employees, consultants and volunteers, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed OWNER'S sole legal remedy for breach or violation of this Agreement by CITY shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement.

T. ATTORNEYS' FEES AND LEGAL EXPENSES

In the event either Party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorneys' fees and legal expenses. For purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegal fees and expenses, attorney and consultant fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing Party's attorneys in the course of the representation of the prevailing Party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

U. WAIVER

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 provision 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.

V. SUBORDINATION

OWNER hereby warrants that any and all Parties having record title interest in the Final Map which may ripen into a fee have subordinated to this Agreement and all such instruments of subordination, if any, are attached hereto and made a part of this Agreement.

W. CAPTIONS

Section, paragraph and other captions or headings contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or otherwise describe the scope or intent of this Agreement or any provision hereof and shall not affect in any way the meaning or interpretation of this Agreement.

X. AMBIGUITIES OR UNCERTAINTIES

Any ambiguity or uncertainty herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this Agreement, on the express understanding and agreement the Parties participated equally in the negotiation and preparation of this Agreement, or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code Section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

Y. SEVERABILITY OF PROVISIONS

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the validity or enforceability of the other provisions, which shall remain in full force and effect.

**ARTICLE II. CONSTRUCTION REQUIREMENTS**

A. STANDARD SPECIFICATIONS

All of the Improvements and work and materials shall be performed, installed and provided in strict accordance with the Standard Specifications, which are incorporated herein by this reference as though set forth in full. All of said work and improvements shall also comply with the requirements of the Kerman Municipal Code. In the event there is not a Standard Specification applicable to the Improvements or work or materials, or any portion thereof, it is agreed that the same shall be done and performed in accordance with the standards and specifications of the State of California, Department of Transportation. All of the Improvements and work and materials shall be done, performed and installed under the supervision of the City Engineer, under whose directions the work shall be inspected as it progresses. Until Final Acceptance of Improvements, OWNER shall give prominent and adequate warning to the public of each and every dangerous condition that may exist in the Subdivision, and shall take all reasonable actions to protect the public from any such dangerous condition.

B. SCOPE OF IMPROVEMENTS

The work and Improvements, including those depicted on or required by the Improvement Plans, which may include sewer, water, street, storm drainage, street lighting, landscape, irrigation, grading, and traffic signal plans, as well as plans required

by the Conditions of Approval, are incorporated herein by reference and made a part of this Agreement.

C. APPROVED PLANS

Notwithstanding CITY'S approval of the Improvement Plans, and that completion of the work and other acts are subject to approval of CITY, it is understood and agreed that any approval hereof by CITY shall in no way relieve OWNER of satisfactorily performing said work or its obligations hereunder. OWNER agrees to perform and construct all work and improvements shown on the approved plans on file in the office of the City Engineer.

D. SCHEDULE

OWNER shall perform the work and Improvements to the satisfaction of the City Engineer. OWNER understands and agrees that the following schedule of work is intended to provide a guideline as to diligent prosecution of the work under this Agreement. OWNER agrees to the following construction schedule:

	<u>Date of Completion</u>
1. Grading .....	04/26/23
2. Sewer Facilities .....	08/01/23
3. Water Facilities.....	08/01/23
4. Street Improvements.....	11/01/23
5. Completion of all Improvements.....	03/01/24

If the construction of the Improvements shall be delayed without the fault of OWNER, the time for completion thereof may be extended by CITY, in writing signed by the City Manager of CITY, for such period of time as CITY may deem reasonable. However, CITY reserves the right to withhold issuance of a certificate of occupancy for any dwelling unit constructed within the Subdivision prior to Final Acceptance of Improvements. Without limitation of the foregoing sentence, it is agreed that CITY shall have the right to determine whether to issue or withhold a certificate of occupancy if there is then existing a breach or failure to properly perform the obligations of this Agreement, or if issuance of a certificate of occupancy would not serve the public health, safety or welfare. Concrete curbs and gutters, the sanitary sewer system and house connections, storm drainage pipeline and structures, together with water mains, gas mains and their respective service connections and all other underground services or facilities, shall be completed before starting the street surfacing.

E. COMPACTION AND MATERIALS TESTING

Compaction and soils tests shall be paid for by OWNER, and OWNER shall contract with the soils laboratory directly. Street and utility trench tests shall be taken in varying locations, depths, and frequencies as required and directed by the City Engineer. Compaction of soils shall meet all CITY requirements.



F. CODES AND PERMITS

OWNER shall comply with all ordinances and codes of CITY, and shall secure an encroachment permit from CITY and submit to CITY evidence of insurance required by the encroachment permit before commencing work within any CITY right-of-way or property. OWNER shall install the Improvements in accordance with Kerman Municipal Code Chapter 16.40, Improvement Standards; the Standard Specifications; applicable standards and specifications of the State of California, Department of Transportation; and the Improvement Plans.

G. COORDINATION OF CONTRACTORS

It shall be the responsibility of OWNER to coordinate all work done by its contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall CITY be placed in the position of making decisions that are the responsibility of OWNER. It shall further be the responsibility of OWNER to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of OWNER to timely notify the City Engineer may cause delay for which OWNER shall be solely responsible.

H. INSPECTION

Whenever OWNER varies the period during which work is carried on each day, OWNER shall give due notice to the Inspector so that proper inspection may be provided. Any work done in the absence of the Inspector will be subject to rejection. The inspection of the work shall not relieve OWNER of its obligations to satisfy this Agreement. Defective work shall be made good, and unsuitable materials will be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the Inspector and accepted by CITY.

I. REPAIR OF DAMAGED IMPROVEMENTS

Any damage to the water or sewer systems, concrete work, street paving, or other facilities and improvements constructed in connection with this Agreement that occurs after installation and prior to Final Acceptance of Improvements shall be repaired by OWNER to the satisfaction of the City Engineer before Final Acceptance of Improvements and release of security. CITY may, at its sole option, perform such repair or replacement if OWNER has failed to commence such repair within twenty (20) days after CITY has mailed to OWNER and OWNER'S surety written notice of the need for repairs or replacement. In such event, OWNER agrees to pay the cost of such repair and replacement by CITY, and CITY may recover such cost as a lien against the Subdivision. If CITY determines that public safety requires repairs or replacements to be made before OWNER or surety can be notified, CITY may complete such repairs or replacements and recover the costs thereof as provided above.

J. DUST CONTROL

Adequate dust and mud control shall be maintained by OWNER on all streets within and without the Subdivision until the paving of the streets is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the Subdivision. Whenever, in the opinion of the City Engineer, adequate dust control is not being maintained on any street or streets as required by this paragraph, the City Engineer shall forthwith give notice to OWNER to comply with the provision of this paragraph. Such notice may be personally served upon OWNER or, if OWNER is not an individual, upon any person who has signed this Agreement on behalf of OWNER or a superintendent or foreman of OWNER'S or OWNER'S contractor or subcontractor at the Subdivision, or, at the election of the City Engineer, such notice may be mailed to OWNER at OWNER'S address on file with the City Engineer. If, within twenty-four (24) hours after such personal service of such notice, or within forty-eight (48) hours after the mailing thereof as herein provided, OWNER shall not have commenced work to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be sprinkled, as he may deem advisable, to eliminate the scattering of dust, by equipment and personnel of CITY or by contract as the City Engineer shall determine, and CITY may deduct the cost thereof from any deposits which OWNER has placed with CITY. When the surfacing on any existing street is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the commencement and final completion of work, and adequate dust control shall be maintained during these operations.

K. UNDERGROUNDING OF UTILITIES; STREET SURFACING

OWNER agrees that all existing overhead utilities within the boundaries of the Subdivision, and on adjacent streets to the centerlines thereof, shall be replaced or relocated in underground installations. All new utilities shall be underground and all work shall be completed before installation of street surfacing.

L. STREET SWEEPING

OWNER shall pay for sweeping of streets within the Subdivision following installation of street paving, and all boundary streets throughout the course of construction of Improvements, prior to Final Acceptance of Improvements. CITY may provide such street sweeping services at its sole discretion and convenience. OWNER shall keep streets and gutters free of any mud, debris or materials. If OWNER fails to maintain streets in such condition which allows sweeping, CITY may remove any debris and deduct the cost thereof from any deposits which OWNER has placed with CITY.

M. PRECONSTRUCTION MEETING

OWNER agrees to meet with CITY at a preconstruction meeting. OWNER'S contractors and subcontractors for public improvements shall be required to attend the

preconstruction meeting. Failure to do so shall draw a penalty of \$150.00 per contractor and sub-contractor, and stoppage of work until a preconstruction meeting is held.

N. BUILDING MATERIALS RECYCLING

OWNER agrees to participate in any building materials recycling program as directed by CITY. Participation shall also be required by all of OWNER'S contractors and sub-contractors for both public improvements and home construction, to fullest extent possible.

*(Signatures on Next Page)*

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the day and year first above written.

CITY:  
CITY OF KERMAN,

OWNER:  
JOSEPH CROWN CONSTRUCTION  
AND DEVELOPMENT, INC.

By: \_\_\_\_\_  
Maria Pacheco  
Mayor

By:  \_\_\_\_\_  
JOSEPH DONALD CROWN  
PRESIDENT

Attest:  
  
\_\_\_\_\_  
Marci Reyes  
City Clerk

Approved as to Form:  
  
\_\_\_\_\_  
Hilda Cantú Montoy  
City Attorney

Approved as to Engineering Content:  
  
\_\_\_\_\_  
Jerry Jones  
City Engineer

**(Attach Notary Acknowledgements)**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CA

County of Fresno

On May 5, 2023 before me, C. Brazil, Notary Public (here insert name and title of the officer), personally appeared Joseph Donald Crown, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature



EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Tract No. 6293

The land referred to is situated in the County of Fresno, City of Kerman, State of California, and is described as follows:

PARCEL 1:

Lots 38 and 39 in Section 12, Township 14 South, Range 17 East, Mount Diablo Base and Meridian of Fresno Irrigated Farms Company Tract, according to the map thereof recorded in Book 8 Page 1 of Record of Surveys, Fresno County Records.

Excepting therefrom all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved by WM G Kerckhoff Company, a corporation, recorded April 11, 1947 in Book 2521 Page 134, Official Records.

Also excepting from said Lot 38 the East 208.7 feet of the South 178.7 feet.

Also excepting from said Lot 38 that portion described as beginning at the Southwest corner of said Lot 38, thence Northerly and along the West line of said Lot 38 a distance of 174 feet; thence Easterly and parallel to the South line of said Lot 38 a distance of 250 feet; thence Southerly and parallel with the West line of said Lot 38 a distance of 174 feet; more or less, to the South line of said Lot 38; thence Westerly and along the South line of said Lot 38 a distance of 250 feet, more or less, to the point of beginning.

Also excepting from said Lots 38 and 39 that portion described as commencing at a point on the Westerly line of said Lot 38 which bears Northerly 174.00 feet from the Southwest corner of said Lot; thence continuing Northerly along the Westerly line of Lots 38 and 39, 175.00 feet; thence Easterly and parallel to the South line of Lot 38, 250.00 feet; thence Southerly and parallel to the Westerly line of Lot 38, 175.00 feet; thence Westerly and parallel to the Southerly line of Lot 38, 250.00 feet to the point of commencement.

Also excepting all that portion of Lot 39 that portion described as beginning at a point on the West line of Lot 39 which is 170 feet South of the Northwest corner of Lot 39; thence Southerly along the West line of Lot 39 a distance of 75 feet, thence Easterly and parallel to the South line of Lot 39 a distance of 120 feet; thence Northerly and parallel to the West line of Lot 39 a distance of 75 feet; thence Westerly and parallel to the South line of Lot 39 a distance of 120 feet to the point of beginning.

PARCEL 2:

All that portion of Lot 39 in the Southwest quarter of Section 12, Township 14 South, Range 17 East, Mount Diablo Base and Meridian, of Fresno Irrigated Farms Company Tract, according to the map thereof recorded in Book 8 Page 1 of Record of Surveys, Fresno County Records, described as follows:

Beginning at a point on the West line of said Lot 39 which is 170 feet South of the Northwest corner of said Lot 39; thence Southerly along the West line of Lot 39, a distance of 75 feet; thence Easterly and parallel to the South line of Lot 39, a distance of 120 feet; thence Northerly and parallel to the West line of Lot 39, a distance of 75 feet; thence Westerly and parallel to the South line of Lot 39, a distance of 120 feet to the point of beginning.

Excepting therefrom all oil, gas and other hydrocarbon substances in and under said premises, together with the full right and privilege to the grantor, its successors and assigns, to develop and remove the same, as reserved by WM. G. Kerkckhoff Company, by deed recorded April 11, 1947 in Book 2521 Page 134, as Document No. 20302, Official Records.

EXHIBIT "B"  
DEVELOPMENT IMPACT FEES

Tract No. 6293



**EXHIBIT "B"**  
**DEVELOPMENT IMPACT FEES**

**TRACT NO. 6293**

Vesting Tentative Map No. 6293

Owner: Joseph Crown Construction and Development, Inc.

VTM Approved:	January 13, 2021
Impact Fee Schedule <sup>(1)</sup> :	2014 SFR
# Lots:	85

PART I: DEVELOPMENT IMPACT FEES DUE AT FINAL INSPECTION OR CERTIFICATE OF OCCUPANCY					
Fee Description	Quantity	Rate	Extension	Adjusted Fee <sup>(2)</sup>	Fee Per Lot
Administrative Fee	85 UN	\$ 500.00	\$ 42,500	\$ 42,500	\$ 500.00
Public Building Facilities & Equipment	85 UN	\$ 1,324.00	\$ 112,540	\$ 112,540	\$ 1,324.00
General Plan	85 UN	\$ 296.00	\$ 25,160	\$ 25,160	\$ 296.00
Fire Station & Equipment	85 UN	\$ 730.00	\$ 62,050	\$ 62,050	\$ 730.00
Storm Drain Basin Acquisition	85 UN	\$ 252.00	\$ 21,420	\$ 21,420	\$ 252.00
Storm Drain Facilities	85 UN	\$ 1,043.00	\$ 88,655	\$ 88,655	\$ 1,043.00
Water Front Footage	0 LF	\$ 15.00	\$ -	\$ -	\$ -
Water Oversize	85 UN	\$ 304.00	\$ 25,840	\$ 25,840	\$ 304.00
Water Major Facilities	85 UN	\$ 2,126.00	\$ 180,710	\$ 180,710	\$ 2,126.00
Sewer Front Footage	0 LF	\$ 16.00	\$ -	\$ -	\$ -
Sewer Oversize	85 UN	\$ 554.00	\$ 47,090	\$ 47,090	\$ 554.00
Sewer Major Facilities	85 UN	\$ 2,349.00	\$ 199,665	\$ 199,665	\$ 2,349.00
Parks - Development	85 UN	\$ 2,706.00	\$ 230,010	\$ 230,010	\$ 2,706.00
Parks - Quimby	85 UN	\$ 759.00	\$ 64,515	\$ 64,515	\$ 759.00
Major Streets	85 UN	\$ 1,545.00	\$ 131,325	\$ 131,325	\$ 1,545.00
Street Signals	85 UN	\$ 159.00	\$ 13,515	\$ 13,515	\$ 159.00
Railroad Crossings	85 UN	\$ 263.00	\$ 22,355	\$ -	\$ -
Outside Travel Lane	85 UN	\$ 310.00	\$ 26,350	\$ 26,350	\$ 310.00
<b>TOTAL</b>			\$ 1,293,700	\$ 1,271,345	\$ 14,957.00

Notes:

- 1) Development was approved as a Vesting Tentative Map, which sets fees at rate in effect at time of approval. Vesting rights expire two years after recording of Final Map.
- 2) Refer to Part II for fee adjustments.

**EXHIBIT "B"**  
**DEVELOPMENT IMPACT FEES**

**TRACT NO. 6293**

Vesting Tentative Map No. 6293

Owner: Joseph Crown Construction and Development, Inc.

VTM Approved: January 13, 2021

Impact Fee Schedule <sup>(1)</sup>: 2014 SFR

# Lots: 85

PART II: DEVELOPMENT IMPACT FEE ADJUSTMENTS/REIMBURSEMENTS						
Fee Description	Previous Credit	Construction Credit <sup>(2)</sup>	Total Credit	Original Fee Obligation	Adjusted Obligation	Potential Reimbursement
Administrative Fee	\$ -	\$ -	\$ -	\$ 42,500	\$ 42,500	\$ -
Public Building Facilities & Equipment	\$ -	\$ -	\$ -	\$ 112,540	\$ 112,540	\$ -
General Plan	\$ -	\$ -	\$ -	\$ 25,160	\$ 25,160	\$ -
Fire Station & Equipment	\$ -	\$ -	\$ -	\$ 62,050	\$ 62,050	\$ -
Storm Drain Basin Acquisition	\$ -	\$ -	\$ -	\$ 21,420	\$ 21,420	\$ -
Storm Drain Facilities	\$ -	\$ -	\$ -	\$ 88,655	\$ 88,655	\$ -
Water Front Footage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Water Oversize	\$ -	\$ -	\$ -	\$ 25,840	\$ 25,840	\$ -
Water Major Facilities	\$ -	\$ -	\$ -	\$ 180,710	\$ 180,710	\$ -
Sewer Front Footage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sewer Oversize	\$ -	\$ -	\$ -	\$ 47,090	\$ 47,090	\$ -
Sewer Major Facilities	\$ -	\$ -	\$ -	\$ 199,665	\$ 199,665	\$ -
Parks - Development	\$ -	\$ -	\$ -	\$ 230,010	\$ 230,010	\$ -
Parks - Quimby	\$ -	\$ -	\$ -	\$ 64,515	\$ 64,515	\$ -
Major Streets	\$ -	\$ -	\$ -	\$ 131,325	\$ 131,325	\$ -
Street Signals	\$ -	\$ -	\$ -	\$ 13,515	\$ 13,515	\$ -
Railroad Crossings	\$ -	\$ 300,000	\$ 300,000	\$ 22,355	\$ -	\$ 277,645
Outside Travel Lane	\$ -	\$ -	\$ -	\$ 26,350	\$ 26,350	\$ -
<b>TOTAL</b>	\$ -	\$ 300,000	\$ 300,000	\$ 1,293,700	\$ 1,271,345	\$ 277,645

Notes:

- 1) Development was approved as a Vesting Tentative Map, which sets fees at rate in effect at time of approval. Vesting rights expire two years after recording of Final Map.
- 2) Refer to Part III for construction credit calculations. The amount of each credit is an estimate and will be updated as appropriate based on documented construction costs submitted to the City for review at final acceptance.

**EXHIBIT "B"**  
**DEVELOPMENT IMPACT FEES**

**TRACT NO. 6293**

Vesting Tentative Map No. 6293

Owner: Joseph Crown Construction and Development, Inc.

<b>PART III: CONSTRUCTION CREDIT CALCULATIONS</b>
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**RAILROAD CROSSINGS**

Item Description	Quantity	Unit	Unit Cost	Extension
<b>Siskiyou Avenue Railroad Crossing <sup>(1)</sup></b>				
New crossing surface, crossing arms, warning signals, and street improvements	1.00	LS	\$ 300,000.00	\$ 300,000.00
Railroad Crossings Credit =				\$ 300,000.00

Notes:

- 1) Per "Cost Sharing and Reimbursement Agreement Between City of Kerman and Joseph Crown Construction and Development, Inc. Relating to Public Improvements for Tentative Tract No. 6293" dated January 13, 2021, Crown is responsible for 50% of the estimated cost of improvements. The estimated cost stated in the Agreement was \$600,000, so Crown's 50% share is \$300,000.