

DATE SUBMITTED 9/27/2023
 SUBMITTED BY COMMUNITY DEVELOPMENT DIRECTOR
 DATE ACTION REQUIRED 10/4/2023

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED (X)
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: PUBLIC HEARING/DISCUSSION/ACTION: MORNINGSTAR SUBDIVISION REINBURSEMENT AGREEMENT FOR SEWER LIFT STATION	
1. Conduct a Public Hearing and Approve Reimbursement Agreement with Heritage at Dahlia Ranch, LLC and City of Imperial for a sewer lift station located on Morningstar Subdivision	
DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT DEPARTMENT	
BACKGROUND/SUMMARY: Heritage at Dahlia Ranch, LLC constructed a sewer lift station within the Morningstar subdivision. The developer requested cost participation with surroundings projects but were unsuccessful. The developer is now requesting a reimbursement agreement be established for expenses incurred for the expansion in the lift station. The attached reimbursement agreement will provide a method for which they will be reimbursed by any property owner outside the boundaries of their development that connects to the lift station. The agreement will terminate after 30 years and the City keep 3% of the fees collected for administrative cost.	
FISCAL IMPACT: N/A	ADMIN SERVICES SIGN INITIALS _____
STAFF RECOMMENDATION: Staff recommends Approve Reimbursement Agreement with Heritage at Dahlia Ranch, LLC and City of Imperial for a sewer lift station located on Morningstar Subdivision	DEPT. INITIALS <u>DM</u>
CITY MANAGER'S RECOMMENDATION: <i>conduct public hearing and impose proposed reimbursement</i>	CITY MANAGER'S INITIALS <u>OHM</u>
MOTION:	
SECONDED: APPROVED () REJECTED () AYES: DISAPPROVED () DEFERRED () NAYES: ABSENT: REFERRED TO:	

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Heritage at Dahlia Ranch, LLC
341 Crown Court
Imperial, California 92251
Attn: Russell H. Roben

Above Space for Recorder's Use

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("**Agreement**") is entered into on this ____ day of _____, 2023 ("**Date of Agreement**"), by and between the CITY OF IMPERIAL, a municipal corporation of the State of California ("**City**"), and HERITAGE AT DAHLIA RANCH, LLC, a California limited liability company ("**Developer**").

RECITALS

WHEREAS, as of the Date of Agreement, Developer owns certain real property located in the Morning Star Subdivision in the City of Imperial, California (APNs: 063-311-016 through -027, -029, -030, and -032; 063-312-013, -014, -016, -019, -021, -023, -024, -027, -028, and -030 through -033; and 063-010-089) (collectively, the "**Developer Property**"); and

WHEREAS, Developer has voluntarily built the Lift Station related to the Morning Star Subdivision in a manner that can handle more capacity than the is needed by said development; and

WHEREAS, Developer agrees that City has will give future developers in a certain benefitted area that can be serviced by the Lift Station (collectively, the "**Benefited Area**"); and the opportunity to connect to the Lift Station; and

WHEREAS, in the event a future Developer does request and receives permission from the City to connect to the Lift Station, City agrees to reimburse Developer for the costs as set forth herein; and

WHEREAS, the City shall give Developers in the benefited area the option to either (1) provide a wholly developer owned and operated life station or (2) pay to connect to and utilize the current Developer lift station for sewage flow ("**Lift Station**"); and

WHEREAS, as of the Date of Agreement, the City has received no commitment to connect to the Lift Station and shall not be obligated to require any connection to the Lift Station; and

WHEREAS, in the event a future development utilizes the Lift Station, the City shall be obligated to reimburse Developer.

WHEREAS, the purpose of this Agreement is to set forth the manner in which Developer will be reimbursed for costs associated with the Lift Station which benefits other development in the Benefited Area; and

WHEREAS, it is contemplated that if a future developer chooses to connect to the Lift Station, the City will require all properties in the Benefited Area to reimburse Developer for a fair share of the costs associated with the Lift Station as set forth in this Agreement;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Recitals**. The Recitals hereto are correct and incorporated herein by reference and made a part of this Agreement for all purposes.

2. **Definitions**. The following terms will have the meanings set forth below when used in this Agreement:

2.1. "Acre" or "Acreage" means the acreage of a Parcel as indicated on the

most recent Assessor's Parcel Map, or if the land is not shown on such Assessor's Parcel Map, the land area shown on the applicable Final Map, parcel map, condominium plan, or other similar instrument.

2.2. "Assessor's Parcel Map" means an official map of the Imperial County Assessor designating parcels by an assessor's parcel number.

2.3. "Commercial Property" means any Parcel (or portion thereof) designated for retail or commercial activities. Commercial Property is identified as "Commercial" in Exhibit A.

2.4. "Final Map" means a subdivision of property by recordation of a final map, parcel map, or lot line adjustment, pursuant to the Subdivision Map Act (California Government Code section 66410, et seq.) or recordation of a condominium plan pursuant to California Civil Code section 1352, that creates individual Parcels for which building permits may be issued without further subdivision.

2.5. "Hotel Property" means any Parcel (or portion thereof) designated for hotel, motel, hostel, inn, or resort for commercial purposes. Hotel Property is identified as "Hotel" in Exhibit A.

2.6. "Land Use Category" means any of the categories listed in the table attached as Exhibit B.

2.7. "Multifamily Residential Property" means any Parcel of residential property that includes a building or buildings comprised of attached residential units that are under common management and are available for rental, but not purchase, by the general public. Multifamily Residential Property is identified as "Multi Family" in Exhibit A.

2.8. "Parcel" means any lot or parcel within the boundary of the Benefited Area.

2.9. “Single Family Residential Property” means any Parcel of residential property (other than Multifamily Residential Property or Undeveloped Single Family Residential Property) for which a building permit may be issued for attached or detached residential units pursuant to a Final Map. Single Family Residential Property is identified as “Single Family” in Exhibit A.

2.10. “Undeveloped Single Family Residential Property” means any Parcel of residential property other than Multifamily Residential Property and Single Family Residential Property. Undeveloped Single Family Residential Property is identified as “Undeveloped Single Family” in Exhibit A.

3. Benefited Area. The Benefited Area includes the areas benefited by the Lift Station, which are identified as “Phase 1” in Exhibit A. The Benefited Area is generally located within the boundaries of Neckel Road to the south, Ralph Road to the north, La Brucherie Road to the west, and State Highway 86 to the east, in Imperial County, California.

4. Costs Eligible for Reimbursement. As of the Date of Agreement, the total amount of costs associated with the Lift Station that are eligible for reimbursement is \$633,454 (“**Eligible Cost**”). In the event the costs for completing or maintaining the Lift Station (including, without limitation, costs to complete the Remaining Project Work) increase beyond the Eligible Cost, the parties agree to present an Amendment to this Agreement reflecting the Eligible Costs to the City Council, approval of which will be at the sole discretion of the City Council, and, if approved, make corresponding adjustments to the applicable Fair Share Reimbursements (as defined below), if necessary.

5. Reimbursement Amount. The dollar amount per Parcel (or portion thereof) within the Benefited Area to be reimbursed to Developer shall be as set forth in the table

attached as Exhibit B (each a “**Fair Share Reimbursement**”). The Fair Share Reimbursement amounts were calculated based upon engineer calculations of usage for each respective Land Use Category. Total reimbursement to Developer shall not exceed the Eligible Cost set forth in Section 4 above, plus interest. Interest shall commence as of the date of approval of this Agreement by the City Council. Commencing one year from the Date of Agreement, and annually thereafter for the ensuing year, unpaid reimbursement shall be subject to adjustment commensurate with The Wall Street Journal Prime Rate on such annual date, plus 1%. Developer acknowledges and agrees that its actual reimbursement may be less than the Eligible Cost.

6. **Payment.** Either upon agreement to connect received by the City or prior to the issuance of the first building permit for any future project on each Parcel in the Benefited Area, the City shall collect payment of the Fair Share Reimbursement applicable to such Parcel, plus accrued interest. The City shall remit all such monies collected to Developer on a quarterly basis, less a 3% administrative collections fee to be retained by the City. Any reimbursement paid to Developer in accordance with this Agreement shall be considered reimbursement for those costs that are normally borne by the public in accordance with California Labor Code section 1720(c)(3).

7. **Term.** This Agreement shall remain in effect and be binding until the date which is thirty (30) years after the date the Agreement is approved by the City Council, or until Developer receives full reimbursement plus interest, whichever occurs first.

8. **No Obligation to Connect.** The City shall have no obligation to require developers to connect to Lift Station. City shall inform future developers of the opportunity to connect, but shall not be obligated to require connection to Lift Station.

9. **Applicable Law.** This Agreement shall be construed under and enforced in accordance with the laws of the State of California.

10. **Disputes.** The parties agree that any litigation arising out of this Agreement shall be filed and maintained until conclusion in the Superior Court of Imperial County, California.

11. **Binding Agreement.** This Agreement and all of its terms and provisions shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors, and assigns.

12. **No Partnership.** Nothing in this Agreement shall be interpreted as creating any form of partnership, joint venture, or other relationship between the parties with reference to the ownership, design, development, financing, or other operations or uses proposed for the subject Lift Station.

13. **No Public Work.** Nothing in this Agreement shall be interpreted as a finding by the City that the Lift Station (including any Remaining Project Work) is a public work, and nothing contained herein shall otherwise be interpreted to cause the Lift Station (or any Remaining Project Work) to be determined a public work within the scope of California Labor Code section 1720, et seq.

14. **Further Assurances.** Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to the date hereof, as may be reasonably requested by the other party to consummate the transactions contemplated by this Agreement.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each to be an original, but all of which shall constitute one instrument, and it shall be sufficient

if any party hereto signs any such counterpart, so long as each of the parties hereto executes at least one such counterpart.

[SIGNATURE PAGES FOLLOW]

CITY:

**CITY OF IMPERIAL, a municipal
corporation of the State of California**

By: _____

Name: _____

Title: Mayor

ATTEST:

By: _____

Name: _____

Title: City Clerk

EXHIBIT A
Benefited Area

[Attached]

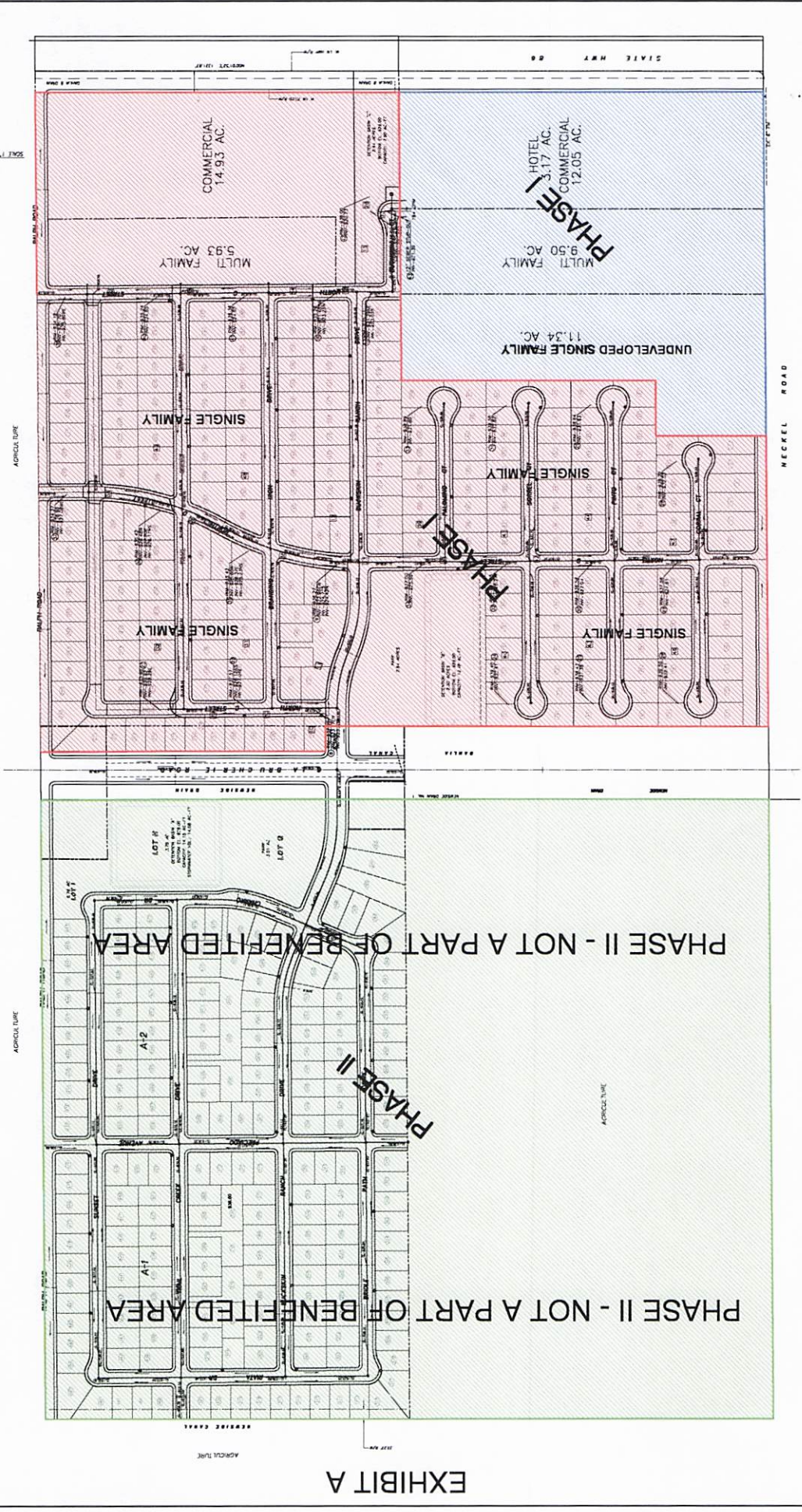


EXHIBIT A

No.	Description	By	Date	Prepared Under the Direction of:	Engineer/Consultant:	Master Sewer Tributary Areas Plan
1				CARLOS CORNILLAS	UC ENGINEERING CONSULTANTS, INC. 11100 Wilshire Blvd., Suite 1000 Los Angeles, CA 90024 Tel: (310) 206-1110 Fax: (310) 206-1111 www.uc-engineers.com	1
				SS-432		1
				R.C.E. No. 12/31/20		1
				DATE	EXP. DATE	

MASTER SEWER TRIBUTARY AREAS PLAN
 MORNING STAR SUBDIVISION
 IMPERIAL, CALIFORNIA
 RAY ROBBEN

UC ENGINEERING CONSULTANTS, INC.
 11100 Wilshire Blvd., Suite 1000
 Los Angeles, CA 90024
 Tel: (310) 206-1110
 Fax: (310) 206-1111
 www.uc-engineers.com

BENCH MARK
 PREPARED UNDER THE DIRECTION OF:

CARLOS CORNILLAS
 SS-432
 R.C.E. No. 12/31/20
 DATE EXP. DATE

THIS PLAN CHECKED AND CONSIDERED PRELIMINARY
 UNTIL APPROVED BY:

No.	Description	By	Date

EXHIBIT B

Initial Assigned Fair Share Reimbursement Amounts

Land Use Category	Measurement Unit	Reimbursement Amount Per Measurement Unit
Single Family Residential Property	Parcel	\$911.13 per Parcel
Multifamily Residential Property	Acre	\$14,804.00 per Acre
Hotel Property	Acre	\$11,640.39 per Acre

Affidavit of Publication

State of California
County of Imperial
City of El Centro

Rosa E Noguera

being first duly sworn, deposes and says:

That he/she is a citizen of the United States, over twenty-one years of age; that he/she is and was, at all times herein mentioned, the business manager of the Holtville Tribune, Imperial Valley Weekly/Calexico Chronicle, a newspaper of general circulation published in the City of El Centro and circulated at least once a week in Imperial County, State of California,

*And That The
Notice of Public Hearing*

City of Imperial City Council

Morningstar Subdivision

Of which the annexed is a true printed copy, was published in said newspaper according to Gov't Code publication section 6062

*_____ 1 _____
issues, and on the following days, to wit:*

September 21, 2023

and in the regular and entire issue of said newspaper, and not in any supplement.


OFFICE MANAGER

**HOLTVILLE TRIBUNE
IMPERIAL VALLEY WEEKLY/
CALEXICO CHRONICLE
1122 W STATE ST STE E
EL CENTRO, CALIFORNIA 92243**

PUBLIC NOTICE



**Notice of Public Hearing
City of Imperial City Council**

Notice is hereby given that a public hearing will be conducted by the City of Imperial City Council meeting on Wednesday, October 4, 2023 at 7:00 P.M at the City of Imperial Council Chambers located at 200 W. 9th Street, Imperial, CA 92251. The purpose of the public hearing is to hear comments from the public regarding Morningstar Subdivision Reimbursement Agreement for Sewer Lift Station located at Mornningstar Subdivision. The project is categorically exempt from the requirements of the California Environmental Quality Act under section 15303 Construction of Accessory Structure.

Copies of pertinent information are available for review at the Community Development Department at Imperial City Hall during regular business hours. If you would like to know more about the proposed project prior to the public hearing, please contact Othon Mora at the Community Development Department (760) 355-1152 or via email at omora@cityofimperial.org.

Any person desiring to comment on the above project may do so in writing or may appear in person at the public hearing. Written comments should be directed to Kristina Shields, City Clerk, City of Imperial, 420 South Imperial Avenue, Imperial, CA 92251. Please reference the project name in all written correspondence.

Kristina Shields
City Clerk

Legal 9021

Publish: Sept. 21, 2023