

REIMBURSEMENT AGREEMENT
BY AND BETWEEN THE COUNTY OF SONOMA AND VICTORY STATION LLC, A
CALIFORNIA LIMITED LIABILITY COMPANY RELATED TO EIGHTH STREET EAST
IMPROVEMENTS

This Reimbursement Agreement (“**Agreement**”) is entered into effective as of this day of _____, 2020 (“**Effective Date**”), by and between the County of Sonoma, a political subdivision of the State of California, acting by and through its Department of Transportation and Public Works (“**County**”), and Victory Station LLC, a California limited liability company (“**Victory Station**”). County and Victory Station are sometimes referred to collectively hereinafter as the “**parties**” and individually as a “**party**.”

RECITALS

- A. In connection with the Victory Station Project (County File number DRH15-0007), Victory Station is obligated to construct certain improvements along the property’s frontage on Eighth Street East including widening the roadway and altering the rail crossing as shown on the “Victory Station – 8th Street East Frontage Improvements” Plans, prepared by Adobe Associates, Inc. and HDR and dated June 5, 2019 (the “**Victory Station-8th Street East Improvements**”).
- B. The Victory Station-8th Street East Improvements include certain improvements to the east side of Eighth Street East, which County did not obligate Victory Station to construct as part of permit approval, including certain road widening improvements and rail crossing improvements on the east side of 8th Street East (“**Excess Improvements**”).
- C. Victory Station designed and installed the Excess Improvements with the understanding that County would reimburse Victory Station for the costs of these improvements because they would otherwise be required of County in the future to signalize the intersection of Eighth Street East and State Route 12/121 (identified as “**Project C02292**”).
- D. County has accepted the Victory Station-8th Street East Improvements, including the Excess Improvements, which will be owned and maintained by County, except as otherwise agreed to under separate agreement between County and Victory Station (Public Improvements and Maintenance Agreement recorded as Document Number 2019038147 on June 6, 2019), and except to the extent the Sonoma-Marin Area Rail Transit District is obligated to maintain such improvements under its agreements with County and applicable rules and regulations.
- E. County and Victory Station desire to enter into this Agreement in order to memorialize the parties’ responsibilities regarding the design and installation of the Excess Improvements and reimbursement of costs associated therewith.
- F. This Agreement was approved by the Sonoma County Board of Supervisors on _____, 2020.

AGREEMENT

County and Victory Station agree as follows:

1. RECITALS

- 1.1 The foregoing Recitals are true and correct and are incorporated herein and form a part of this Agreement.

2. VICTORY STATION'S RESPONSIBILITIES

- 2.1 Victory Station prepared final plans for the Victory Station-8th Street East Improvements, which have been approved by County. Following plan approval, the Victory Station-8th Street East Improvements were installed by Victory Station consistent with such plans. County roadway improvements were completed under permit number ENC19-0110, finalized on December 9, 2019. The railroad crossing improvements were completed after PG&E provided power to the crossing signal on February 7, 2020. Victory Station's contractor provided all equipment, personnel, and materials necessary to complete the Victory Station-8th Street East Improvements, including the Excess Improvements.
- 2.2 Victory Station has paid the costs of the design and construction of the Victory Station-8th Street East Improvements and has submitted evidence to County to support these costs. County and Victory Station agree that the reimbursable portion attributable to the Excess Improvements is Four Hundred Twenty Eight Thousand Three Hundred Ninety One and 50/100 Dollars (\$428,391.50) (the "**Reimbursement Amount**"), which is the maximum amount that County shall be required to reimburse Victory Station for the work.

3. COUNTY'S RESPONSIBILITIES

- 3.1 Within sixty (60) days of the Effective Date of this Agreement, County shall pay Victory Station Two Hundred Sixty Six Thousand Six Hundred Fifty Six and 25/100 Dollars (\$266,656.25) as a first installment towards the Reimbursement Amount, which is the amount County has received in fair share payments towards Project C02292 as of the Effective Date of this Agreement. Payment of the remaining One Hundred Sixty One Thousand Seven Hundred Thirty Five and 25/100 Dollars (\$161,735.25) of the Reimbursement Amount is contingent upon County's receipt of additional fair share payments towards Project C02292. Available funds collected for Project C02292 shall be paid to Victory Station annually upon written request by Victory Station, until such time as the Reimbursement Amount has been paid in full or ten (10) years from the Effective Date of this Agreement, whichever occurs first. The required written requests shall reference this Agreement, County File number DRH15-0007, and the Project number holding funds available for reimbursement (Project C02292). Collection of funds towards Project C02292 shall remain a function of County's permitting process and shall be at County's sole discretion. In the event County receives a fair share payment that is disputed by a project applicant, County shall have no obligation to pay such amount to Victory Station until such time as the dispute has been fully resolved. County's payment obligations under this Agreement shall terminate ten (10) years from the Effective Date of this Agreement, notwithstanding the fact that Victory Station may not have received the entire Reimbursement Amount by such date.

4. MISCELLANEOUS PROVISIONS

- 4.1 Merger Modification. This Agreement is intended as the final expression of the understanding between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the agreement, pursuant to Code of Civil Procedure Section 1856. This Agreement supersedes all prior oral or written negotiations, representations, or agreements with respect to the subject matter hereto. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by all parties.

- 4.2 Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be delivered by hand (including by courier or reputable overnight delivery service), by deposit in the United States Mail, registered or certified mail, postage prepaid, return receipt required, or by e-mail, and addressed as follows:

To County:

County of Sonoma
Department of Transportation and Public Works
2300 County Center Drive, Suite B 100
Santa Rosa, California 95403
Attention: Director
Email: TPW-LandDev-Referral@sonoma-county.org

To Victory Station:

Victory Station LLC
PMA
1450 Harbor Blvd Ste F
West Sacramento, CA 95691-3460
Attention: Jose McNeill and Gary Albertson
Email: mcneill.jose@gmail.com and galbertson@pmasacramento.com

Notices which are delivered by hand or e-mail shall be deemed received upon delivery; notices which are deposited in the United States Mail in accordance with the terms of this Section shall be deemed received three (3) days after the date of mailing. The foregoing addresses may be changed by written notice to the other party provided in accordance with this section

- 4.3 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the drafting party. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 4.4 Costs; Attorney Fees. In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorneys' fees.
- 4.5 Indemnity. County and Victory Station each shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, contractors, subcontractors and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) to the extent caused by any negligent act or omission, or intentional misconduct of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees with respect to this Agreement, including without limitation any breach of this Agreement by the indemnifying party. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party

under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity provision survives this Agreement.

- 4.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- 4.7 Authority to Execute Agreement. The person or persons executing this Agreement on behalf of each party warrants and represents that he or she has the authority to execute this Agreement on behalf of said party and has the authority to bind said party to the performance of its obligations hereunder.
- 4.8 Compliance with laws, Prevailing Wages. Victory Station understands that use of County funds in connection with the Victory Station-8th Street East Improvements may require the payment of prevailing wages in accordance with the Labor Code of the State of California. Victory Station shall comply with all applicable laws related to the Victory Station-8th Street East Improvements, including but not limited to any applicable prevailing wage requirements, and shall include a requirement in any contract for construction to which prevailing wage statutes apply that all contractors, and all subcontractors at all levels, must comply with the requirements to pay prevailing wages as stated in the Labor Code of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

COUNTY:

COUNTY OF SONOMA

By: _____ Date: _____

Name: Johannes Hoevertsz

Title: Director, Transportation & Public Works Dept

Approved as to form for County:

By: _____ Date: _____

Name: Luke Bowman

Title: Deputy County Counsel

VICTORY STATION:

Victory Station LLC,
a California limited liability company

By: Victoria Station Planning LLC,
a California limited liability company,

Date: _____

Name: Joseph A McNeill III

Title: Manager

EXHIBIT A

Reimbursement Amount

Estimated total cost for:	
Excess Improvements	
County agreed portion of Railroad Crossing (50%)	\$314,391.50
County agreed portion of Eighth Street East widening work	\$114,000.00
Total Reimbursement Amount to Victory Station	\$428,391.50