

TUMF PAYMENT/BUILDING PERMIT APPLICATION AGREEMENT

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

[INSERT AGENCY NAME AND ADDRESS]

Exempt from recording fees per Government Code §27383

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____, by and between the (City/County) of _____, a California municipal corporation ("City/County"), and _____, ("Developer"). (City/County) and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, Developer owns ____ acres of real property located within the (City/County) of _____, California, which is more specifically described in the legal description set forth in Exhibit "A," attached hereto and incorporated by reference ("Property"); and

WHEREAS, Developer has requested from (City/County) certain entitlements and/or permits for the construction of a project on the Property which are more particularly described as

("Project"); and

WHEREAS, (City/County) requires Developer to pay the Transportation Uniform Mitigation Fee ("TUMF") which covers the Developer's fair share of costs to construct transportation improvements that help mitigate the traffic impacts on the Regional System of Highways and Arterials ("RHSA") generated by the Project that are necessary to protect the safety, health, and welfare of persons that travel to and from the Project using the RHSA; and

WHEREAS, as condition of receiving a building permit for a project, **[INSERT SECTION NUMBER]** of (City/County)(Municipal Code/County Code) requires that a developer file an application with the (City/County) and submit the project to plan review; and

WHEREAS, **[INSERT SECTION NUMBER]** of (City/County)(Municipal Code/County Code) also requires that plan review must be completed within one hundred and eight (180) days from the date of the application for a building permit; and

WHEREAS, Developer submitted its application for a building permit between July 1,

2005 and June 30, 2006, which is referenced below in Section 2.0 herein; and

WHEREAS, in accordance with **[INSERT SECTION NUMBER]** of (City/County) TUMF Ordinance, Developer paid its full TUMF obligation in the amount of **[INSERT AMOUNT]** (“TUMF Obligation”) when Developer submitted the abovementioned building permit application; and

WHEREAS, Developer failed to complete plan review by **[INSERT DATE]** (“Expiration Date”) which resulted in the expiration of the abovementioned application; and

WHEREAS, no more than one hundred and eighty (180) days have passed since the Expiration Date ; and

WHEREAS, Developer now desires to submit another building permit application for the Project without having to pay increased TUMF fees; and

WHEREAS, the Project is the same project which was described in the previous building permit application; and

WHEREAS, DEVELOPER has neither requested nor received a refund of the TUMF Obligation prior to the date of this Agreement

WHEREAS, in consideration for permitting Developer to submit a new application for the Project without increasing TUMF rate, Developer agrees to forever forfeit and relinquish any claim or right to a refund of the TUMF Obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and (City/County) hereby agree as follows:

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as through fully set forth herein.

2.0 TUMF Obligation Not Subject to Future Increases. The Project shall be subject to the same TUMF rate in existence on the date Developer first paid its TUMF Obligation; provided, however, the Project is the same project described in the previous building permit application. A copy of the previous building permit application without attachments is attached hereto and incorporated herein by reference as Exhibit “B” (“Original Application”). Notwithstanding the foregoing, (City/County) may permit adjustments to the Project to the extent required by local, state and federal law.

3.0 TUMF Administrative Plan. This Agreement shall not be construed as violating the (City/County) TUMF Ordinance which prohibits development agreements freezing future TUMF adjustments.

4.0 Permits Expired for More Than 180 Days. Notwithstanding Section 2.0, if the last submitted building permit application for the Project has been expired for more than one hundred and eighty (180) days, Developer may submit a new building permit application for the Project; however, the Project will be subject to the TUMF rate in existence on the date the Developer submits this new application (“Adjusted TUMF Obligation”). Developer must pay the Adjusted TUMF Obligation at the time the new application is submitted.

5.0 Forfeiture of TUMF Refund. Notwithstanding Section III.A. of the TUMF Administrative Plan, Developer hereby forever relinquishes any claim to a refund of any monies paid to satisfy the TUMF Obligation. Developer shall not be entitled to a refund under any circumstance, including, but not limited to, its failure to construct the Project. If, however, the Developer chooses to construct a project which is different from the Project ("New Project"), Developer shall receive a credit for any TUMF fees paid to the (City/County) for the Project. (City/County) shall not refund any TUMF fees paid to it for the Project, even if the new TUMF fee which is calculated for the New Project is less than the Project's TUMF obligation. The TUMF fee of the New Project shall be calculated based on the current TUMF rate in effect at the time Developer submits its new building permit application for the New Project.

6.0 Credit/Reimbursements. If Developer constructs improvements identified in the RHSA, the Developer shall only receive a credit or reimbursement based on the lesser of the actual costs or approved unit costs set forth in the nexus study used to calculate the TUMF Obligation at the time Developer submitted its Original Application, whichever is less.

7.0 Agreement Runs with the Property. All of the provisions, agreements, rights, powers, standards, terms, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. To the extent permitted by state law, all of the provisions of this Agreement shall be enforceable and run with the land. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

8.0 Miscellaneous.

8.1 Attorney's Fees. If either party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

8.2 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not business days unless otherwise specified. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to (City/County) include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

8.3 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless duly approved in writing and signed on behalf of all

Parties.

8.4 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

8.5 Binding Effect. Each of the Parties agree that all of the covenants and conditions are lawful, valid and binding upon and shall inure to the benefit of the Parties, and their lawful successors, heirs, personal representatives, or assigns

8.6 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

8.7 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

8.8 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

8.9 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

8.10 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

8.11 Entire Agreement. This Agreement contains the entire agreement between (City/County) and Developer and supersedes any prior oral or written statements or agreements between (City/County) and Developer.

8.12 Acknowledgement by WRCOG. This Agreement shall not be effective until the Western Riverside Council of Governments ("WRCOG") affixes its signature to the Agreement after the Parties have executed it. WRCOG is merely acknowledging receipt of this Agreement and shall not be considered a party to the Agreement under any circumstances.

[SIGNATURES ON FOLLOWING PAGE]

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

(CITY/COUNTY)

DEVELOPER

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

ACKNOWLEDGEMENT OF RECEIPT BY WRCOG:

By: _____
Its: _____

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
COPY OF BUILDING PERMIT APPLICATION