

DIF CREDIT AGREEMENT

[Insert Project Name]

This **DIF CREDIT AGREEMENT** (“Agreement”) is entered into this ___ day of _____, 20___, by and between the CITY OF WILDOMAR, a California municipal corporation (“CITY”), and _____, a California **[INSERT TYPE OF ENTITY - corporation, partnership, sole proprietorship or other legal entity]**, (“Developer”). CITY 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 which is more specifically described in the legal description set forth in Exhibit “A”, attached hereto and incorporated herein by this reference (“Property”);

WHEREAS, Developer has requested from CITY certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as **[INSERT PROJECT DESCRIPTION]** (“Project”);

WHEREAS, CITY requires developers to pay certain development impact fees for the purpose of defraying all or a portion of the cost of public improvements, public services, and community amenities related to the their projects (“DIF”);

WHEREAS, sections 3.40.040, 3.40.050, and 3.44.080 of the Wildomar Municipal Code 1) authorize the CITY to issue DIF credits to a developer who constructs certain public improvements that are included within the fee program to reduce their DIF obligation, and 2) authorize the CITY to reimburse a developer who constructs public improvements that are more costly than its DIF obligations;

[OPTIONAL: WHEREAS, CITY and Developer have entered into a separate agreement pertaining to the Developer’s construction of improvements included within the Transportation Uniform Mitigation Fee (“TUMF”) Program and providing Developer credits and/or reimbursements against the Developer’s TUMF obligations; and,]

WHEREAS, as a condition of CITY’s approval of the Project, CITY has required Developer to construct certain public improvements that would be funded by the DIF Program (“DIF Improvements”);

WHEREAS, CITY and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the DIF Improvements, (2) to ensure that delivery of the DIF Improvements is undertaken as if the DIF Improvements were constructed under the direction and authority of the CITY, (3) to provide a means by which the Developer’s costs for project delivery of the DIF Improvements and related right-of-ways is offset against Developer’s obligation to pay the applicable DIF for the Project, and (4) to provide

a means for Developer to be reimbursed to the extent the actual and authorized costs for the delivery of the DIF Improvements exceeds Developer's DIF obligations.

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

TERMS

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 though fully set forth herein.

2.0 Construction of DIF Improvements. Developer shall construct or have constructed at its own cost, expense, and liability certain DIF Improvements generally described as [INSERT DIF IMPROVEMENTS], and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by CITY, and which are incorporated herein by this reference. Construction of the DIF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the DIF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of CITY and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the DIF Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the DIF Improvements until all plans and specifications for the DIF Improvements have been submitted to and approved by CITY. Approval by CITY shall not relieve Developer from ensuring that all DIF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the DIF Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the DIF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of, CITY, Developer shall comply with all of the following requirements with respect to the construction of the DIF Improvements:

(a) Developer shall obtain bids for the construction of the DIF Improvements, in conformance with the standard procedures and requirements of CITY with respect to its public works projects, or in a manner which is approved by the Public Works Department.

(b) The contract or contracts for the construction of the DIF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the DIF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities and as required by the procedures and standards of CITY with respect to the construction of its public works projects or as otherwise directed by the Public Works Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the DIF Improvements which they will construct in conformance with CITY's standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the DIF Improvements which CITY may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the DIF Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Developer shall provide proof to CITY, at such intervals and in such form as CITY may require that the foregoing requirements have been satisfied.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the DIF Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The DIF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with CITY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the DIF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses,

permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to DIF Improvements. All work shall be done and the DIF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the DIF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by CITY. Any and all alterations in the plans and specifications and the DIF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of DIF Improvements. CITY shall not be responsible or liable for the maintenance or care of the DIF Improvements until CITY approves and accepts them. CITY shall exercise no control over the DIF Improvements until accepted. Any use by any person of the DIF Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to CITY's acceptance of the DIF Improvements. Developer shall maintain all of the DIF Improvements in a state of good repair until they are completed by Developer and approved and accepted by CITY, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by CITY. If Developer fails to properly prosecute its maintenance obligation under this section, CITY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. CITY shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the DIF Improvements or their condition prior to acceptance.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the DIF Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service fees established by CITY.

5.0 CITY Inspection of DIF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the DIF Improvements, maintain reasonable and safe facilities and provide safe access for inspection by CITY of the DIF Improvements and areas where construction of the DIF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the DIF Improvements, Developer shall provide to CITY such evidence or proof as CITY shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the DIF Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to

CITY a title insurance policy or other security acceptable to CITY guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of DIF Improvements; As-Built or Record Drawings. If the DIF Improvements are properly completed by Developer and approved by CITY, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, CITY shall be authorized to accept the DIF Improvements. CITY may, in its sole and absolute discretion, accept fully completed portions of the DIF Improvements prior to such time as all of the DIF Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the DIF Improvements. Upon the total or partial acceptance of the DIF Improvements by CITY, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted DIF Improvements in accordance with California Civil Code sections 8182, 8184, 9204, and 9208 ("Notice of Completion"), at which time the accepted DIF Improvements shall become the sole and exclusive property of CITY without any payment therefore. Notwithstanding the foregoing, CITY may not accept any DIF Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the CITY for all such DIF Improvements. The drawings shall be certified and shall reflect the condition of the DIF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the DIF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the DIF Improvements, for a period of one (1) year following completion of the work and acceptance by CITY ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the DIF Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of CITY, and to the approval of CITY. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any DIF Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following CITY's acceptance of the repaired, replaced, or reconstructed DIF Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any DIF Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the DIF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to CITY for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if CITY determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, CITY may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation (“Notice”). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, CITY may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon CITY’s issuance of the Notice, Developer and its surety shall be liable to CITY for all costs of construction and installation of the DIF Improvements and all other administrative costs or expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; CITY Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to CITY within the time frame contained in the Notice, CITY may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. CITY’s right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the DIF Improvements at the time of CITY’s demand for performance. In the event CITY elects to complete or arrange for completion of the remaining work and the DIF Improvements, CITY may require all work by Developer or its surety to cease in order to allow adequate coordination by CITY.

10.3 Other Remedies. No action by CITY pursuant to this Section 10.0 *et seq.* of this Agreement shall prohibit CITY from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. CITY may exercise its rights and remedies independently or cumulatively, and CITY may pursue inconsistent remedies. CITY may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the DIF Improvements, Developer or its contractor shall provide CITY with surety bonds in the amounts and under the terms set forth below (“Security”). The amount of the Security shall be based on the estimated actual costs to construct the DIF Improvements, as determined by CITY after Developer has awarded a contract for construction of the DIF Improvements to the lowest responsive and responsible bidder in accordance with this Agreement (“Estimated Costs”). If CITY determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by CITY. Developer’s compliance with this Section 11.0 *et seq.* of this Agreement shall in no way limit or modify Developer’s indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the DIF Improvements and all the provisions of this Agreement, to protect CITY if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the DIF Improvements, Developer or its contractor shall provide CITY a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The CITY may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the DIF Improvements are accepted by CITY, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than _____ (____%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the DIF Improvements and this Agreement, Developer or its contractor shall provide CITY a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of CITY after six (6) months from the date CITY accepts the DIF Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which CITY is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of CITY's anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to CITY. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by CITY in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the DIF Improvements, or the plans and specifications for the DIF Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "B", unless other forms are deemed acceptable by the CITY, and when such forms are completed to the satisfaction of CITY, the forms and evidence of the Security shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless CITY, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental CITY, arising out of or incident to any acts, omissions, negligence, or willful

misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement, or arising out of or in any way related to or caused by the DIF Improvements or their condition prior to CITY's approval and acceptance of the DIF Improvements ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of CITY, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of CITY as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by CITY, its elected officials, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

(a) General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

(b) Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

(c) Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

(d) Professional Liability. For any consultant or other professional who will engineer or design the DIF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the DIF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its elected officials, officers,

employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name CITY, its elected officials, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to CITY, its elected officials, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering CITY, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against CITY in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish CITY with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by CITY before work pursuant to this Agreement can begin. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to CITY.

13.7 Insurer Rating. Unless approved in writing by CITY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14 DIF Credits.

14.1 Developer's DIF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to CITY as part of the DIF Program is **[INSERT DOLLAR VALUE OF DIF REQUIREMENT]** (\$ **[REDACTED]**) ("DIF Obligation"). This DIF Obligation shall be initially determined under the nexus study and fee schedule in effect for the CITY at the time the Developer submits a building permit application for the DIF Improvements. This DIF Obligation does not have to be paid until the

Certificate of Occupancy is obtained. Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop CITY from adjusting the DIF.

14.2 Credit Offset Against DIF Obligation. Pursuant to section 3.44.080(A) of the Wildomar Municipal Code and in consideration for Developer's obligation under this Agreement for the delivery of DIF Improvements, credit shall be applied by CITY to offset the DIF Obligation subject to adjustment and reconciliation under Section 14.4 of this Agreement ("DIF Credit"). Developer hereby agrees that the amount of the DIF Credit shall be applied after Developer has initiated the process of project delivery of DIF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the DIF Credit shall be equal to the lesser of: (A) the City Engineer's Estimate of the actual value of the DIF Improvements; or (B) the estimated cost of the DIF Improvements as identified in the DIF study in effect at the time of the issuance of a building permit for the project ("DIF Unit Cost Assumptions").

The City Engineer's Estimate and the DIF Unit Cost Assumptions shall hereafter be collectively referred to as "DIF Estimated Credit". At no time will the DIF Credit exceed the Developer's DIF Obligation. If the dollar amount of the DIF Estimated Credit exceeds the dollar amount of the DIF Obligation, Developer will be deemed to have completely satisfied its DIF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.5 of this Agreement. CITY shall provide Developer written notice of the determinations that CITY makes pursuant to this section, including how the DIF Credit is applied to offset the DIF Obligation as described above.

14.3 Verified Cost of the DIF Improvements. Upon recordation of the Notice of Completion for the DIF Improvements and acceptance of the DIF Improvements by CITY, Developer shall submit to the CITY Public Works Director the information set forth in the attached Exhibit "C". The CITY Public Works Director, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in delivering the DIF Improvements covered under this Agreement ("DIF Verified Costs"). The CITY Public Works Director will use his or her best efforts to determine the amount of the DIF Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.4 Reconciliation; Final Credit Offset Against DIF Obligations. The Developer is aware of and accepts the fact that credits are speculative and conceptual in nature. The actual amount of DIF Credit that shall be applied by CITY to offset the DIF Obligation shall be equal to the lesser of: (A) the DIF Verified Costs or (B) the DIF Unit Cost Assumptions as determined in accordance with Section 14.2 of this Agreement ("Actual DIF Credit"). No Actual DIF Credit will be awarded until the DIF Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer's estimate in order to estimate DIF Credits for project planning purposes, the Actual DIF Credit awarded will only be determined by the reconciliation process.

(a) DIF Balance. If the dollar amount of the Actual DIF Credit is less than the dollar amount of the DIF Obligation, the CITY Public Works Director shall provide written notice to Developer of the amount of the difference owed (“DIF Balance”) and Developer shall pay the DIF Balance to fully satisfy the DIF Obligation.

(b) DIF Reimbursement. If the dollar amount of the Actual DIF Credit exceeds the DIF Obligation, Developer will be deemed to have fully satisfied the DIF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.5 of this Agreement. CITY shall provide Developer written notice of the determinations that CITY makes pursuant to this section.

(c) DIF Overpayment. If the dollar amount of the Actual DIF Credit exceeds the Estimated Credit, but is less than the DIF Obligation, but the Actual Credit plus additional monies collected by CITY from Developer for the DIF Obligation exceed the DIF Obligation (“DIF Overpayment”), Developer will be deemed to have fully satisfied the DIF Obligation for the Project and may be entitled to a refund.

14.5 Reimbursement Agreement. If authorized under either Section 14.2 or Section 14.4 Developer may apply to CITY for a reimbursement agreement for the amount by which the Actual DIF Credit exceeds the DIF Obligation, as determined pursuant to Section 15.4 of this Agreement, section 3.44.080 of the Wildomar Municipal Code, and the CITY’s adopted Development Impact Fee Credit and Reimbursement Policy (“Reimbursement Agreement”). If CITY agrees to a Reimbursement Agreement with Developer, the Reimbursement Agreement shall be executed on the form set forth in Exhibit “D,” and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property (“Assignment”). Developer and such purchaser and assignee (“Assignee”) shall provide to CITY such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with CITY in a form reasonably acceptable to CITY, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer’s rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or CITY

between CITY and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of CITY.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, CITY shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To CITY: City of Wildomar
 Attn: Public Works Director
 23873 Clinton Keith Rd., Ste. 201
 Wildomar, CA 92595
 Fax No. (951) 698-1463

To Developer: _____
 Attn: _____

 Fax No. (____) _____

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 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 work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to CITY 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.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 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.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

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

15.12 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.

15.13 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.

15.14 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.

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

15.16 Entire Agreement. This Agreement contains the entire agreement between CITY and Developer and supersedes any prior oral or written statements or agreements between CITY and Developer.

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

[INSERT NAME OF DEVELOPER]

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

CITY OF WILDOMAR:

Gary Nordquist, City Manager

ATTEST:

Debbie Lee, City Clerk

APPROVED AS TO FORM:

Thomas D. Jex, City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[ATTACHED BEHIND THIS PAGE]

DRAFT

EXHIBIT A-1

EXHIBIT “B”
FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]

EXHIBIT B-1

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

PERFORMANCE BOND

WHEREAS, the City of Wildomar (“CITY”) has executed an agreement with _____ (hereinafter “Developer”), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the “Work”);

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain DIF Credit Agreement dated _____, (hereinafter the “Agreement”); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY in the sum of _____ (\$_____), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless CITY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including

EXHIBIT B-2

reasonable attorney's fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20__.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

EXHIBIT B-3

ALL-PURPOSE ACKNOWLEDGMENT FOR CALIFORNIA
STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me, _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
personally appeared _____
Name(s) of Signer(s)

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.

Place Notary Seal Above Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

- _____ Title(s)
- Partner(s) Limited
 - Attorney-In-Fact General
 - Trustee(s)
 - Guardian/Conservator
 - Other: _____

_____ Title or Type of Document

_____ Number Of Pages

_____ Date Of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____ Signer(s) Other Than Named Above

CERTIFICATE AS TO CORPORATE PRINCIPAL

EXHIBIT B-4

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT B-5

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

LABOR & MATERIAL BOND

WHEREAS, the City of Wildomar ("CITY") has executed an agreement with _____ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain DIF Credit Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of his or its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of _____ (\$_____), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail

EXHIBIT B-6

to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430, 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20__.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

EXHIBIT B-7

ALL-PURPOSE ACKNOWLEDGMENT FOR CALIFORNIA
STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me, _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
personally appeared _____
Name(s) of Signer(s)

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.

Place Notary Seal Above Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

- _____
Title(s)
- Partner(s) Limited General
 - Attorney-In-Fact
 - Trustee(s)
 - Guardian/Conservator
 - Other: _____

Title or Type of Document

Number Of Pages

Date Of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

CERTIFICATE AS TO CORPORATE PRINCIPAL

EXHIBIT B-8

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT B-9

EXHIBIT “C”

DOCUMENTATION TO BE PROVIDED TO CITY BY DEVELOPER FOR DETERMINATION OF CONSTRUCTION COSTS

To assist CITY in determining the Construction Costs for a completed DIF Improvement, Developer shall provide the following documents to CITY:

1. Plans, specifications and Developer’s civil engineer’s cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of each DIF Improvement and the check number for each item of cost and invoice;
8. Final lien releases from each contractor and vendor; and
9. Such further documentation as may be reasonably required by CITY to evidence the completion of construction and the payment of each item of cost and invoice.

EXHIBIT C-1

EXHIBIT "D"

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") is entered into this ___ day of _____, 20___, by and between the City of Wildomar, a California municipal corporation ("CITY"), and _____, a California [INSERT TYPE OF ENTITY - corporation, partnership, sole proprietorship or other legal entity], ("Developer"). CITY and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, CITY and Developer are parties to an agreement dated _____, 20___, entitled "DIF Credit Agreement" (hereinafter "Credit Agreement");

WHEREAS, Sections 14.1 through 14.4 of the Credit Agreement provide that Developer is obligated to pay CITY the DIF Obligation, as defined therein, but shall receive credit to offset the DIF Obligation if Developer constructs and CITY accepts the DIF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 of the Credit Agreement provides that if the dollar amount of the DIF credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the DIF Obligation, Developer may apply to CITY for a reimbursement agreement for the amount by which the DIF credit exceeds the DIF Obligation;

WHEREAS, Section 14.5 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS

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 though fully set forth herein.

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of DIF Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual DIF Credit exceeds the dollar amount of the DIF Obligation as determined pursuant to the Credit Agreement, section 3.44.080 of the Wildomar Municipal Code, and the CITY's adopted Development Impact Fee Credit and Reimbursement Policy ("DIF Reimbursement"). The DIF Reimbursement shall be subject to verification by CITY and Developer shall provide any and all documentation reasonably necessary for CITY to verify the amount of the DIF Reimbursement. The DIF Reimbursement shall be in an amount not exceeding [INSERT DOLLAR AMOUNT] (\$) ("DIF Reimbursement Amount"). In no event shall the dollar amount of the DIF Reimbursement exceed the difference between the dollar amount of all credit applied to offset the DIF Obligation pursuant to Sections 15.2, 15.3, and 15.4 of the Credit Agreement, and one hundred (100%) of the construction costs of the DIF Improvement identified in the DIF Study in effect at the time of the issuance of a building permit for the Project.

5.0 Payment of DIF Reimbursement; Funding Contingency. The payment of the DIF Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the DIF Reimbursement unless and until (i) the DIF Improvements are completed and accepted by CITY in accordance with the Credit Agreement, and (ii) CITY has funds available and appropriated for payment of the DIF Reimbursement Amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the DIF Reimbursement is determined and the time when payment of the DIF Reimbursement is made to Developer by CITY.

6.0 Affirmation of Credit Agreement. CITY and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. CITY and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. CITY and Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

7.0 Incorporation Into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit "D" to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable

hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, and Sections 14.0 through 14.5.

[SIGNATURES OF PARTIES ON NEXT PAGE]

DRAFT

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

[INSERT NAME OF DEVELOPER]

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

CITY OF WILDOMAR:

Gary Nordquist, City Manager

ATTEST:

Debbie Lee, City Clerk

APPROVED AS TO FORM:

Thomas D. Jex, City Attorney