

**AGREEMENT TO DEFER UNDERGROUNDING OF UTILITIES AND FOR PAYMENT
OF UNDERGROUNDING COSTS BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
BEST DEVELOPMENT GROUP, LLC**

This Agreement to Defer Undergrounding of Utilities and for Payment of Undergrounding Costs ("Agreement") is made and entered into as of _____, 2019 ("Effective Date"), by and between the City of Desert Hot Springs, a municipal corporation ("City"), and Best Development Group, LLC, a California limited liability company ("Developer"), with the City and Developer sometimes being hereinafter individually referred to as a "Party" and collectively as the "Parties," with respect to the following:

RECITALS:

WHEREAS, on March 12, 2019, the City's Planning Commission approved Tentative Tract Map 37571 in connection with Developer's proposed project for development of a 20,000 square foot discount grocery store on a 2.09 acre site located on the west side of Palm Drive across from Park Lane, having Assessor's Parcel Number 656-020-034 ("Property"), in the City of Desert Hot Springs, California; and

WHEREAS, pursuant to Chapter 16.04 "Subdivision Regulations" of the City's Municipal Code ("DHSMC"), in connection with approval of Tentative Tract Map 37571, Project Condition of Approval 100 required the undergrounding of all utility distribution or transmission facilities within the subdivision and along peripheral streets less than 92kv, in compliance with certain standards; and

WHEREAS, Section 16.04.110(C)(3) of the DHSMC permits the Developer to satisfy Project Condition of Approval 100 by entering into an agreement with the City to defer the undergrounding of utilities until the utility lines along the frontage of one (1) or more of the adjoining parcels are undergrounded; and

NOW THEREFORE, in consideration of the covenants, conditions and promises contained herein, the Parties hereby agree as follows:

Section 1. Recitals

The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Payment to City of Utilities Undergrounding Costs

The total amount to be paid to the City for the cost of the undergrounding the electric utilities is \$100,000.00 ("Cost"). The undergrounding shall be deferred until the electric utility lines along the frontage of one (1) or more of the adjoining parcels pull any permit whatsoever for the commencement of their/its undergrounding ("Adjoining Parcel Underground Date"). Developer shall pay to the City the Cost no later than issuance of the Certificate of Occupancy (CofO) for the project.

Section 3. City to Pay Utility Companies

After both the (1) full amount of the Cost has been paid to the City by the Developer pursuant to Section 2 and (2) Adjoining Parcel Underground Date, the Parties acknowledge that the City will forward Cost to the utility companies for use toward completion of the utilities undergrounding work.

Section 4. Term

This Agreement shall commence as of the Effective Date and shall continue until the Developer submits the full amount of the Cost to the City pursuant to Section 2.

Section 5. Indemnity

Developer shall defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of the performance of this Agreement.

Section 6. Notices

a. Any and all notices and payments sent or required to be sent by or to either Party under this Agreement shall be mailed to the following addresses:

City of Desert Hot Springs
Attn: Charles Maynard, City Manager
65950 Pierson Boulevard
Desert Hot Springs, California 92240
Telephone: (760) 329-6411
Facsimile: (760) 288-3129
Email: cmaynard@cityofdhs.org

Best Development Group, LLC
Attn: Carl Best
2580 Sierra Blvd., Suite E
Sacramento, California 95825
Telephone: (916) 486-2694
Email: carl@bestprop.net

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 7. Third Parties

Nothing in this Agreement is intended to create duties, obligations, or rights in any third party to this Agreement.

Section 8. Default

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than five (5) days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Section 9. General Provisions

a. Amendments. This Agreement may not be modified, terminated or rescinded, in whole or part, except by a written instrument duly executed and attested by the Parties.

b. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with California law. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

c. Attorney's Fees. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

d. Binding Agreement. Each of the Parties hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

e. Successors and Assigns. All the terms, covenants and conditions herein imposed shall inure to the benefit of and shall apply to and bind the successors in interest and assigns of the Parties.

f. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the Parties when at least a copy hereof shall have been signed by both Parties hereto.

g. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

h. Entire Agreement. This Agreement contains the entire agreement between the Parties, and is intended by the Parties to state the Agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Agreement, is null and void.

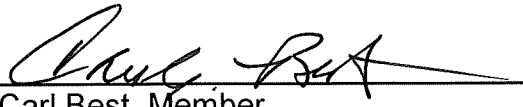
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

**CITY OF DESERT HOT
SPRINGS**

Scott Matas, Mayor

BEST DEVELOPMENT GROUP, LLC



Carl Best, Member

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney