

**AGREEMENT FOR PAYMENT OF FAIR SHARE OF
DEVELOPMENT IMPACT FEES BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
BEST DEVELOPMENT GROUP, LLC**

This Agreement for Payment of Fair Share of Development Impact Fees ("Agreement") is made and entered into as of Sept 24, 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 ("Planning Commission") approved Developer's proposed project for development of a 20,000 square foot discount grocery store ("Project") 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, in the City of Desert Hot Springs, California; and

WHEREAS, it is expected that the Project will result in increased traffic flow at the intersection of Palm Drive and Park Lane ("Subject Intersection") and that as a result, a traffic signal is needed at such intersection to better control vehicular and pedestrian traffic; and

WHEREAS, the City retained KD Anderson & Associates, Inc., to conduct a traffic signal analysis of the future impact of the Project on traffic volume at the Subject Intersection; and

WHEREAS, per the traffic signal analysis conducted by KD Anderson & Associates, Inc., dated July 8, 2019, it has been determined that the amount of additional vehicular traffic that will traverse through the Subject Intersection as a result of the Project is 15%; and

WHEREAS, under the Mitigation Fee Act, the City is permitted to charge Developer a fee for the purpose of defraying all or a portion of the cost of public facilities related to the impact of development of the Project, including, but not limited to, those costs associated with installation of a traffic signal at the Subject Intersection; and

WHEREAS, the Planning Commission in part approved the Project based on certain conditions of approval, including Condition No. 88 which requires Developer to pay City a fair share value for the installation of a traffic signal at the Subject Intersection; and

WHEREAS, Developer agrees to pay City 15% of the cost of installation of the traffic signal, in accordance with the terms of this Agreement.

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 of Development Impact Fees for Improvements

By no later than thirty (30) calendar days after receiving an invoice from the City for costs attributable to the Project and associated with installation of a traffic signal at the Subject Intersection, Developer shall pay City the total amount detailed in the invoice ("Amount Owed"), it being understood that the Amount Owed will reflect 15% of the total cost to the City of installing such traffic signal in the Subject Intersection.

Section 3. Term

This Agreement shall commence as of the Effective Date and shall continue thereafter until the total amount of the Amount Owed is paid by Developer or its successors and assigns, to the City.

Section 4. 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: Jan Snyder
2580 Sierra Blvd., Suite E
Sacramento, California 95825
Telephone: (916) 486-2694
Email: jan@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 5. Third Parties

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

Section 6. 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. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties hereto.

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**

Charles Maynard,
City Manager

BEST DEVELOPMENT GROUP, LLC

~~Jan Snyder, Member~~
TERRY JOHNSON

ATTEST:

Jerryl Soriano, City Clerk

TERRY JOHNSON
BEST DEVELOPMENT GROUP
2580 SIERRA BLVD., SUITE E
SACRAMENTO, CA 95825
(916) 482-8330

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney