

AGREEMENT TO PROVIDE SECURITY FOR IMPROVEMENTS

THIS AGREEMENT TO PROVIDE SECURITY FOR IMPROVEMENTS (“Security Agreement”) is made by and between CITY OF BEAUMONT (“CITY”) and _____ a California [if other state specify the state] [corporation] or [limited liability company] or [limited partnership] (“DEVELOPER”).

RECITALS

A. DEVELOPER has applied to the CITY for a Conditional Use Permit (CUP No. _____).

B. The conditions of approval for the CUP require that the Developer enter into an improvement agreement with the City and provide cash in lieu of construction for 100% of the estimated cost at the time of deposit to improve the west-bound off ramp from the I-10 freeway as identified in the approved Traffic Impact Analysis report summarized as “Widen the I-10 Westbound Off-Ramp to provide for one exclusive left turn lane and one exclusive right turn lane (“Improvements”)

C. The Improvements have not yet been constructed and completed and it is the purpose of this Security Agreement to set forth the terms and conditions by which the DEVELOPER shall guarantee that such Improvements shall be constructed and completed within the time set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the acceptance of the DEVELOPER’s offer of dedication and the approval of the CUP for filing and recording as provided and required by law, the CITY and the DEVELOPER hereby agree as follows:

1. Provision of Improvements. City shall provide for the installation at the DEVELOPER’s sole cost and expense, all necessary labor and materials to complete the construction of the Improvements at or about the time that a new on-ramp/off-ramp at Pennsylvania Avenue is constructed.

2. Inspection by the CITY. The CITY shall inspect all of the work, labor and materials performed and provided by the DEVELOPER in connection with the Improvements which shall be covered by the Security.

3. Compliance with Plans and Specifications. The Improvements shall be constructed and installed in accordance with the CITY-approved plans and specifications.

4. Security for Performance. Concurrently with the execution of this Security Agreement by DEVELOPER, DEVELOPER shall deliver to the CITY cash in the amount of \$_____ (“Security”) which City shall expend for the Improvements provided that if the actual cost of the Improvements exceeds the amount of the Security Developer shall pay such additional amount to City within ten days of demand from City . City may commingle the Security

with other funds of City and shall have no obligation to account for the Security to Developer or pay interest in the Security.

5. Indemnification. Notwithstanding the provisions of Government Code, Section 66474.9 or any other statutes of similar import, and to the full extent permitted by law, the DEVELOPER shall defend, indemnify and hold harmless the CITY, its employees, agents, officials and attorneys, from and against any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind or nature, whether actual, alleged or threatened, reasonable attorneys' fees, court costs, interest, expert witness fees and any other costs or expenses of any kind whatsoever, without restriction or limitation, incurred in relation to, as a consequence of, or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part, to the CUP, this Agreement, or any matter related to the same; provided, however, that the indemnification to be provided by DEVELOPER to the CITY pursuant to the terms of this paragraph shall not be applicable where the aforementioned liability, claim, suit or action is the result of the sole negligence or sole willful misconduct of the CITY.

6. Binding Effect. This Security Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives and their successors and assigns.

7. Authority to Execute. The DEVELOPER hereby warrants and represents to the CITY that the individual signing this Security Agreement on behalf of the DEVELOPER is vested with the unconditional authority to do so pursuant to, and in accordance with, all applicable legal requirements, and has the authority bind the DEVELOPER hereto.

8. No Assignment. The DEVELOPER may not assign this Security Agreement, or any part thereof, to another without the prior written consent of the CITY.

9. Attorneys' Fees. In the event of legal action to enforce or interpret this Agreement or any of its provisions, the prevailing party shall be entitled, in addition to any other form of relief, to recover its reasonable attorneys' fees and costs of suit.

10. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates listed below.

CITY OF BEAUMONT

By: _____
Mayor

Date: _____

DEVELOPER

By: _____

Date: _____

Title: _____