

**CITY OF BEAUMONT
ROLLING HILLS (CROSSROADS LOGISTICS)
FEE CREDIT AGREEMENT**

THIS FEE CREDIT AGREEMENT (the "Agreement") is dated as of February 5, 2019 , by and among the City of Beaumont, a municipal corporation organized and existing under the laws and Constitution of the State of California, hereinafter referred to as "City" and USEF Crossroads II, LLC, a Delaware limited liability company, with its principal place of business at 9830 Colonnade Blvd., Suite 600, San Antonio, Texas, 78230, hereinafter referred to as "Property Owner."

RECITALS

A. The Property Owner owns and is developing certain real property in the City pursuant to the Rolling Hills Ranch Specific Plan as shown on the map attached hereto as Exhibit A (the "Property").

B. The Rolling Hills Ranch Specific Plan and related land use entitlements and conditions of approval for the Property require the construction of various facilities identified in Exhibit "B" (the "Facilities"). The Property has been determined to benefit from the Facilities.

C. Developer has requested from City certain permits for the construction of improvements on the Property, which are more particularly described as 1010 Fourth Street which consists of approximately 700,000 SF of industrial ground floor space having four stories ("Project");

D. The Project is subject to various development impact fees established and administered by the City including, but not limited to, those as set forth on Exhibit "D" (the fees in Exhibit "D" being the defined as the "Fees");

E. By this Agreement Property Owner is requesting of City that the Fees be subject to credits to the extent the Property Owner funds or constructs the Facilities which would otherwise be funded by those Fees.

F. In addition to governing credits to the Fees for Facilities, this Agreement is also intended to implement certain provisions of the Funding Agreement dated May 17, 2017 whereby Property Owner advanced \$1,133,000.00 towards the Phase I of the Potrero overpass project.

G. The Funding Agreement provides that the \$1,133,000 advanced by Property Owner will be credited to the City's Old Road and Bridge Fee with an adjustment to TUMF Fees, as such terms are defined therein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

A G R E E M E N T

1. Recitals. The above recitals and each of them are true and correct and are incorporated herein and become a part of this Agreement.

2. Estimated Cost of the Facilities. The estimated cost of the Facilities and the maximum eligible credit for funding the Facilities is listed in **Exhibit "B"**. Facilities may be added to **Exhibit "B"** and the description of Facilities and the estimated costs thereof may be modified at any time by a written amendment to this Agreement approved in advance by the City Council and signed by the City Manager and Property Owner.

3. Eligible Costs. The Property Owner shall strictly account for the expenditure of funds used to construct the Facilities according to accepted accounting practices for public agencies in Southern California. It is the intention of the parties that issuance of Fee credits for construction of Facilities shall be approved by the City only in connection with properly completed credit request forms with appropriate supporting documentation for reasonable costs and expenses paid or incurred including, without limitation, any amounts owing under any construction contract entered into by the Property Owner for the Facilities and costs to comply with regulatory agency permits related to the Facilities and listed on **Exhibit "E"**. Administrative costs of the Property Owner with respect to design, engineering and Bid Documents (as defined below) shall include, but are not limited to, the reasonable costs of preparing the bid documents and costs incurred in obtaining permits, licenses, rights-of-way or easements, and reasonable planning, environmental, engineering, construction administration and supervision, legal, plan check and inspection fees.

4. Planning, Design, Engineering and Grading. Facilities shall be designed by a qualified design engineer engaged by the Property Owner. The party undertaking the design of a Facility shall design and prepare, or shall cause to be designed and prepared, all designs, detailed bid documents, construction plans, and specifications (collectively the "Bid Documents"), including, but not limited to, system layout drawings and all other construction documents and permits for the applicable Facilities in accordance with the design criteria of the City or other public agency or agencies which will be the ultimate owner of such Facilities. The Bid Documents shall conform to all applicable federal, state and local governmental rules, ordinances, and regulations and all applicable environmental protection laws.

All Bid Documents shall be subject to review and approval by the City Manager and/or his or her designee, and the applicable public agencies, prior to commencement of construction of the Facilities. Preliminary and final plans and specifications for Facilities shall be submitted to the City and the applicable public agencies for review and approval. The Property Owner shall then obtain the approval of all appropriate public agencies of the construction plans and specifications and construction documents. The Facilities shall be constructed by the Property Owner in accordance with public agency contracting requirements and in accordance with all regulatory agency permits associated with the Facilities as required by the City.

(a) Construction Schedule. The Facilities shall be constructed at the earliest practicable date after execution of this Agreement as required to serve the Property as approved by the City and completed no later than the Outside Completion Date, as defined below.

The City shall coordinate with the Property Owner to schedule commencement and completion of construction of Facilities, consistent with the Property Owner's construction schedule and the City's schedule for construction of Potrero Boulevard.

(b) Preliminary Coordination Meeting. Property Owner, the City Manager and/or his or her designee, and representatives of the applicable local agencies shall meet for purposes hereinafter set forth, upon the written request of the Property Owner (hereinafter the "Preliminary Coordination Meeting") delivered to the City, and the applicable local agencies. The Preliminary Coordination Meeting shall occur as soon as practicable after said written request. At the Preliminary Coordination Meeting the City Manager, and/or his or her designee, shall provide the Property Owner information and documents required by the Property Owner or its design engineer to prepare the **Bid Documents** for the applicable Facilities. Said information and documents will include, but will not be limited to, the form of bid documents and specifications, regulatory permits, applicable prevailing wage rate, insurance requirements, and bonding requirements which shall be made part of a separate subdivision security agreement. At the Preliminary Coordination Meeting, the City, the Property Owner and applicable local agencies shall develop the phasing and schedule for construction of the Facilities then planned for construction and shall coordinate their efforts to accomplish the design and construction of such Facilities substantially in accordance with such schedule except as the parties may otherwise agree in writing.

(c) Bidding and Contracting. Upon completion of the Bid Documents for a Facility to be constructed by Property Owner, Property Owner shall proceed to solicit bids for the construction of the Facility and award and administer such contract in accordance with the following requirements:

(i) Property Owner shall solicit bids for the construction of the Facility from at least three (3) qualified contractors.

(ii) The bidding response time shall not be less than thirty (30) working days.

(iii) The City Manager shall be provided a copy of the bid package, bid submittals and tabulation of bid results prior to award of the bid and all bidders must comply with state prevailing wage requirements.

(iv) The contract shall be awarded to the lowest responsive and responsible bidder.

(d) Pre-construction Meeting. Prior to the commencement of construction of each Facility, there shall be a meeting (hereinafter the "Preconstruction Meeting") among the Property Owner, the City and the responsible agencies. Thereafter, the Property Owner, the City and any applicable agencies shall schedule construction meetings from time to time as necessary as requested by the Property Owner, the City to review the status of construction of the Facility.

(e) Change Orders. Property Owner may not authorize changes to the overall scope or plans and specifications of the construction contracts awarded for the construction

of a Facility without the prior approval of the City Council. The Property Owner may authorize change orders to the construction contract that do not result in modification to the overall scope of the project or specifications included within the improvement plans upon prior written approval of the City Manager or his/her designee.

(f) Status Meetings: Expenditure Reports. The Property Owner shall provide the City copies of expenditure reports prepared in connection with construction of the Facilities upon request.

(g) Performance and Payment Bonds. Property Owner agrees to comply with all applicable performance and payment bonding requirements of the City (and other applicable public entities and/or public utilities) and Sections 995.311 and 995.610-995.670 of the Code of Civil Procedure for the Facilities to be constructed by Property Owner for which Fee credits may be issued. Performance and payment bonds by a qualified and California admitted surety shall be provided by the Property Owner for Facilities to be constructed by Property Owner in accordance with the City's standard subdivision security agreement, including for compliance with all regulatory permits attached hereto as **Exhibit E**.

(h) Inspection. Upon the City's determination that construction of a Facility has been completed in accordance with the Plans, the City shall, upon request of the Property Owner, notify Property Owner in writing that the construction of such Facility has been satisfactorily completed. If the City determines that the construction of the Facility has not been so completed it shall provide the Property Owner with a punch list of items that must be completed before the City will approve the completion of the Facility. The City may make or cause to be made periodic site inspections of the Facilities to be constructed by Property Owner.

5. Conveyance of Title. The City and Property Owner believe that fee simple title to or an easement over the land or rights-of-way in favor of the City currently exist on which the Facilities are to be constructed free of all liens and encumbrances. The fee simple title to or an easement over the land or rights-of-way on which the Facilities are to be constructed shall be insured by a street right-of-way easement title insurance policy in the amount of Three Million Dollars (\$3,000,000) in favor of the City from First American Title Insurance Company at the sole cost of the Property Owner. However, if the Property Owner or City discover that additional fee simple title to or an easement over the land or rights-of-way are required for the Facilities, the Property Owner and the City will cooperate to acquire that additional fee simple title to or an easement over the land or rights-of-way which is needed.

6. Fee Credits. Property Owner may earn Fee credits under this Agreement based upon the construction of the Facilities defined in **Exhibit "B"**. Fee credits for Facilities shall be available to be credited against Fees having a nexus study identifying the Facility and no others. Elements of the Fourth Street Extension Project referred to in **Exhibit "B"** are identified in the TUMF nexus study, and other elements are identified in the City's Local Road and Bridge Fee nexus study. The Traffic Signal Improvements identified in **Exhibit "B"** are identified in the nexus study for the City's Traffic Signal Impact Fee. Fee credits shall be available upon compliance with this Agreement, the final inspection of the completed Facility and approval of expenditures as provided in **Section 4** by City and/or WRCOG or other applicable public entity or utility. All Fees will be calculated at the time the Property Owner is issued the certificate of

occupancy for the Project and calculation of the Fees may change due to a variety of factors requiring the City to make appropriate adjustments in the amounts of the Fees under this Agreement. Other development impact fees apply to the Project which are not covered by this Agreement.

(a) Payment of Fees. Fees shall be calculated and due concurrent with City issuing a certificate of occupancy for the Project. However, if Owner has completed a Facility, or a distinct part of a Facility, and received approval from City under **Section 4** prior to the issuance of the certificate of occupancy for the Project, the Fees shall be credited in accordance with this Agreement at the time the certificate of occupancy is issued. If the Facility, or a distinct part of a Facility, is completed after the certificate of occupancy for the Project is issued, the Property Owner will be required to pay the applicable Fees at the time the certificate of occupancy is issued and the appropriate amount of Fees paid by Property Owner shall be refunded when Property Owner completes the Facilities and they are accepted by the City as provided in this Agreement. The total fee credit shall not exceed the amount available under the applicable nexus study, the actual cost of the construction of the Facility as provided in **Section 4** or the estimated cost in **Exhibit "B"**, whichever is less. Fee credits referred to in this Agreement are estimates only. The actual Fee credits that are actually available may vary significantly from the estimates in this Agreement based on a number of factors including, but not limited to, annual changes in the Fees. Fees are calculated at the time that the certificate of occupancy is issued. Fees are adjusted periodically and may have increased by the time the certificate of occupancy is applied for.

(b) Completion of Facilities. Completion of the Facilities in a timely manner is essential to the City's program of meeting transportation demands created by the Project and other factors. Property Owner shall complete the Facilities obtain approval of the City on or before December 31, 2019 ("Outside Completion Date"). In order for Fee credits to be available under this Agreement they must be used on or before the Outside Completion Date.

(c) Separate TUMF Credit Agreement. The TUMF program is administered by Western Regional Council of Governments ("WRCOG"). The City collects TUMF Fees on behalf of WRCOG and remits them to WRCOG. The City and Property Owner agree to enter into a Improvement and Credit/Reimbursement Agreement ("TUMF Credit Agreement") for the Fourth Street Extension Project whereby Property Owner shall be eligible for certain credits to TUMF Fees ("TUMF Credits"). However, the TUMF Credit Agreement is subject to the approval of WRCOG and City cannot assure Property Owner that WRCOG will approve the TUMF Credit Agreement. Notwithstanding anything to the contrary in this Agreement, all TUMF Credits and terms are subject to the applicable administrative rules and written approval of WRCOG in its sole and absolute discretion.

(d) Adjustment to TUMF. Property Owner made an advance ("Advance") of \$1,133,000 on August 7, 2018 to the City under the Funding Agreement, ("Funding Agreement") dated May 16, 2017. The City credited the Advance towards the Old Road and Bridge Fee which was then used for Phase One of the Potrero Overpass Project. After the execution of the Funding Agreement the City transitioned from the Old Road and Bridge Fee to the TUMF Fee. The Funding Agreement provides for the proration of the Advance between the TUMF Program and the Old Road and Bridge Fee in an equitable manner. The Advance covered 33.52% of the Old Road and Bridge Fee in the total amount of \$3,379,986.70; the City will not

collect the other 67.08% of the Old Road and Bridge Fee. In order to equitably prorate the TUMF obligation, the City and Property Owner agree that Owner will be deemed to have paid 33.52% of the TUMF Fee in like manner. The TUMF Fee is estimated to be \$1,738,081.09 less 33.52% equals \$1,155,461.68 ("Adjusted TUMF"). The Adjusted TUMF is subject to WRCOG approval. Fourth Street Project expenditures not credited to TUMF may be credit against the City's Local Road and Bridge Fee in accordance with this Agreement and the nexus study or may be subject to reimbursement under the TUMF Credit Agreement subject to WRCOG approval. Property Owner's estimated TUMF obligations (subject to WRCOG approval) are set forth on Exhibit "F".

7. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or upon deposit of the same in any United States Post Office, registered or certified, postage prepaid, addressed as follows:

Property
Owner: USEF Crossroads II, LLC
c/o USAA Real Estate Company,
9830 Colonnade Blvd. Suite 600
San Antonio, Texas, 78230

and a copy to:

McDonald Property Group, Inc.
1140 North Coast Highway
Laguna Beach, California 92651
Attn: Bruce McDonald

City of Beaumont: City of Beaumont
550 East Sixth Street
Beaumont, California 92223
Attention: City Manager

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party within twenty (20) days of such change.

8. Attorneys' fees. In the event of any action, lawsuit or other proceeding to enforce this Agreement or arising out of the breach of any of its covenants, conditions, or provisions, the prevailing party shall be entitled to recover from the other party all of such party's reasonable litigation costs and expenses, including attorney's fees, incurred in each and every such action, suit or other proceeding, including any and all appeals.

9. Severability. If any provision of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may not be assigned except with the written consent of the parties.

11. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein. The Facilities Fee Credit Agreement is terminated and of no further force or effect.

12. Amendments. This Agreement may be amended or modified only in writing signed by all parties.

13. Interpretation. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provision of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement. The captions and headings in this Agreement are for convenience only and shall not be referred to for purposes of construing the provisions hereof.

14. Independent Contractor. In performing any obligations under this Facilities Agreement, the Property Owner is an independent contractor and not the agent or employee of the City. The City shall be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Property Owner.

15. Counterparts. This Agreement may be executed in counterparts, all of which shall be deemed an original.

16. Governing Law. This Agreement shall, in all respects, be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

Date:

CITY OF BEAUMONT

By:


Mayor

ATTEST:

By:


City Clerk

ATTEST:

By:


City Clerk of the City of Beaumont

USEF CROSSROADS II, LLC,
a Delaware limited liability company

By: USAA Eagle Real Estate Multi-Sector
Operating Partnership, LP,
a Delaware limited partnership,
its sole member

By: USAA Eagle Real Estate REIT, LLC,
a Delaware limited liability company,
its general partner

By: USAA Eagle Real Estate Feeder 1,
LP, a Delaware limited partnership,
its manager

By: USAA Eagle Real Estate GP,
LLC, a Delaware limited
liability company,
its general partner

By: USAA Equity Advisors,
LLC, a Texas limited
Liability company,
its sole member

By: USAA Real Estate
Company, a Delaware
corporation,
its sole member

By: 
Name: DAVID BUCK
Title: Executive Managing Director

By: USAA Eagle Real Estate Feeder 3, LP,
a Delaware limited partnership, its general partner

By: USAA Eagle Real Estate GP, LLC,
a Delaware limited liability company,
its general partner

By: USAA Equity Advisors, LLC, a Texas
limited liability company, its sole member

By: USAA Real Estate Company,
a Delaware corporation, its sole member

By: 
Name: DAVID BUCK
Title: Executive Managing Director

EXHIBIT A

MAP OF BOUNDARIES OF THE PROPERTY

EXHIBIT A

EXHIBIT B

DESCRIPTION OF FACILITIES

Facility/Description	Estimated Cost
Fourth Street Extension Project (East of Potrero Blvd)	\$ 3,525,001
Traffic Signal Improvements:	\$ 90,085
A. 4 th Street and Veile Avenue	
B. 4 th Street and Distribution Way	
C. 4 th Street and B Street	

All costs and credits shall be subject to review and approval of the City and/or WRCOG in accordance with the maximum unit price assumptions for component portions of facilities as identified and set forth in Ordinance No. 1092 and WRCOG ordinances and rules.

Facility and Fee Credit shall not exceed the total fees due to the City at the time of issuance of certificate of occupancy and shall be based on actual construction cost as approved by the City.

EXHIBIT C

FORM OF FEE CREDITS REQUEST

The undersigned (the "Contracting Party"), hereby requests fee credits in the total amount of \$_____ for the Facilities (as defined in the Facilities and Fee Credit Agreement by and between the City of Beaumont and USEF Crossroads II, LLC, a Delaware limited liability company dated as of _____, 20____ (the "Agreement"), all as more fully described in Attachment 1 hereto. In connection with this Credit Request, the undersigned hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized officer of the Contracting Party, qualified to execute this Payment Request for payment on behalf of the Contracting Party and is knowledgeable as to the matters set forth herein.

2. All costs of the Facilities for which payment is requested hereby are Actual Costs (as described in the Agreement) and have not been inflated in any respect. The eligible costs for which payment is requested have not been the subject of any prior credit request submitted to the District.

3. Supporting documentation (such as third party invoices, lien releases, certified payroll and cancelled checks or other evidence of payment) is attached with respect to each cost for which payment is requested.

4. The Facilities for which credit is requested was constructed in accordance with the requirements of the Agreement.

5. The Contracting Party is in compliance with the terms and provisions of the Agreement and no portion of the amount being requested to be paid was previously paid.

6. The credit value for the Facility (a detailed calculation of which is shown in Attachment 1 hereto for each Facility) has been calculated in conformance with the terms of the Agreement.

7. Please authorize credit for facility fees, building permit fees and/or plan check and inspection fees to the following entity (ies), if other than the Contracting Party, in the amounts or percentages indicated:

[Insert names of payees and amounts or percentages]

I declare under penalty of perjury that the above representations and warranties are true and connect.

CONTRACTING PARTY:

DISTRICT:

USEF Crossroads II, LLC

Payment/Credit Request Approved for
Submission to Trustee and/or City Manager

By: _____
Authorized Representative of
Contracting Party

City Representative

Date: _____

Date: _____

ATTACHMENT 1
SUMMARY OF FACILITIES
TO BE CREDITED

Facility

Eligible Costs

Credit Requested

EXHIBIT D

ELIGIBLE FEE CREDITS

Any of the following Fees associated with the development of the Property and the construction of Facilities shall be eligible for Fee credit subject to the terms and provisions of this Agreement. However, this list of fees is not a complete list of all Fees.

1) City Development Impact Fees

Impact Fees	Eligible Facility
(a) TUMF Fees (b) Local Street and Bridge Impact Fees	4 th Street Extension
Traffic Signal Impact Fees	4 th Street and Veile Ave
Traffic Signal Impact Fees	4 th Street and Distribution Way
Traffic Signal Impact Fees	4 th Street and B Street

EXHIBIT E
REGULATORY PERMITS

- 1) All other regulatory permits related to the Facilities

EXHIBIT F

TUMF OBLIGATION

Adjusted TUMF Obligation (see details below)..... \$1,155,461.68

Construction Costs/Max TUMF Share (see details below)..... \$ 2,376,000.00

TUMF Facility Balance \$1,220,538.32

Adjusted TUMF Fee (see details below. Fee subject to change) \$1,155,461.68

Total Project SF (includes four stories)	Total Old Road and Bridge Fees	Old Road and Bridge Fees Paid per Funding Agreement	% Old Road and Bridge Fees Paid	Total SF of Project per TUMF Nexus Study	TUMF SF Deemed Paid as per Section 6 (subject to WRCOG Approval)	TUMF SF Remaining	TUMF Fee Per SF	TUMF Fees Remaining (subject to WRCOG Approval)
2,643,646	\$3,379,986.70	\$1,133,000	33.52%	981,966	329,163.51	652,803.21	\$1.77	\$1,155,461.68

USEF Crossroads II, LLC paid \$1,133,000 under the Funding Agreement which was credited to the City’s Old Road and Bridge Fee on August 7, 2017. These fees were paid prior to the City joining the TUMF Program. The \$1,133,000 represented roughly 33.52% of the total Old Road and Bridge Fees due. The current TUMF handbook worksheet A.2.8. Calculates the total TUMF square footage for this project to be 981,966 SF. The 33.52% of the 981,966 SF is 329,163.51. Therefore, the remaining SF of the building subject to the TUMF program is deemed by Property Owner and City to total 652,803.21. The Property Owner and City agree that the Adjusted TUMF amount to be paid is \$1,155,461.68 under current TUMF rates. City will submit the Adjusted TUMF amount to WRCOG for approval, but cannot guaranty WRCOG approval.

TUMF Cost Assumption/Max TUMF Share

Design Cost Breakdown:

Fourth Street Project Construction	\$1,155,461.68
SUB TOTAL:	\$1,155,461.68
Maximum TUMF share for this Project	\$1,155,461.68