

AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT

This **AGREEMENT TO GRANT DEVELOPMENT IMPACT FEE CREDIT** (“**Agreement**”) is made and entered into this ____ day of _____, 2020, by and among the **CITY OF CARSON**, a California municipal corporation (“**City**”), the **CARSON RECLAMATION AUTHORITY**, a California joint powers authority (“**Authority**”), and **FARING CAPITAL, LLC**, a Delaware limited liability company (“**Developer**”); each a “**Party**” and collectively, the “**Parties**”.

RECITALS

A. Developer and Authority, have entered into that certain Option Agreement and Joint Escrow Instructions, dated _____, 2020 (the “**Option Agreement**”), whereby Developer obtained (i) the option to acquire certain Property (defined below), and (ii) the opportunity to seek certain entitlements and approvals (“**Entitlements**”) for a project (“**Project**”) Developer has proposed on the Property. The subject property for the Project is the Surface Lot of Cells 3, 4, and 5 (“**Property**”) of that certain 157 acre site, formerly known as the Cal-Compact Landfill (“**157 Acre Site**” or “**Site**”), located in the City of Carson, California. The Option Agreement gives Developer two different options, Options A and B (the “**Options**”), based on whether the Required Approvals (as defined in the Option Agreement) are approved or not approved, including the right/obligation of Developer to reprocess the Project if it is not approved.

B. In connection with the Project and such option, under the Option Agreement, Developer agreed to, among other things, reimburse the Authority for the Carry Costs incurred by the Authority with respect to the Property during the Authority’s and Developer’s negotiation of the Option Agreement and related agreements, subject to a reimbursement obligation in favor of Developer in the event Developer validly terminates the Option Agreement prior to the Contingency Date (as defined in Section 2.5 of the Option Agreement). As more particularly set forth in this Agreement, Developer shall be entitled to reimbursement for the Carry Cost payments required to be made by Developer to Authority for the period commencing March 9, 2020 and extending through the date of this Agreement (as set forth above) (the “**Reimbursement Amount**”), which Reimbursement Amount is specifically defined and set forth in Exhibit A attached hereto.

C. Subject to the terms and conditions of this Agreement, City shall provide Developer with development impact fee credits in the amount of the Reimbursement Amount in exchange for the Carry Cost reimbursements that Developer has provided or will provide to the Authority.

D. The Carson Municipal Code (“**CMC**”) Article XI (Ordinance 19-1931) (“**DIF Ordinance**”) establishes Development Impact Fees (“**Impact Fees**”) that developers are required to pay for their fair share of the costs to construct the infrastructure that will be necessary to accommodate and mitigate the impacts and burdens on the public generally generated by new development and that are necessary to protect the safety, health and welfare of persons in the City.

F. City and Developer now desire to enter into this Agreement to provide for a credit to Developer in the amount of the Reimbursement Amount to be used and applied by Developer

towards the Impact Fees otherwise applicable to existing and future development projects within the City pursuant to the DIF Ordinance.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the Parties hereto agree as follows:

AGREEMENT

1. **Effective Date.** This Agreement shall be deemed effective upon full execution and delivery hereof by the City, the Authority and Developer. Prior to the date of execution and delivery of this Agreement, each of the Parties shall have obtained all necessary consents, authorizations and approvals to enter into this Agreement and be bound by the terms and conditions hereof, and to perform in accordance with the terms hereof. It is expressly understood and agreed that this Agreement and the obligations of the Parties hereunder are subject to and conditioned upon the occurrence of the Commencement Date (as defined below), and if the Commencement Date does not occur, this Agreement shall terminate in accordance with its terms as set forth in Section 8 below. It is understood and agreed that Developer is relying upon the agreements of City and Authority as set forth in this Agreement as a condition to paying the Carry Costs pursuant to the terms of the Option Agreement.

2. **DIF Credit Amount.** Upon the Commencement Date, Developer shall be entitled to a credit in the amount of the Reimbursement Amount together with interest thereon (commencing on the Commencement Date) at a rate of 6% per annum ("**DIF Credit(s)**"), subject to the terms and conditions of this Agreement. The DIF Credits are to be used and applied by Developer towards the actual Impact Fees that are to be received by the City in connection with any development projects within the City that are paid or subject to payment following the Commencement Date subject and pursuant to the DIF Ordinance. The applicable terms of the DIF Ordinance which shall apply shall be the most recent existing form of the DIF Ordinance as of the date of this Agreement, provided that in no event shall the amount of the DIF Credits to which Developer is entitled be less than the Reimbursement Amount together with interest thereon as stated above.

3. **Refund Pursuant to DIF Credit.** Upon City's receipt of Impact Fees from any entity under or pursuant to the DIF Ordinance following the Commencement Date, or any subsequent fee(s) directly replacing or modifying such Impact Fees from time to time, the City shall, within thirty (30) days of such receipt, refund Developer an amount equal to the sum received. The City's reimbursement to Developer according to this process shall continue until Developer's receipt of the full amount of the refund of the DIF Credits to which Developer is entitled as set forth herein.

4. **Fee Credit Ledger; Priority.** City shall establish, and maintain a database or ledger ("**Ledger**") that shows the total dollar value of the initial DIF Credits to which Developer is entitled under this Agreement, the date of receipt of any and all Impact Fees the City receives from any entity following the Commencement Date, and the portion of DIF Credit that has been refunded to Developer pursuant to this Agreement. A copy of this Ledger shall be provided to Developer upon Developer's request, and upon the date that each refund processed in accordance with Section 3. City covenants that it shall not, without the prior written consent, of Developer, which Developer may withhold, condition or provide in its sole and absolute discretion, sell,

issue or otherwise transfer any credits under the DIF Ordinance, or any subsequent fee(s) replacing or modifying such Impact Fees from time to time, to or for the benefit of any other developments within the City of Carson during the Agreement Term hereof, unless the City has or shall refund any such Impact Fees to the Developer (to the extent there remains outstanding DIF Credits in favor of Developer) as shown in the Ledger.

5. **Agreement Term.** Unless terminated pursuant to the terms of Section 7 hereof, the term of this Agreement (“**Agreement Term**”) shall commence on the Commencement Date and shall expire on the date which is the earlier of (i) the date which is ten (10) years following the Commencement Date, or (ii) the date on which Developer has received the full amount of the refund of its DIF Credits (i.e., the balance of the DIF Credits have been exhausted as shown in the Ledger). The “**Commencement Date**” shall be the date on which the Option Agreement has been terminated by Developer in accordance with Section 2.5 of the Option Agreement. In the event of any claims concerning the validity and enforceability of the DIF Credits, Developer shall defend any such claim and will bear the legal cost and attorneys’ fees of defending such claims; provided that Developer may elect not to defend such claim by giving written notice to the Authority and City, in which case, the DIF Credits shall be null and void and this Agreement shall terminate as of the date of such notice.

6. **Indemnification.**

(a) *Developer Responsibilities.* Developer agrees to indemnify and hold harmless Authority, City, their officers, agents, consultants, and employees (“**City Parties**”) from any and all claims, demands, costs or liability arising from or connected with the activities contemplated by this Agreement (including, but not limited to reasonable attorneys’ fees) or liability arising from the breach by Developer of its obligations or representations made under this Agreement or liability arising from the active negligent acts, fraud, errors or omissions or willful misconduct of Developer or Developer Parties under this Agreement.

(b) *City Responsibilities.* City agrees to indemnify and hold harmless Developer and its officers, directors, agents, consultants, employees, successors and/or assigns (“**Developer Parties**”) from any and all claims, demands, costs (including, but not limited to, reasonable attorneys’ fees) or liability arising from the breach by City or the City Parties of their obligations or representations made under this Agreement or liability arising from the active negligent acts, fraud, errors or omissions or willful misconduct of City or City Parties under this Agreement.

7. **Disputes; Remedies; Termination.**

(a) *Time is of the Essence.* Time is of the essence with respect to this Agreement.

(b) *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 Los Angeles, 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.

(c) *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.

(d) *Attorneys' Fees.* In the event of any litigation or other legal proceeding including, but not limited to, arbitration or mediation between the Parties arising from this Agreement, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses (including attorneys' fees) incurred in the proceeding.

(e) *Disputes.* A Party not in default under this Agreement (a “**Non-Defaulting Party**”) in its discretion may elect to declare a default under this Agreement by delivering a written notice of the alleged default (“**Notice of Default**”) in accordance with the procedures hereinafter set forth for any alleged failure or breach of any other Party to perform any material duty or obligation under the terms of this Agreement. Notwithstanding any failure or breach, a Party shall be deemed to be in Default under this Agreement (and therefore, a Defaulting Party) only if: (i) the Non-Defaulting Party has provided a Notice of Default to such Party setting forth the nature of the breach or failure and the actions, if any, required to cure such breach or failure, and (ii) the Party for which a breach is alleged shall have failed, if the breach or failure can be cured, to take such actions and cure such default (x) within twenty (20) calendar days after the date of its receipt of the written notice delivered by the Non-Defaulting Party for monetary defaults, or (y) for all other defaults, within thirty (30) calendar days after the date of its receipt of the Notice of Default delivered by the Non-Defaulting Party, provided, however, if any non-monetary default cannot be cured within such thirty (30) day period, then the Party against which a default is alleged shall not be deemed in breach of this Agreement if and as long as such Party does each of the following:

- (i) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
- (ii) Notifies the Non-Defaulting Party of its Party's proposed course of action to cure the default;
- (iii) Promptly commences to cure the default within the thirty (30) day period;
- (iv) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- (v) Diligently prosecutes such cure to completion.

8. **Termination.** This Agreement shall terminate automatically without any further action by the Parties in the event Developer fails to exercise its Contingency Termination right set forth in Section 2.5 of the Option Agreement, and / or if Developer fails to deliver the Contingency Termination Notice as and when required under Section 2.5 of the Option Agreement.

9. **Relationship Between the Parties.**

(a) *No Partnership.* The Parties agree that this Agreement does not operate to create the relationship of partnership, joint venture, or agency between City Parties and Developer. Nothing herein shall be deemed to make Developer or Developer Parties an agent of City Parties.

(b) *Cooperation.* 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.

(c) *Successors/Assigns.* Each and all of the covenants and conditions contained herein 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 contained herein, except as expressly provided in this Agreement.

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

10. **Miscellaneous.**

(a) *Notice.* Any notices, requests, demands, documents approvals or disapprovals given or sent under this Agreement from one Party to another (each a “**Notice**”, and collectively, the “**Notices**”) shall be given to the Party entitled thereto at its address set forth below or at such other address as such Party may provide to the other Parties in writing. Any such Notice may be given (i) by personal delivery which will be deemed received on the day of delivery; (ii) by national overnight delivery service which shall be deemed received the following day; (iii) by mailing the same by registered or certified US mail, return receipt requested which will be deemed delivered three (3) days after depositing same in the mail, addressed to the Party to whom the Notice is directed as set forth below; or (iv) electronic mail so long as a hard copy is concurrently sent to the applicable Party pursuant to subsections (i) through (iii) above, addressed as follows which shall be deemed delivered upon electronic confirmation of receipt by the addressee to the sending party:

To Authority: Carson Reclamation Authority
701 East Carson St.
Carson, CA 90745
Attention: Executive Director
Email: jraymond@carson.ca.us

With a Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
Attention: Sunny Soltani
Email: ssoltani@awattorneys.com

To City: City of Carson
701 East Carson St.
Carson, CA 90745
Attention: City Manager
Email: slanders@carson.ca.us

With a Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
Attention: Sunny Soltani
Email: ssoltani@awattorneys.com

To Developer: FARING CAPITAL, LLC
c/o Faring Capital
659 N. Robertson Blvd.
West Hollywood, CA 90069
Attention: Jason Illouljian
Email: jason@faring.com

With Copies to: Bryan Cave Leighton Paisner, LLP
1920 Main Street, Suite 1000,
Irvine, CA 92614-7276
Attention: Brett Souza
Email: bjsouza@bclplaw.com

(b) *Construction; References; Captions.* The Parties and/or their agents agree that each of the Parties have participated in the preparation of this Agreement, and that the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against either Party. Unless otherwise specified herein, any term referencing time, days, or period for performance shall be deemed calendar days and not business days, provided, however that any deadline that falls on a weekend or holiday shall be extended to the next City business day. The captions of the various paragraphs herein are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

(c) *Amendment; Modification.* No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all of the Parties.

(d) *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.

(e) *Counterparts.* This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one single instrument. The signature of any Party to this Agreement transmitted to any other Party by DocuSign or e-mail (PDF) shall be deemed an original signature of the transmitting Party.

(f) *Entire Agreement.* This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written statements or agreements between the City, Authority and Developer with respect to the subject matter of this Agreement.

(g) *Qualification; Authority.* Each Party warrants that it has the legal capacity to enter into this Agreement, and each has received valuable consideration in exchange for the execution and delivery of this Agreement. Each individual executing this Agreement on behalf of the Party represents, warrants and covenants that (i) the Party is duly organized and existing, (ii) such person is duly authorized to execute and deliver this Agreement on behalf of the Party in accordance with applicable laws, rules and regulations and authority granted under the organizational documents of the Party, (iii) the Party is bound under the terms of this Agreement to carry out the agreements and terms hereof, and (iv) entering into this Agreement does not violate any provision of any other agreement to which the Party is bound.

(h) *Incorporation of Recitals and Exhibits.* The Parties hereby affirm the Recitals set forth above and the Exhibit A attached are agreed to and incorporated herein as though fully set forth herein.

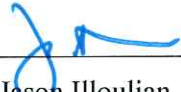
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Authority, City and Developer have executed this Agreement as of the date first above written.

DEVELOPER:

FARING CAPITAL, LLC, a Delaware limited liability company

By: Faring Capital, LLC, a Delaware limited liability company

By:  _____

Name: Jason Illoulouian

Title: CEO

AUTHORITY:

CARSON RECLAMATION AUTHORITY, a California joint powers authority

By: _____

Name:

Title:

CITY:

CITY OF CARSON, a California municipal corporation

By: _____

Name:

Title:

ATTEST:

Donesia Gause-Aldana
Authority Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Sunny Soltani, Authority Counsel

EXHIBIT A

Carry Cost Reimbursement Schedule

[Attached]