

**COMMUNITY FACILITIES DISTRICT NO. 2015-5
(TRIESTE)
OF THE CITY OF LAKE ELSINORE
FUNDING AGREEMENT**

THIS AGREEMENT is made and entered into by and between CITY OF LAKE ELSINORE (the "City"), acting for and on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 2015-5 (TRIESTE) OF CITY OF LAKE ELSINORE (the "Community Facilities District" or "CFD"), and FAR WEST INDUSTRIES, a California corporation (the "Developer"), each individually a "Party" and collectively the "Parties."

WHEREAS, the City has formed the CFD pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), authorized special taxes and issuance of bonded indebtedness for the finance certain public improvements to be owned, operated or maintained by the City and the Elsinore Valley Municipal Water District and Incidental Expenses as defined by the Act; and

WHEREAS, in order to proceed in a timely way with development of its property within the Community Facilities District which is attached as **Exhibit "A"** (the "Developer Property"), Developer desires to fund through the Community Facilities District (i) improvements included in the City's fee programs (the "City Improvements"), as more particularly set forth and described in the Description of Cost Estimates attached hereto as **Exhibit "B"** and (ii) if applicable, any improvements unrelated to the City Improvements described and governed by the terms contained in **Exhibit "E"** hereto (the "Miscellaneous Improvements") (collectively the "Improvements"); and

WHEREAS, the City is authorized by the Act to form the CFD and to issue bonds to fund the Improvements; and

WHEREAS, the City Council has adopted the City's policies and procedures concerning the use of special district financing programs to finance City facilities (the "Policy"); and

WHEREAS, the purpose of this Agreement is to constitute a formal understanding between Developer and the City (pursuant to the requirements of Government Code Section 53313.51 and other provisions of the Act and the Policy) concerning financial and other obligations and responsibilities related to the Improvements to be financed by the Community Facilities District to the extent funds are available, and to set forth the conditions upon which (1) the Community Facilities District will fund the Improvements and (2) the Community Facilities District will also fund any Miscellaneous Improvements, if applicable, described in **Exhibit "E."**

NOW, THEREFORE, it is mutually agreed between the respective parties as follows:

SECTION 1. FEASIBILITY STUDY

At Developer's request, the City undertook to analyze the appropriateness of forming the Community Facilities District to finance the Improvements. The City retained, at Developer's expense, the necessary consultants to analyze the proposed formation thereof, including an engineer, special tax consultant, bond counsel, appraiser and other consultants deemed necessary by the City. The Developer has advanced to the City a sum of money related to the costs of forming the CFD, part of which may be eligible for reimbursement from the CFD. The City will provide to Developer on request

a summary of how the advances have been spent and the unexpended balance remaining. The amounts advanced by Developer and, to the extent determined reasonable and appropriate by the City, expenses incurred by Developer for engineering consultant costs in connection with the formation of the Community Facilities District and the issuance of bonds, will be reimbursable to Developer, without interest, from the proceeds of bonds (the "Bonds") issued by the Community Facilities District. In the event that Bonds are not issued to provide a source of reimbursement to Developer, the City shall not have any liability to Developer to reimburse it for any of the amounts previously advanced by Developer and expended by the City.

Prior to the issuance of the Bonds, the City will request a final advance for any unpaid expenses incurred during preparatory technical, financial and legal work; and following payment of such expenses, the City shall promptly release the balance, if any, of the advance to Developer. Should the City's expenses exceed the remaining balance, the City will bill Developer for the difference, which Developer agrees to pay within 10 days following receipt of such billing, subject to the conditions of paragraph one of this section.

SECTION 2. SALE OF BONDS

2.1 City Policies. The City Council has adopted the Policy, setting forth the City's policies and procedures concerning the use of special district financing programs to finance the City Improvements. Pursuant to the City's policies, the total annual amount of the special taxes to be collected with respect to property within the CFD and all other taxes and assessments which will be collected with respect to such property must not exceed two percent (2%) of the lowest estimated sales price within each square footage category of proposed dwelling units within the Community Facilities District as determined during the formation process and at the time of Bond issuance. Also, the ratio of the value of all parcels of property for which the Bonds are being issued to the amount of outstanding community facilities district or assessment district bonds attributable to such parcels (the "Value-to-Lien Ratio") may not be less than four-to-one (4:1) unless the City Council determines that a Value-to-Lien Ratio of less than 4:1 does not present any unusual credit risk due to the escrow of a portion of the Bonds. The fair market value of the property within the Community Facilities District for purposes of determining such ratio will be determined based on the assessed value of the property or on the appraisal made by an appraiser selected by the City with a valuation date within three (3) months of the issuance of the Bonds. Subject to satisfaction of applicable City policies and the requirements of this Agreement, the City shall use its best efforts to issue and sell the Bonds in one or more series in an amount sufficient to fund the Improvements in accordance with the schedule for development of the Developer Property.

2.2 Major Landowner Initial and Continuing Disclosure. An owner of land which is responsible for twenty percent (20%) or more of the Maximum Special Taxes applicable to all of the land within the Community Facilities District (a "Major Landowner") will be required to provide all information regarding the development of its property, including the financing plan for such development, which is necessary to ensure that the official statement for such Bonds complies with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") and all other applicable federal and state securities laws. Additionally, Developer acknowledges that, if it is a Major Landowner at the time of issuance of the Bonds, it will be necessary that Developer enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to the development of the land owned by Developer within the Community Facilities District as necessary to assist the underwriter in complying with the continuing disclosure requirements of the Rule.

2.3 Bond Issuance Parameters. The terms and conditions upon which each series of the Bonds shall be issued and sold, the method of sale of the Bonds and the pricing of the Bonds shall be determined solely by the City in its reasonable discretion in conformance with the requirements of Government Code Section 53313.5, the Act, the Policy, and this Agreement. The Bonds shall be issued with a term not to exceed 40 years. The proceeds of the Bonds shall be used in the following priority to (1) fund a reserve fund for the payment of principal and interest with respect to the Bonds in an amount equal to the least of (i) ten percent (10%) of the total bond issue, (ii) maximum annual debt service on Bonds, or (iii) 125% of average annual debt service; (2) fund up to eighteen (18) months of capitalized interest; (3) pay for costs of issuance of the Bonds including, without limitation, underwriter's discount, bond counsel and disclosure counsel fees, appraisal and special tax consultant fees, printing, and fiscal agent fees; (4) pay for the costs of forming the Community Facilities District; (5) pay for the actual costs of the Improvements; and (6) reimburse Developer or its designee if applicable, as described in **Exhibit "E"** hereto. The Community Facilities District shall maintain records relating to the disbursements of proceeds of the sale of the Bonds. The Indenture or Resolution (hereinafter "Indenture") for the Bonds shall establish an acquisition and construction fund or improvement fund (herein, the "Improvement Fund") into which shall be deposited initially the proceeds of the Bonds net of the amount of proceeds required to fund items (1) through (4) in the second preceding sentence. The Indenture shall also establish separate accounts of the Improvement Fund designated the "City Improvements Account", and any Miscellaneous Improvement Accounts described in **Exhibit "E"** if applicable, into which shall be deposited such portions of the Improvement Fund as directed by the City and in writing at or subsequent to the closing of the sale of the Bonds consistent with the following priorities:

(a) An amount sufficient to fund the reasonable, current estimated cost of the City Improvements anticipated to be funded out of the Bonds being issued shall be deposited in the City Improvements Account;

(b) If applicable, an amount sufficient to fund the reasonable, current estimated cost of any Miscellaneous Improvements anticipated to be funded out of the Bonds being issued shall be deposited in the applicable Miscellaneous Account(s), if any, described in **Exhibit "E"** hereto.

The Indenture shall provide that amounts remaining in the Improvement Fund after funding all proposed Improvements or sooner, as specified by the City, shall be deposited in the special tax fund or bond service fund and be applied to pay debt service on the Bonds and/or to call Bonds in advance of maturity.

The Indenture shall also provide that amounts in the reserve fund for the Bonds in excess of the reserve requirement shall be deposited in the special tax fund or bond service fund and applied to pay debt service on the Bonds.

SECTION 3. ALLOCATION OF SPECIAL TAXES

Upon sale and delivery of the Bonds or sooner, as specified by the City, the City Council of the City, as the legislative body of the Community Facilities District, shall annually levy a special tax as provided for in the formation proceedings of the Community Facilities District. The entire amount of any special tax levied by the Community Facilities District to repay the Bonds and recover costs and expenses allowable pursuant to Government Code Section 53313.5, shall be allocated to the Community Facilities District.

SECTION 4. NOTICE OF SPECIAL TAX

Developer, or Developer's successors or assigns, shall provide written notice to all potential purchasers of lots advising of the special tax obligation applicable to the Developer Property in the form required by Section 53341.5 of the Government Code. A sample copy as prepared by Developer is attached as **Exhibit "C."**

SECTION 5. CITY IMPROVEMENTS

Amounts in the City Improvements Account shall be disbursed at the written direction of the City upon Developer's submittal of a written payment request at the time or times that fees related to the City Improvements are payable to the City. Upon receipt of Developer's request for disbursement, the City shall submit a written requisition for payment of the requested amount to the CFD Administrator ("Administrator"), who shall directly pay the amount to the City and Developer shall receive credit against the applicable fees for the City Improvements. Pending the disbursement of said monies, the amounts in the City Improvements Account shall be invested as directed in writing by the City and investment earnings shall either remain in such account or be transferred to the Improvement Fund to be used as provided in Section 2.3 above. The City shall expend any amounts disbursed to it from the City Improvements Account on capital facilities. If Developer is required to deposit security to assure payment of fees for the City Improvements prior to the issuance of the Bonds or due to insufficient funds being on deposit in the City Improvements Account, Developer shall be reimbursed the full amount of deposit at such time as, and to the extent funds are subsequently available in the City Improvements Account. The payment of a deposit described in the preceding sentence shall not be construed as a dedication or gift of the fees of the City or as a waiver of any right to reimbursement of such fees.

SECTION 6. MISCELLANEOUS IMPROVEMENTS.

Improvements unrelated to the City Improvements, if applicable, will be supplemented by the terms contained in an addendum which will appear as **Exhibit "E"** hereto. The amounts deposited in the applicable Miscellaneous Improvement Account(s), if any, will be disbursed for the acquisition of Miscellaneous Improvements in accordance with the provisions in the applicable Joint Community Facilities Agreement, if any. Any amounts in the applicable Miscellaneous Improvement Account(s) shall be disbursed at the written direction of the City upon Developer's submittal of an addendum which will appear as the applicable entity's Certificate and the Disbursement Request Form provided for in the Joint Community Facilities Agreement. Upon receipt of the Disbursement Request Form, the City shall submit a written requisition for payment of the requested amount to the Administrator, who shall directly pay the amount requested to the applicable entity or, if Developer has previously advanced funds to the applicable entity, to Developer or its designee, as directed in Disbursement Request Form.

SECTION 7. INDEPENDENT CONTRACTOR

In performing this Agreement, Developer is an independent contractor and not the agent of the City. The City shall not have any responsibility for payment to any contractor or supplier of Developer. It is not intended by the parties that this Agreement create a partnership or joint venture among them and this Agreement shall not otherwise be construed.

SECTION 8. INDEMNIFICATION

Developer shall assume the defense of, indemnify and hold harmless, the City, its officers, employees and agents, and the Community Facilities District, its officers, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subject or put, by reason of, or resulting from the Developer's performance of its obligations under this Agreement, the issuance of the Bonds and the construction of the Improvements. No provision of this Agreement shall in any way limit the extent of Developer's responsibility for payment of damages resulting from the operations of Developer and its contractors; provided, however that Developer shall not be required to assume the defense or indemnify and hold harmless the City, its officers, employees or agents, or the Community Facilities District, its officers, employees or agents, as to actions, damages, claims, losses or expenses resulting from negligence or willful misconduct of such person or entity.

SECTION 9. CONFLICT WITH OTHER AGREEMENTS

Except as specifically provided herein, nothing contained herein shall be construed as releasing Developer from any condition of development or requirement imposed by any other agreement with City. In the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by City.

SECTION 10. TERMINATION

The provisions of this Agreement related to the financing of the Improvements shall terminate and be of no further force or effect if the first series of Bonds are not sold within 36 months from the date of this Agreement unless extended by agreement of all the parties. If the City is unable to sell the first series of Bonds after diligent, commercially reasonable efforts to do so, this Agreement shall terminate and be of no further force and effect.

SECTION 11. NOTICES

Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid. Any notice to the Community Facilities District or the City shall be addressed to City of Lake Elsinore, 130 South Main Street, Lake Elsinore, CA 92530, Attention: Assistant City Manager. Any notice to Developer shall be made to the address provided on the execution page herein.

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party hereto.

SECTION 12. GENERAL PROVISIONS

(a) Amendment. This Agreement may be amended at any time but only in writing signed by each party hereto.

(b) Entire Agreement. This Agreement, and the agreements referenced herein, contains the entire understanding and agreement between the parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the parties with

respect to the subject matter of this Agreement. There are no oral or written representations, understanding, undertakings or agreements which are not contained or expressly referred to herein, and any such representations, understandings or agreements are superseded by this Agreement. This Agreement shall be binding upon, and enforceable by and against the Community Facilities District upon the establishment of the Community Facilities District.

(c) Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

(d) Severability. If any part 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.

(e) Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other parties hereto, or the failure by a party to exercise its rights upon the default of another party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other parties with the terms of this Agreement thereafter.

(f) No Third Party Beneficiaries. Except as provided explicitly in this Agreement, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City, the Community Facilities District, and Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

(h) Assignment. Developer may assign all or any of its rights pursuant to this Agreement to a purchaser of all or any portion of the Developer Property. Such a purchaser and assignee shall, as a condition to taking an assignment of such rights, enter into an assignment and assumption agreement with the City and Developer, in a form reasonably acceptable to Developer and the City, whereby such rights assigned are specified and such purchaser agrees, except as may be otherwise specifically provided therein, to assume the obligations of Developer pursuant to this Agreement and to be bound thereby.

(i) Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

(j) Construction of Agreement. This Agreement has been reviewed by legal counsel for both the City and Developer and shall be deemed for all purposes to have been jointly drafted by the City and Developer. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

(k) Attorneys' Fees. In the event of any action or proceeding, including an arbitration or a reference pursuant to Section 638, et seq., of the Code of Civil Procedure brought by any Party against any other under this Agreement, the prevailing Party shall be entitled to recover its actual attorneys' fees and all fees, costs and expenses incurred for prosecution, defense, consultation, or advice in such action or proceeding. In addition to the foregoing, the prevailing Party shall be entitled to its actual attorneys' fees and all fees, costs and expenses incurred in any post-judgment

proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

(l) Venue and Forum. Any action at law or in equity arising under this Agreement brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, and the Parties waive all provisions of law providing for the filing, removal or change of venue to any other Court.

(m) Entire Agreement. Except as provided in an addendum, which if applicable, will appear as **Exhibit “E”** hereto, this Agreement sets forth and contains the entire understanding and agreement of the parties. There are no oral or written representations, understandings, undertaking or agreements, which are not contained or expressly referred to herein, and any such representations, understandings or agreements are superceded by this Agreement. No evidence of any such representations, understandings or agreements shall be admissible in any proceeding of any kind or nature relating to the terms or conditions of this Agreement, its interpretation or breach.

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

Dated: July __, 2017

CITY OF LAKE ELSINORE, a political subdivision
of the State of California

By: _____
Assistant City Manager

ATTEST:

By: _____
Susan M. Domen, CMC, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY OF THE CITY OF LAKE ELSINORE

By: _____
Barbara Z. Leibold, City Attorney

FAR WEST INDUSTRIES, a California corporation

By: _____
Scott Lissoy, President

Address:

Far West Industries
2922 Daimler Street
Santa Ana, CA 92705

LIST OF EXHIBITS

EXHIBIT A - DESCRIPTION OF DEVELOPER PROPERTY

EXHIBIT B - DESCRIPTION OF COST ESTIMATES

EXHIBIT C - NOTICE OF SPECIAL TAX (as prepared by Developer)

EXHIBIT D - DISBURSEMENT REQUEST FORM

EXHIBIT E - ADDENDUM

EXHIBIT A
DESCRIPTION OF DEVELOPER PROPERTY



EXHIBIT B
DESCRIPTION OF COST ESTIMATES

The Improvements consist of the City Improvements, as described below. Any other types of Improvements will be described in an addendum to this Agreement appearing as **Exhibit “E.”**

I. CITY IMPROVEMENTS.

City facilities included in the City’s development fee programs used to finance expansion projects, exclusive of in-tract facilities constructed by a property owner, but including and not limited to the following: drainage, library, park, roadway and other public facilities of the City, including all costs of site acquisition, planning, design, engineering, legal services, materials testing, coordination, surveying, construction staking, construction inspection and any and all appurtenant facilities and appurtenant work relating to the foregoing.

Estimated Cost of the City Improvements	
<i>Description</i>	<i>Estimated Cost</i>
City Hall/Public Works Facilities Fee	\$ 60,675
Community Center Facilities Fee	40,875
Marina Facilities Fee	58,425
Animal Shelter Facilities Fee	26,100
Library Facilities Fee	11,250
Traffic Impact Fee	102,675
Development Agreement Fee	240,000
Total Fees	<u>\$ 540,000</u>

EXHIBIT C
NOTICE OF SPECIAL TAX

**NOTICE OF SPECIAL TAX
CITY OF LAKE ELSINORE
COMMUNITY FACILITIES DISTRICT 2015-5 (TRIESTE)
COUNTY OF RIVERSIDE, CALIFORNIA**

EXHIBIT D
CFD NO. 2015-5 (TRIESTE)
OF THE CITY OF LAKE ELSINORE
DISBURSEMENT REQUEST FORM

1. Community Facilities District No. 2015-5 (Trieste) of City of Lake Elsinore (the “CFD”) is hereby requested to pay from the _____ Account, or any applicable account or sub-account thereof, established by the CFD in connection with its [20__] Special Tax Bonds (the “Bonds”) to City of Lake Elsinore (the “City”) as payee, the sum set forth below :

\$_____ (the Requested Amount”)

2. The Requested Amount represents the payment of City Fees for ____ lot(s) within the boundaries of the CFD (the “Property”).

(Tract No. _____, Lot Nos. _____).

3. The Requested Amount is due and payable, has not formed the basis of any prior request or disbursement.

4. The Requested Amount shall be payable to _____ (the “Developer”), pursuant to the wiring instructions attached hereto.

5. The Requested Amount is authorized and payable pursuant to the terms of the certain Funding Agreement (the “Agreement”) between the City, acting for and on behalf of itself and the CFD and Developer.

6. Capitalized undefined terms used herein shall have the meaning ascribed to them in the Agreement.

Dated:_____

DEVELOPER:

FAR WEST INDUSTRIES, a California corporation

By:_____

Name:_____

Title:_____

Dated:_____

CITY OF LAKE ELSINORE

By:_____

Its:_____

[ATTACH WIRING INSTRUCTIONS]

EXHIBIT E
ADDENDUM

DESCRIPTION AND COST ESTIMATES OF THE MISCELLANEOUS IMPROVEMENTS

I. ELSINORE VALLEY MUNICIPAL WATER DISTRICT IMPROVEMENTS.

Water and sewer facilities including the acquisition of capacity in the sewer system and/or water system of the Elsinore Valley Municipal Water District (the “Water District”) which are included in the Water District’s water and sewer capacity and connection fee programs, exclusive of in-tract facilities constructed by a property owner, including all costs of site acquisition, planning, design, engineering, legal services, materials testing, coordination, surveying, construction staking, construction inspection and any and all appurtenant facilities and appurtenant work relating to the foregoing.

Estimated Cost of the Water District Improvements	
<i>Description</i>	<i>Estimated Cost</i>
Water Capacity Charge (3/4” Meter)	\$ 674,775
Water Capacity Charge (1.5” Irrigation Meter)	31,699
Sewer Capacity Charge	<u>646,575</u>
Total Fees	<u>\$ 1,353,049</u>