

## DEVELOPMENT IMPACT FEE WAIVER AGREEMENT

This Development Impact Fee Waiver Agreement ("Agreement") is entered into between the City of Fontana ("City"), a California municipal corporation, and the Water of Life Community Church, a California religious nonprofit corporation ("Developer"). City and Developer are sometimes individually referred to herein as "Party" and together as "Parties." This Agreement is effective on the date ("Effective Date") it is fully executed by the Parties.

### RECITALS

**WHEREAS**, Developer is the owner of that certain real property located at 16029 Arrow Blvd., Fontana, CA 92335, in San Bernardino County, California ("Property"). The Property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference, and consists of 3.75± gross acres; and

**WHEREAS**, Developer has developed a multi-use structure consisting of approximately 15,362 sf of office space, 3,625 sf of assembly space, and 8,373 sf of warehouse space on the Property for an approximate total of 27,360 sf in size ("Project"). The Project will include a food pantry storage with drive-in cooler and freezer, equipment mezzanine, loading dock with enclosed refuse bin, and vehicle storage area; and

**WHEREAS**, Developer has applied to the City and received approval of those certain permits and entitlements necessary to allow the construction of the Project; and

**WHEREAS**, in connection with the granting of such permits and entitlements, the City has imposed certain development impact fees and charges (hereinafter referred to individually as an "Impact Fee" and collectively as "Impact Fees") as allowed by the City's Municipal Code and adopted resolutions; and

**WHEREAS**, Developer has requested that the City waive the collection of certain Impact Fees imposed against the Project as a result of demolition of Developer's current property of similar size located within the City; and

**WHEREAS**, the demolition of Developer's existing property of similar size located within the City is expected to result in no net increase in demand on the City's existing infrastructure and therefore it is appropriate to waive the Impact Fees due to the net even effect on the Developers Project within the City; and

**WHEREAS**, the City has determined that the Project will benefit and enhance the economic strength of the community and generally contribute to the well-being of the City and its residents. Accordingly, the City has agreed, subject to the terms, conditions and limitations of this Agreement, to waive payment of the following Impact Fees payable with respect to the Project as more particularly set forth in this Agreement:

		<u>Amount</u>
A.	Police Facilities Fee	2,054.25
B.	Public Facilities Fee	1,944.69
C.	Traffic Signals Fee	1,205.16
D.	Circulation Fee	222,406.80
E.	Fire Facilities	3,232.02
F.	Incl. Housing Fee	35,880.90
G.	Landscape Median	1,218.86
H.	Local Arterials	3,861.99
I.	Active Transportation	6,929.67
J.	Library	424.08
		\$ 279,158.42

The aggregate sum of the foregoing Impact Fees in the amount of Two Hundred Seventy-Nine Thousand, One Hundred Fifty Eight Dollars and Forty Two Cents (\$279,158.42) shall be hereinafter collectively referred to as the "Waived Fees."

## **AGREEMENT**

**NOW THEREFORE, IN CONSIDERATION** of the above Recitals, incorporated herein by this reference, the mutual agreements and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1. Waived Fees.** The City hereby agrees, subject to the terms, conditions and limitations of this Agreement, to waive payment of the Waived Fees.

Notwithstanding the above provision, all Impact Fees waived shall become due and payable upon the occurrence of an Event of Default under this Agreement.

**Section 2. Conditions of Waiver.** The City shall waive the payment of the Impact Fees upon satisfaction of the following conditions:

- (a) the Developer's execution and delivery to the City of this Agreement; and
- (b) the payment of all other fees and charges due to the City for the Project not otherwise included in the Waived Fees.

**Section 3. Rights Not Granted Under Agreement.** Developer acknowledges City is under no obligation to grant a waiver of the Impact Fees due and payable upon the Project. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by City concerning the construction of the Project, or any other project, development or other construction by Developer within the City. This Agreement does not, and shall not be construed to, exempt Developer from paying any fees for

any permits, licenses or other approvals which may be required by the City, and (other than the Waived Fees) at the time required by the City, concerning the construction of the Project, or any other project, development or other construction by Developer within the City. This Agreement does not, and shall not be construed to, exempt Developer in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance or operation of the Project, or any other project, development or other construction by Developer within the City. This Agreement does not, and shall not be construed to, exempt Developer or the Property from the application and/or exercise of City power of eminent domain, or its police powers including, but not limited to, the regulation of land uses, and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

#### **Section 4. Default.**

a. Events of Default. Each of the following events shall constitute an "Event of Default":

- (1) Developer fails to pay when due any other fee, charge, tax, or assessment or other sum due for the Project not otherwise included with the Waived Fees under this Agreement;
- (2) Developer defaults in the performance of any other term, covenant, or agreement contained in this Agreement.

b. Rights Upon Event of Default. In addition to all other available legal or equitable remedies, upon an Event of Default, the City shall have the right to do any one or more of the following:

- (1) Withhold the issuance of a Final Certificate of Occupancy ("COO") for the Project, including revocation of previously issued COOs for other structures related to the Project; or
- (2) Reinstate the Waived Fees due and payable as of the date of the Event of Default.

**Section 5. Cumulative Remedies.** The rights or remedies of City, as provided in this Agreement, or pursuant to any applicable laws, rules or regulations, may be pursued singly, successively, together or otherwise against the Developer, at the sole discretion of City. The City's failure to exercise any such right or remedy shall in no event be construed as a waiver or release of such rights or remedies, or of the right to exercise them at any later time.

**Section 6. Indemnification and Prevailing Wage.** Developer agrees to indemnify, defend and hold harmless City, its elected and appointed officials, officers, employees, contractors and agents from and against all claims, demands, causes of action, costs, damages, liabilities and obligations of any kind or nature arising out of the Waived Fees, this Agreement, including, without limitation, all costs of collection, including actual attorneys' and expert witness fees.

In addition to the above, Developer specifically acknowledges and agrees to comply with all requirements to pay prevailing wages applicable to public works projects pursuant to California Labor Code Section 1720 *et seq.* should the Waived Fees trigger such requirement to pay prevailing wages. Developer agrees to indemnify, defend and hold harmless City, its elected and appointed officials, officers, employees, contractors and agents from and against all claims, demands, causes of action, costs, damages, liabilities and obligations of any kind or nature arising out of the failure to pay prevailing wages pursuant to California Labor Code, section 1720 *et seq.* if such requirements are triggered as a result of this Agreement and the Waived Fees.

**Section 7. No Set-Off Rights.** Developer understands and agrees that it shall not have any rights whatsoever to set-off against amounts due hereunder or otherwise due City for any amount or obligation due to Developer or claimed to be due Developer from City.

**Section 8. Successors and Assigns.** Developer may not assign this Agreement, in whole or in part, without the prior written consent of City, and any attempt to make such assignment shall be null and void. This Agreement shall be binding on any and all successors and permitted assigns of the Parties.

**Section 9. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California, without regard to the conflict of laws principles. The Superior Court of the State of California in the County of San Bernardino, California, shall have exclusive jurisdiction of any litigation between City and Developer arising out of this Agreement. The Developer hereby expressly waives the provisions of any federal or state law providing for a change of venue to any other state court or to federal district court, due to any reason whatsoever, including, without implied limitation, the fact that the City (a public agency) is a Party to this Agreement, due to any diversity of citizenship between the City and the Developer, or due to the fact that a federal question may be involved. Without limiting the generality of the foregoing, the Developer expressly waives, to the maximum legal extent, the benefit of California Code of Civil Procedure Section 394 and all other state and federal statutes and judicial decisions of similar effect.

**Section 10. Notices.** All notices required to be delivered under this Agreement or applicable law shall be delivered by personal delivery, express mail or by United States mail, certified, postage prepaid. Notices personally delivered or delivered by express mail shall be deemed received upon receipt. Notices delivered by certified mail shall be deemed received the earlier of three (3) days following deposit of such notice with the United States Postal Service or actual receipt. Notices shall be sent as follows:

To City:      City of Fontana  
                  8353 Sierra Ave  
                  Fontana, CA 92335  
                  Attn: Phillip Burum, Deputy City Manager

To Developer: Water of Life Community Church  
14418 Miller Ave, Ste K  
Fontana, CA 92336  
Attn: Mark Nuaimi

**Section 11. Attorneys' Fees and Costs.** Should either party bring any action or proceeding against the other that in any way relates to or arises due to the existence of this Agreement, then the prevailing party in that action or proceeding shall be entitled to recover from the other party, in addition to all other relief to which the prevailing party may be entitled, the litigation costs and attorneys' fees, in an amount to be determined by the court. The "prevailing party" shall be as determined by the court in accordance with the provisions of California Code of Civil Procedure Section 1032. Recoverable litigation costs and attorneys' fees include those incurred by the prevailing party in the enforcement of any judgment or other judicial order, and during the defense of any appeal taken from such underlying judgment or other judicial order.

**Section 12. Entire Agreement.** This Agreement constitutes the entire agreement of City and Developer and supersedes all previous agreements, oral or written, on the subject matter of this Agreement.

**Section 13. Modification.** This Agreement shall be amended or modified only by an Agreement in writing signed by each of the Parties.

**Section 14. Headings.** Section headings contained in this Agreement are for convenience only, and shall not impact the construction or interpretation of any provision.

**Section 15. Further Acts.** The Parties agree to execute such additional documents and to take such further actions as are reasonably necessary to accomplish the objectives and intent of this Agreement.

**Section 16. Severability.** If any provision or clause of this Agreement or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect any other provision of this Agreement, and the Agreement shall be construed as if such provisions or clauses did not exist.

**Section 17. Good Faith Negotiations.** The City and the Developer acknowledged that this Agreement is the product of mutual, good faith arms-length negotiations in that the City and the Developer each have been, or have had the opportunity to have been, represented by legal counsel of its own choosing in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to either the interpretation or the enforcement of this Agreement. In any action or proceeding brought to interpret or enforce this

Agreement, the trier of fact may refer to such extrinsic evidence which is not in direct conflict with any express term or provision hereof to ascertain and give effect to the intent of the Parties hereto.

**Section 18. Time is of the Essence.** Time is of the essence in this Agreement.

**Section 19. No Third Party Beneficiary.** This Agreement and the performance of the City's and the Developer's obligations hereunder are for the sole and exclusive benefit of the City and the Developer. No person or entity who or which is not a signatory to this Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either the City or the Developer hereunder as a result of the City's or the Developer's performance or nonperformance of their respective obligations under this Agreement.

[Signatures on following page]

**CITY OF FONTANA,**  
a California municipal corporation

By: \_\_\_\_\_  
Matthew Ballantyne, City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Germaine Key, City Clerk  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ruben Duran, City Attorney  
Date: \_\_\_\_\_

**WATER OF LIFE COMMUNITY  
CHURCH,**  
a California nonprofit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A"**

Legal Description of Property Located in Fontana, California.

Assessor's Parcel Number: 0232-201-12