

**COST PARTICIPATION AGREEMENT BETWEEN WINGSWEEP  
CORPORATION AND WOODSIDE 05S, LP AND CITY OF  
TEMECULA**

This “Cost Participation Agreement between Wingsweep Corporation and Woodside 05S and the City of Temecula” (“Agreement”) is entered into and effective as of \_\_\_\_\_, 2023, between the City of Temecula, a municipal corporation (“City”) and Woodside 05S, LP, a California Limited Partnership and Wingsweep Corporation, a California corporation (jointly, the “Phase II Owners”). City and the Phase II Owners are referred to within this Agreement jointly as the “Parties” and individually as a “Party.”

**RECITALS**

This Agreement is made with respect to the following:

a. The Phase II Owners are the owners of part of the area generally known as Phase II of the Roripaugh Ranch Specific Plan (the “Property”).

b. The Property is a portion of land which is the subject of a statutory development agreement entered into between Ashby USA, LLC (“Ashby”) and the City dated December 17, 2002, and recorded on January 9, 2003, in the Official Records of the County of Riverside as Document No. 2003-018567 (the “Development Agreement”).

c. The Phase II Owners are the successors-in-interest to Ashby under the Development Agreement with respect to the completion of Phase II of the Roripaugh Ranch Specific Plan (the “Project”).

d. In connection with the Project, City previously has authorized the construction of (i) public improvements related to Nicolas Road and Calle Girasol in the City (the “Road Improvements”), (ii) a “Community Sports Park” bordered on three sides by Butterfield Stage Road, North Loop Road, and Long Valley Wash (the “Sports Park”), and (iii) improvements to Butterfield Stage Road including the Butterfield Stage Road Phase III improvements (the “Butterfield Stage Road Phase III Improvements”), and (iv) the Long Valley Wash trail system including its easterly connection to the “Wine Country” future trail system (the “East Trail System Connection”). Together, the Road Improvements, the Sports Park, the Butterfield Stage Road Phase III Improvements, and the East Trail System Connection will be referred to within this Agreement as the “Improvements.” The Improvements are part of the Project.

e. On March 9, 2022, City and the Phase II Owners entered into an Eighth Operating Memorandum to the Development Agreement (the “Memorandum”). Pursuant to the Memorandum, the Phase II Owners have agreed to participate in the planning, permitting, and/or construction of certain improvements which are part of the

Project and the City has agreed to fund those improvements (the “Additional Improvements”).

f. This Agreement will set forth specific terms of the Parties’ respective participation in the Improvements and the Additional Improvements, which together consist of the following:

- The additional improvements to Nicolas Road adjacent to the Seraphina project (the “Seraphina Frontage Improvements”) which are described on Exhibit A.

- The upsizing of an Eastern Municipal Water District (“EMWD”) sewer main (the “Sewer Improvements”) which is described on Exhibit B.

- The installation of additional streetlights and associated electrical services within the Nicolas Road and Calle Girasol project (the “Streetlight Improvements”). The Streetlight Improvements are described on Exhibit C.

- The installation of certain additional improvements to the Sports Park (the “Sports Park Improvements”), which are described on Exhibit D.

- The landscape repairs and additional landscaping for erosion control purposes within the Butterfield Stage Road Phase III Improvements (the “Landscape Improvements”), which are described on Exhibit E.

- The additional improvements to the East Trail System Connection (the “Trail Improvements”), which are described on Exhibit F.

g. The Parties desire to enter into this Agreement to provide for (i) the design and construction by the Phase II Owners of the Improvements and Additional Improvements, and the terms of the funding of portions of the Improvements and Additional Improvements by the City and the Phase II Owners. This Agreement is intended to serve as the separate agreement referenced in Section M of the Memorandum.

## **AGREEMENT**

For the consideration set forth within this Agreement, the Parties agree as follows:

### **1. The Improvements, Additional Improvements, and Application of Funding Sources.**

a. Seraphina Frontage Improvements. The City shall be responsible for the full cost of the design and construction of the Seraphina Frontage Improvements, including the bicycle path and the roadwork on Nicolas Road necessary to construct the bicycle path. The City shall apply funds from the City Capital Improvement Project

Account (the “City Capital Improvement Project Funds”) and the City Trails Master Plan Implementation Account (the City Trails Master Plan Implementation Funds”) to the cost, pursuant to Section 2, Reimbursement of Costs. In addition, the Phase II Owners shall apply any remainder savings pursuant to Section 5, Delta Revision Offset, which are not applied to the Landscape Improvements and the Trail Improvements.

b. Sewer Improvements. The City and EMWD have entered into a cost participation agreement by which EMWD will reimburse City the actual costs of the Sewer Improvements. The City shall reimburse the Phase II Owners the full amount of any EMWD reimbursement funds received by the City, pursuant to Section 3, Transfer of EMWD Reimbursement (the “EMWD Reimbursement Funds”).

c. Streetlight Improvements. To partially offset the cost of the design and construction of the Streetlight Improvements, the City has calculated and provided reductions in the plan check and inspection fees paid by the Phase II Owners to the City (the “Plan Check and Inspection Fee Reduction”). The Phase II Owners shall apply savings from the Plan Check and Inspection Fee Reduction to the cost of the Streetlight Improvements, pursuant to Section 4, Adjustment of City Plan Check and Inspection Charges.

d. Sports Park Improvements. To partially offset the cost of the design and construction of the Sports Park Improvements, the Phase II Owners shall apply savings from the Plan Check and Inspection Fee Reduction to the cost of the Sports Park Improvements, pursuant to Section 4, Adjustment of City Plan Check and Inspection Charges.

e. Landscape Improvements. To offset the cost of the design and construction of the Landscape Improvements, the City has approved revisions to the plans and specifications for the Road Improvements (the “Delta Revision Offset”). The Phase II Owners shall apply savings from the Delta Revision Offset to the cost of the Landscape Improvements, pursuant to Section 5, Delta Revision Offset.

f. Trail Improvements. To offset the cost of the design and construction of the Trail Improvements, the Phase II Owners shall apply savings from the Delta Revision Offset, pursuant to Section 5, Delta Revision Offset.

**2. Reimbursement of Costs.** Phase II Owners shall design, construct, and install the Seraphina Frontage Improvements, consistent with Exhibit A, as follows:

a. The Phase II Owners shall maintain all books, records, reports, invoices, and correspondence to or from consultants, engineers, contractors, subcontractors, and other persons (the “Documentation”) relating to the costs incurred for the design and construction of the Seraphina Frontage Improvements which are to be borne by the City pursuant to this Agreement, the Memorandum, the Third Amendment, and any other agreement entered into between the City and the Phase II Owners, whether before or

after the signing of this Agreement, which obligates the City to pay, reimburse, or otherwise direct funding to the Phase II Owners for work performed and paid for by the Phase II Owners (collectively, the “Reimbursable Costs”). Phase II Owners shall permit representatives of City to review and copy the Documentation on two (2) business days’ written notice to Phase II Owners. Phase II Owners shall deliver all Documentation to City within three (3) months from the date of City’s acceptance of the Improvements to which the Documentation relates. This requirement is separate and distinct from any documentation required for reimbursement to the Phase II Owners either (i) from the available and future bond proceeds from CFD 16-01 and CFD 03-02 or (ii) for the EMWD Reimbursement addressed in Section 3, Transfer of EMWD Reimbursement.

b. The Phase II Owners shall pay when due all invoices for Reimbursable Costs actually incurred (“Paid Invoices”). On or about the first calendar day of each month, the Phase II Owners will provide the City with copies of each Paid Invoice paid during the previous calendar month with the information required by the “reimbursement package” described in Section 2d below.

c. Within thirty (30) calendar days after the execution of this Agreement, the City shall provide to the Phase II Owners the form and content of the reimbursement package, as reasonably required by the Director of Public Works, to be provided by the Phase II Owners with each monthly request for reimbursement of Reimbursable Costs paid by the Phase II Owners.

d. Within thirty (30) calendar days after the receipt of each monthly reimbursement package, the City shall fully reimburse the Phase II Owners the amount of all Paid Invoices included within that month’s reimbursement package. The Phase II Owners may include the cost of design of Improvements undertaken before the signing of this Agreement in the first monthly request for reimbursement.

### **3. Transfer of EMWD Reimbursement.**

With respect to the Sewer Improvements:

a. The City and EMWD have entered into a cost participation agreement (the “Participation Agreement”) by which EMWD will reimburse City the actual costs of the Sewer Improvements (the “EMWD Reimbursement”).

b. Within thirty (30) calendar days after the execution of this Agreement, the City shall provide to the Phase II Owners the information required by the City to timely request the EMWD Reimbursement pursuant to the Participation Agreement (the “Sewer Cost Information”).

c. The Phase II Owners will complete the Sewer Improvements consistent with Exhibit B.

d. The Phase II Owners will maintain and make available to the City documentation in the same form and on the same terms as required for the Documentation in Paragraph 2b above.

e. Upon completion of the Sewer Improvements, the Phase II Owners shall provide the City the Sewer Cost Information. Once the Sewer Cost Information is provided to the City by the Phase II Owners, the City shall diligently pursue the EMWD Reimbursement by requesting the EMWD Reimbursement from EMWD on the earliest date reasonably possible under the Participation Agreement.

f. The City shall reimburse the Phase II Owners the full amount of any EMWD Reimbursement funds received by the City within fifteen (15) business days after those funds are received by the City.

#### **4. Adjustment of City Plan Check and Inspection Charges.**

a. To partially offset the cost of the design and construction of the Streetlight Improvements and Sports Park Improvements, the City shall modify its Public Works plan check and inspection fees for the Project, as follows:

1) The City will not charge plan check and inspection fees for the Rancho California Water District facilities, EMWD facilities, and arch culverts, none of which require City Public Works inspection.

2) The City Building Department, rather than the Public Works Department, will plan check and inspect the structural components of the arch culverts and will charge established Building Department plan check and inspection fees.

b. The Phase II Owners will pay established plan check and inspection fees to said Districts.

c. The amount of the reduction in plan check and inspection fees has been calculated as \$321,230. City and Phase II Owners hereby agree that this amount is the full and sufficient adjustment of the Public Works plan check and inspection fees due to the Phase II Owners under this Agreement.

#### **5. Delta Revision Offset**

a. To offset the cost of the design and construction of the Landscape Improvements and the Trail Improvements, the City has approved 1) an elimination of certain components of a rock-lined drainage swale, to be documented by a delta revision to the Road Plans, and 2) a substitution of "CMB" road base material for the "CAB" road base material specified in the construction documents, to be documented by an "as-built" notation on the archived construction documents (together, the "Delta Revision Offset"), as described on Exhibit G.

b. City and Phase II Owners hereby agree that the actual amount of savings resulting from the Delta Revision Offset cannot be finalized until completion of

the Road Improvements work, that the actual amount of savings shall be considered to be sufficient to offset the cost of the design and construction of the Landscape Improvements and the Trail Improvements, and that the remainder of the actual amount of savings shall accrue to the Phase II Owners, to be applied pursuant to Section 1.a, Seraphina Frontage Improvements.

**6. Terms of Construction Contracts.** Provisions for Prevailing Wage, Registration with the Department of Industrial Relations, Indemnification, Liability Insurance and Workman's Compensation for the Seraphina Frontage Improvements, the Sewer Improvements, the Streetlight Improvements, the Sports Park Improvements, the Landscape Improvements, and the Trail Improvements shall be as required in the construction contracts approved by the City.

**7. Reconciliation of Costs.** Upon the completion of the Road Improvements, the Parties agree to conduct a reconciliation, comparing all estimated costs and estimated savings under this Agreement with the actual costs incurred and savings realized under this Agreement. The Parties agree that the City shall be responsible for any actual funding shortfall for the Seraphina Frontage Improvements, and may apply City Capital Improvement Project Funds as necessary to cover any such actual shortfall.

**8. Default.**

a. If one Party claims that the other Party has defaulted on its obligations under this Agreement, that Party shall notify the other Party of the alleged default. The Party receiving the notice of default shall cure the default within fifteen (15) days of the date of the Notice of Default, unless the default cannot reasonably be cured within that time, in which case the Party in default shall commence the cure and shall diligently prosecute the cure to completion.

b. Except as provided in Paragraph 7c below, each Party shall have all remedies provided by law for any uncured default or breach of this Agreement.

c. The Parties agree that damages may not be an adequate remedy if either Party fails to carry out its obligations under this Agreement. The sole remedy of either Party in the event of a breach of this Agreement by the other Party shall be specific performance (including the performance of any obligation to pay funds required by this Agreement), declaratory relief, writ of mandate, or similar remedies to compel the other Party's compliance with the terms of this Agreement.

**9. Notices.** All notices and demands will be given in writing by certified or registered mail, postage prepaid, and return receipt requested, or by overnight carrier. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one business day following deposit with an overnight carrier service. The Parties will address such notices as provided below or as may be amended by written notice:

To City: City of Temecula  
Attention: City Manager  
41000 Main Street  
Temecula, CA 92590

Copy to: Peter M. Thorson  
Richards, Watson & Gershon  
350 South Grand Ave, 37th Floor  
Los Angeles, CA 90071

To Woodside 05S, LP: Woodside 05S, LP  
Attn: Trent Heiner  
1250 Corona Pointe #500  
Corona, CA 92879

With a copy to: Cynthia Paulsen  
Cox, Castle & Nicholson LLP  
3121 Michelson Drive, Second Floor  
Irvine, CA 92612

To Wingsweep: Wingsweep Corporation  
Attn: Joseph T. Gauthier, Esq.  
c/o UNICOM PLAZA, Suite 310  
15535 San Fernando Mission Boulevard  
Mission Hills, CA 91345

**10. General.**

a. Choice of Law. This Agreement is made under and in all respects will be interpreted, enforced, and governed by the laws of the State of California.

b. Jurisdiction. Any action by either Party shall be brought in the appropriate court of competent jurisdiction within the County of Riverside, State of California, notwithstanding any other provision of law which may provide that such action may be brought in some other location.

c. Amendment. This Agreement cannot be altered, amended or modified in any way without the express written consent of each of the Parties or their authorized successor-in-interest. The Parties have, however, mutually cooperated through agreements such as the Memorandum and this Agreement to facilitate the development of certain components of the Project. Therefore, future agreements between the Parties which, by their specific terms, would modify or eliminate the obligations of the Parties under this Agreement shall control over the terms of this Agreement even if this Agreement is not formally modified to be consistent with those specific terms of a future agreement.

d. Assignment. This Agreement shall not be assignable by either Party in whole or in part without the prior written consent of the other Party, which written

consent shall not be unreasonably withheld. The assigning Party shall provide to the other Party thirty (30) days' advanced notice of any such proposed assignment.

e. Binding on Successors. This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, assigns, executors, and administrators.

f. Entire Agreement. This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties which are the subject of this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, relating to those obligations which are not set forth within this Agreement shall not be binding upon the Parties.

g. Phase II Owners Not Agent of City. Neither Phase II Owners nor any of Phase II Owners' agents or contractors are or shall be considered to be agents of City in connection with the performance of Phase II Owners' obligations under this Agreement.

h. Legal Responsibilities. Phase II Owners shall comply with all applicable local, state and federal laws and regulations governing the employment of individuals hired or otherwise retained by the Phase II Owners to perform their obligations under this Agreement. City, and its officers and employees shall not be liable for the failure of Phase II Owners to comply with this Subparagraph.

i. Time of the Essence. Time is of the essence of this Agreement.

j. Interpretation and Construction. Each Party has reviewed this Agreement and each has had the opportunity to have its respective counsel review and revise this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or its Exhibits. In this Agreement, the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association wherever the context so requires. The recitals and captions of the sections and subparagraphs of this Agreement are for convenience and reference only and shall not be interpreted to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

k. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, the validity of the remaining provisions will not be affected, provided that the court determines that the intent of this Agreement can be fulfilled without the invalid provision.

l. Authority to Execute Agreement. The individuals executing this Agreement on behalf of the Parties each warrants and represents that he or she has the



authority to execute this Agreement on behalf of that Party and bind that Party to its obligations under this Agreement.

m. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Each Party agrees that each Party may use either original signatures or electronic and digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The Parties further agree that the electronic signatures of the Parties, if any, included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

n. Exhibits. The following exhibits are attached to this Agreement and are incorporated into this Agreement as though set forth in full:

- Exhibit A Description of the Seraphina Frontage Improvements
- Exhibit B Description of the Sewer Improvements
- Exhibit C Description of the Streetlight Improvements
- Exhibit D Description of the Sports Park Improvements
- Exhibit E Description of the Landscape Improvements
- Exhibit F Description of the Trail Improvements
- Exhibit G Description of the Delta Revision Offset

[SIGNATURE PAGES FOLLOW]

[EXHIBITS FOLLOW]

This Agreement has been signed by the Parties as of the date set forth in the first paragraph on Page 1 of this Agreement:

**Woodside 05S, LP,**  
a California limited partnership

By: WDS GP, Inc.,  
A California corporation,  
Its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Wingsweep Corporation,**  
a California corporation

By: \_\_\_\_\_  
Corry Hong  
President and Chief Executive Officer

**City of Temecula,** a municipal corporation

By: \_\_\_\_\_  
Aaron Adams, City Manager

Attest: \_\_\_\_\_  
Randi Johl, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Peter M. Thorson, City Attorney