

PLEASE COMPLETE THIS INFORMATION  
RECORDING REQUESTED BY:

City of Rialto

AND WHEN RECORDED MAIL TO:

City of Rialto  
Attn: City Clerk  
150 S. Palm Ave.  
Rialto CA 92376

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Space above this line for recorder's use only

**EXEMPT FROM RECORDER FEES PURSUANT TO GOV. CODE § 27383**

**AGREEMENT FOR DEFERRAL  
OF PAYMENT OF  
DEVELOPMENT IMPACT FEES  
AND  
TRAFFIC FAIR SHARE FEES**

**AGREEMENT FOR DEFERRAL OF PAYMENT OF  
DEVELOPMENT IMPACT FEES AND TRAFFIC FAIR SHARE FEES**

This Agreement for Deferral of Payment of Development Impact Fees and Traffic Fair Share Fees (“Agreement”), dated September 28, 2021, is entered into by and between the CITY OF RIALTO, a municipal corporation organized and existing under the laws of the State of California (“City”) and Beyond Food Mart, Inc. (“Developer”) on the following terms and conditions:

**RECITALS**

A. Developer is presently developing a vehicle fuel station consisting of a 5,240 square foot canopy with sixteen (16) fuel dispensers, a 7,250 square foot convenience market, and three (3) diesel dispensers (“Project”), on 2.06 acres of land (APN: 0258-131-36) located at the southeast corner of Riverside Avenue and Santa Ana Avenue (“Property”), located within the City of Rialto, California. The Developer will need to obtain permits and approvals for the Project. A standard condition on the issuance of these permits is the payment of City imposed Development Impact Fees and Traffic Fair Share Fees.

B. The City has established a regular program of the payment of specified Development Impact Fees to offset impacts on public services from new development within the City. Development Impact Fees are typically payable to the City at the time the project applicant submits an application to the City for a building permit.

C. Per the recommendation of the Transportation Commission at its meeting on April 3, 2019, and per Condition of Approval No. 96 of Precise Plan of Design No. 2018-0036, the City has established a requirement for the payment of Traffic Fair Share Fees to facilitate roadway improvements necessary to mitigate Project traffic impacts in and around the Project location.

D. In certain instances, the City acknowledges that it may be to the public’s benefit to defer the payment of Development Impact Fees and Traffic Fair Share Fees until a specified time after the issuance of the building permit, provided adequate security for the future payment of the fees is provided. Generally, where the project involves a significant capital investment by the developer and will provide needed public improvements that benefit other properties or where the project will provide a needed service, convenience, or accommodations to residents or visitors, the City Council may find that the project qualifies to have the payment of Development Impact Fees and Traffic Fair Share Fees deferred.

E. Developer has requested that the Project be considered eligible for deferral of Development Impact Fees and Traffic Fair Share Fees. The City Council has determined, based on the nature and location of the Project and the convenience it will provide to residents of the City, deferral under the terms and conditions of this Agreement is in the best interest of the City. Developer acknowledges and agrees that absent this Agreement it would be required to pay all Development Impact Fees and Traffic Fair Share Fees (as defined below) at the time the Developer submits applications to the City for a building permit.

F. Developer and City acknowledge that the California Prevailing Wage law normally applies to projects where public funds are used for construction or for the payment of fees that are

mandatory conditions of construction. In this case, City is not paying, waiving, reducing, or forgiving fees but is instead deferring payment of them to a later date. Developer is absolutely bound to pay the Development Impact Fees and Traffic Fair Share Fees, but will be allowed to pay them prior to issuance of a certificate of occupancy, rather than prior to issuance of a building permit for the project. Developer and City acknowledge that they have each and separately investigated California Prevailing Wage Law and have each and separately determined that the City's deferral of payment of Development Impact Fees and Traffic Fair Share Fees is not a contribution of public funds, as defined by California Labor Code Section 1720 *et seq.*, and administrative decisions issued by the Department of Industrial Relations interpreting that Section. Notwithstanding the analysis and determination of the parties, Developer acknowledges that if the Department of Industrial Relations determines that the deferral of payment of Development Impact fees and Traffic Fair Share Fees for the Project is a contribution of public funds and that the project is not otherwise exempt from the payment of prevailing wages under Labor Code Section 1720 *et seq.*, then the construction and construction-related activities for the Project would be subject to the California Prevailing Wage Law and Developer would be required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages as determined by the Director of the Department of Industrial Relations under Section 1720 *et seq.*, of the California Labor Code for all covered work performed on the Project that the Director determines is subject to payment of prevailing wage rates.

### **DEFINED TERMS**

**“Action”** shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (where administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument.

**“City”** shall mean the City of Rialto, a general law, municipal corporation formed and existing under the laws of the State of California and any successor-in-interest to the rights, obligations, and powers of the City.

**“Developer”** shall mean Beyond Food Mart, Inc. The term “Developer” shall also include all assignees, to the extent permitted under this Agreement, of the rights and obligations of Developer under this Agreement, and any successor-in-interest to Developer having a legal and/or equitable interest in the Property.

**“Development Impact Fees”** shall mean those development impact fees that are contained within the City's Development Impact Fee Nexus Study adopted by the City by Resolution No. 5427 on December 28, 2006 and Resolution No. 6068 on December 27, 2011, which are imposed and levied by the City to recover the cost of planned public facilities and to mitigate impacts of the Project on the City. Development Impact Fees other than those required for Regional Traffic and Storm Drain Facilities are not subject to deferral under this Agreement and are not included within the definition of Development Impact Fees under this Agreement. Development Impact Fees subject to deferral under this Agreement are listed below:

<b>Fee</b>	<b>Amount</b>
Regional Traffic Fees	\$104,409.44

Storm Drain Facilities	\$77,328.88
<b>Total:</b>	<b>\$181,738.32</b>

**“Effective Date”** shall mean the date the Agreement has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer.

**“Litigation Expenses”** shall mean all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action, including, but not related to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys’ fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other cost or expense reasonably and necessarily incurred by the prevailing party in good faith and directly related to the Action. Where attorneys’ fees are to be paid by Developer to the City’s law firm on behalf of, or in defense of, City, the rate to be paid shall be the full litigation rate charged by the City’s law firm to the City in accord with the City’s contract with that law firm, and actually and necessarily incurred in good faith.

**“Project”** shall mean the proposed development of a vehicle fuel station consisting of a 5,240 square foot canopy with sixteen (16) fuel dispensers, a 7,250 square foot convenience market, and three (3) diesel dispensers.

**“Property”** shall mean those certain parcels of real property commonly known as 2.06 acres of land located at the southeast corner of Riverside Avenue and Santa Ana Avenue, located within the City of Rialto, California, also described as Assessor’s Parcel Number 0258-131-36 located in the City of Rialto, County of San Bernardino, State of California, as more particularly described in the legal description attached hereto and incorporated herein by reference as Exhibit “A”.

**“Traffic Fair Share Fees”** shall mean the fair-share amount established by the City of Rialto Transportation Commission on April 3, 2019 and required by Condition of Approval No. 96 of Precise Plan of Design No. 2018-0036. Traffic Fair Share Fees subject to deferral under this Agreement are listed below:

<b>Fee</b>	<b>Amount</b>
Traffic Fair Share Fees	\$1,428,026.50
<b>Total:</b>	<b>\$1,428,026.50</b>

### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

#### **1. Deferral and Payment.**

**1.1 City’s Deferral.** The City agrees that Developer may defer payment of the Development Impact Fees and Traffic Fair Share Fees imposed on the Project by City until

Developer applies for a Certificate of Occupancy, provided Developer remains in compliance with the terms, conditions, and covenants of this Agreement. The parties acknowledge that City normally requires the payment of all Development Impact Fees and Traffic Fair Share Fees at the time the project applicant submits an application to the City for a building permit. In this case, by virtue of this Agreement, the City will issue permits and approvals for the Project, provided all other requirements for the issuance of such permits have been met, even though the Developer will not have paid the Development Impact Fees and/or Traffic Fair Share Fees. City shall have no obligation to issue a Certificate of Occupancy or Temporary Certificate of Occupancy for any portion of the Project until Developer has paid the Development Impact Fees and Traffic Fair Share Fees for the Project in full.

**1.2 Obligation to pay and Security.** Developer has the absolute obligation to pay the entire outstanding balance of the Development Impact Fees and Traffic Fair Share Fees. Notwithstanding the provisions of this Agreement granting Developer permission to defer payment of the Development Impact Fees and Traffic Fair Share Fees, such deferred payment shall not be deemed to waive all or any portion of Developer's obligation to pay the entire outstanding balance of the Development Impact Fees and Traffic Fair Share Fees. Failure to fully pay the Development Impact Fees and Traffic Fair Share Fees as required shall be deemed a Default of this Agreement.

**1.3 Lien on Property.** This Agreement shall be recorded against the Property in the Office of the San Bernardino Recorder and shall constitute a lien for the payment of the Development Impact Fees and Traffic Fair Share Fees binding upon, and running with, the Property. If Owner sells all or any portion of the Property, Property shall not be released of any obligations under this Agreement relating to the Property or the portion of the Property which is being acquired. This Agreement shall be binding upon, and the benefits of this Agreement shall inure, to the Parties and all successors in interest to the Parties. The burden of this Agreement shall be released from title to the Property upon full payment of the Development Impact Fees and Traffic Fair Share Fees identified herein. Within a reasonable time following payment of the Development Impact Fees and Traffic Fair Share Fees, the City shall execute a lien release releasing the burden of this Agreement from the title to the Property.

**1.4 Prevailing Wage Law.** California Prevailing Wage law applies to projects where public funds are used to pay for construction or for the payment of fees that are mandatory conditions of construction. Pursuant to Section 1.1 [City's Deferral], City will defer payment of Development Impact Fees and Traffic Fair Share Fees, but will not itself pay any fees otherwise required to be paid by Developer. As agreed in Recital E, the parties understand that the City's deferral of payment of Development Impact Fees and Traffic Fair Share Fees will not subject the Project to payment of prevailing wages under California Prevailing Wage Law.

**1.4.1 Deferral is not Payment of Public Funds.** Developer is absolutely bound to pay all required Development Impact Fees and Traffic Fair Share Fees, but will be allowed to pay them upon application for Certificate of Occupancy as provided herein. The parties, having each researched California Prevailing Wage Law, agree that this deferral is not a payment of public funds pursuant to California Labor Code Section 1720 *et seq.* The deferral is instead a market transaction providing the Developer additional time to pay the required Development Impact Fees and Traffic Fair Share Fees.

#### **1.4.2 Developer's Agreement to Comply With Prevailing Wage Law.**

Notwithstanding this understanding, Developer acknowledges that if the Department of Industrial Relations determines that the deferral of Development Impact Fees and/or Traffic Fair Share Fees constitutes the payment of public funds for the Project and that the project is not otherwise exempt from the payment of prevailing wages under Labor Code Section 1720 *et seq.*, then the construction and construction-related activities for the Project would be subject to the Prevailing Wage Law and Developer would be required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 *et seq.*, of the California Labor Code for all work performed on the Project determined by the Director to be subject to payment of prevailing wages under Section 1720 *et seq.* Developer reserves the right to contest any such determination or ruling.

## **2. General Indemnity.**

**2.1 General Indemnity.** Except as to the sole negligence, active negligence or willful misconduct of the City, Developer expressly agrees to, and shall, indemnify, defend, release, and hold the City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, and lien, which arises out of, or are in any way related to, any act or omission of Developer, or its officers, directors, employees, agents, or contractors, connected with the performance under this Agreement, the construction, use, or operation of the Project, notwithstanding that the City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Developer's officers, directors, employees, agents and contractors. The City shall not be responsible for any acts, errors or omissions of any person or entity except the City and its officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement.

**2.2 Prevailing Wage Indemnification and Waiver of Actions.** Developer, for itself and its contractors, hereby expressly agrees that City has satisfied its obligations under the Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City under Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Developer and its contractors. Furthermore, Developer, for itself and its contractors hereby expressly waives any right of action against the City created under Labor Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or any Public Improvement. Developer hereby agrees and covenants to require this express waiver in all construction contracts undertaken for the development of the Project. Further, Developer expressly agrees to, and shall, indemnify, defend, release, and hold the City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, and lien, which arises out of, or are in any way related to or imposed upon the City under Labor Code Sections 1720 *et seq.* that the Project and/or any Public Improvement is subject to the Prevailing Wage Laws and that payment of Prevailing Wages are owed to or may be actionable by Developer and its contractors and/or sub-contractors. The Parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement. The City shall cooperate with Developer in any claim raised against either that is within the scope of this indemnification. The Developer shall, at its expense, hire counsel to defend the City and Developer.

### **3. Default And Remedies.**

**3.1 Default.** Either party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party shall give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within thirty (30) days after receipt of a notice specifying the Default, or, if the Default is of a nature that cannot be cured within thirty (30) days, the defaulting party fails to commence to cure the Default within said thirty (30) days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

**3.2 No Waiver.** Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times. The waiver of any terms, covenants or conditions hereof shall be null and void unless in writing and approved in accordance with terms hereof. The City's issuance of a Certificate of Occupancy for any portion of the Project prior to the payment of Development Impact Fees and Traffic Fair Share Fees shall not constitute a waiver of Developer's obligation to pay the Development Impact Fees and Traffic Fair Share Fees as set forth herein.

**3.3 Legal Actions.** In addition to any other rights and remedies any party may institute a legal action to require the cure of any default and to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

**3.3.1 Jurisdiction and Venue.** Legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, or if appropriate, in the United States District Court for the Central District of California, Eastern Division. Participant specifically waives any rights provided to it pursuant to California Code of Civil Procedure §394 and any federal statute or rule of similar effect.

**3.3.2 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**3.3.3 Attorney's Fees.** In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform, or that is otherwise related to, this Agreement, then the Prevailing Party (as defined here) in the Action shall be entitled to recover its Litigation Expenses from the other party in addition to whatever relief to which the prevailing party may be entitled. For the purpose of this section, "Prevailing Party" shall have the meaning ascribed in §1032(a) (4) of the California Code of Civil Procedure.

**3.4 Rights and Remedies are Cumulative.** The rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it of any other rights or remedies for the same Default or any other Default by another Party.

#### **4. General Provisions.**

**4.1 No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the City, and Developer. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this Agreement.

**4.2 Recitals and Definitions.** The Recitals and Definitions set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions of this Agreement.

**4.3 Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms. Reference to section numbers are to sections in this Agreement unless expressly stated otherwise.

**4.4 Interpretation.** The City and Developer acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties hereto.

**4.5 Severability.** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

**4.6 Amendments to Agreement.** Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the City and Developer.

**4.7 Administration.** Following approval of this Agreement by the City Council, the City shall exercise its rights, perform its obligations, and otherwise administer this Agreement through the City Manager. The City Manager shall have the authority to issue interpretations and to make minor amendments to this Agreement on behalf of the City, provided that any such interpretations and minor amendments shall be effective only if agreed to by Developer in writing and providing such actions do not materially increase the obligations of the City, make a commitment of additional funds to be paid by, or costs to be incurred by, the City, or result in a discretionary extension of time in excess of thirty (30) days. Any such interpretations and/or minor amendments approved by Developer in writing shall be considered an addendum to this Agreement. All other changes, modifications, and amendments shall require the prior approval of the City Council and Developer.



**4.8 Notices, Demands and Communications Between the Parties.** Formal notices, demands and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the parties, as designated in this Section, or telefaxed to the facsimile number listed below followed by dispatch as above described. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received (i) upon the date personal service is effected, if given by personal service, (ii) upon the expiration of one (1) business day, if telefaxed, or (iii) upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

If notice is to be made to the City:

City of Rialto  
Attn: City Manager  
150 S. Palm Ave.  
Rialto CA 92376.

If notice is to be made to Developer:

**4.9 Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Government Code § 6700 and § 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

**4.10 Authority.** The individuals executing this Agreement on behalf of Developer and the instruments referenced on behalf of Developer represent and warrant that they have the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

**4.11 Counterpart Originals.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

**4.12 Effective date of Agreement.** This Agreement shall not become effective until the date it has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer.

**4.13 Waiver of Actions.** Developer, for itself and its contractors, hereby expressly agrees that City has satisfied its obligations under the Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City under Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Developer and its contractors. Furthermore, Developer, for itself and its contractors hereby expressly waives

any right of action against the City created under Labor Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or this Agreement.

**4.14 Assignment.** Developer shall, upon delivering prior written notice to the City, have the right to sell, assign or otherwise transfer its interests in the Property, together with its rights and obligations under this Agreement, to another person or entity ("Subsequent Owner") at any time. Any transfer or assignment must be pursuant to a sale, assignment or other transfer of an interest in the property (or a portion thereof) and shall be subject to the following criteria and conditions: (i) the Developer shall notify the City, at least twenty (20) days prior to the transfer, of the name of the Subsequent Owner, together with the corresponding rights and obligations, if any, being transferred to such Subsequent Owner; and (ii) the agreement between the Developer and Subsequent Owner pertaining to such transfer shall provide, and Developer shall give City notice of such provision, which obligations of Developer under this Agreement the Subsequent Owner shall be liable to perform and acknowledging those obligations Developer retains, if any. Upon transfer of title to the property, the Developer will be released from this Agreement, including all of its terms, responsibilities, duties, and obligations, and the Subsequent Owner will become the Developer for all purposes under this Agreement.

**IN WITNESS WHEREOFF**, the parties hereto have executed this Agreement on the 9<sup>th</sup> day of September 2021.

**CITY:**  
CITY OF RIALTO

By: \_\_\_\_\_  
Deborah Robertson, Mayor

ATTEST:

By: \_\_\_\_\_  
Barbara McGee  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Eric S. Vail  
City Attorney

**DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT “A”

Legal Description of Property