

RESOLUTION NUMBER 6399

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS APPROVING AND AUTHORIZING EXECUTION OF A FUNDING AGREEMENT RELATED TO COMMUNITY FACILITIES DISTRICT NO. 2018-1 (GREEN VALLEY – WEST ELM) OF THE CITY OF PERRIS.

WHEREAS, the City of Perris (the “City”) has taken proceedings pursuant to the Mello-Roos Community Facilities Act of 1982 (constituting Sections 53311 *et. seq.* of the Government Code of the State of California) and formed Community Facilities District No. 2018-1 (Green Valley-West Elm) of the City of Perris (the “District”), consisting of Improvement Area No. 1 and Improvement Area No. 2 (collectively, the “Improvement Areas” and each, an “Improvement Area”) and for the issuance of bonds by the District for each of Improvement Area No. 1 and Improvement Area No. 2; and

WHEREAS, the City and Green Valley Recovery Acquisition, LLC (“Developer”) entered into an Acquisition and Funding Agreement, dated July 31, 2018 (“Acquisition Agreement”), relating to improvements associated with the District, including the Improvement Areas; and

WHEREAS, the Developer has built many of the offsite improvements required by its project and the Green Valley Specific Plan (the “Projects”), which include many of the improvements listed in the Acquisition Agreement; and

WHEREAS, the City and Developer entered into an Improvement and Credit Agreement, dated May 11, 2021 (the “Park Agreement”), pursuant to which Developer agreed to construct certain Park Improvements (as defined in the Park Agreement) and shall receive Park DIF Credits (as defined in the Park Agreement); and

WHEREAS, pursuant to the terms of the Park Agreement, which Park Agreement remains in full force and effect, Developer will soon commence the bidding of and construction of the Green Valley Park, which consists of approximately 30 acres of park improvements as depicted on Exhibit B (“Green Valley Park”); and

WHEREAS, pursuant to a Memorandum of Understanding with the Developer related to the turnover of the Projects approved by the City on September 14, 2022, the City is to acquire the Projects from the Developer with certain proceeds of the Bonds otherwise due and payable to Developer, which proceeds shall be assigned to the City by the Developer to fund a portion of the Developer’s obligation to fund the construction of Green Valley Park; and

WHEREAS, the City and the Developer desire to adjust the items in the Acquisition Agreement to permit the funding and/or acquisition of Green Valley Park; and

WHEREAS, the Developer will comply with all requirements of the Acquisition Agreement and the Park Agreement related to public bidding and the payment of prevailing wages in connection with the construction of the Green Valley Park and Green Valley Park shall become an eligible improvement to be acquired by the City pursuant to the Acquisition Agreement; and

WHEREAS, for assigning the Bond Proceeds to the City and using the Bond Proceeds to construct Green Valley Park, Developer is to receive a dollar-for-dollar reduction

against the Park DIF Obligation Amount (as defined in the Park Agreement) that Developer has committed to expend under the Park Agreement to construct Green Valley Park. To clarify, any tract maps not covered under Park MOU (36988, 36989, 37223, 37262, 37722, 37816, 37817, 37818) are not included in the Park DIF Obligation Amount and will still need to pay fees to the City; and

WHEREAS, taking into account the reduction of the Park DIF Obligation Amount for the Bond Proceeds of \$6,000,000 [ENTER EXACT AMOUNT], and the reduction of the Park DIF Obligation for the \$2,400,000 already funded by the Developer, upon the assignment of the Bond Proceeds to the City the Park DIF Obligation shall have been reduced from \$11,600,000 to \$3,200,000 (\$11,600,000 less \$6,000,000 [UPDATE EXACT AMOUNT], less \$2,400,000 equals \$3,200,000); and

WHEREAS, the District has issued bonds for the Improvement Areas of the District, to wit:

(a) “Improvement Area No. 1 of Community Facilities District No. 2018-1 (Green Valley - West Elm) of the City of Perris Special Tax Bonds, 2020 Series” related to the “Perris Joint Powers Authority Local Agency Revenue Bonds (IA 1 of CFD No. 2018-1 (Green Valley - West Elm)), 2020 Series” (collectively, the “Improvement Area No. 1 Bonds”); and

(b) “Improvement Area No. 2 of Community Facilities District No. 2018-1 (Green Valley - West Elm) of the City of Perris Special Tax Bonds, 2021 Series” related to the “Perris Joint Powers Authority Local Agency Revenue Bonds (IA 2 of CFD No. 2018-1 (Green Valley - West Elm)), 2022 Series” (the “Improvement Area No. 2 Bonds” and together with the Improvement Area No. 1 Bonds”, the “Bonds”); and

WHEREAS, the City and the Developer acknowledge that the CFD Proceeds held in the CFD trustee account belong to the Developer as a reimbursement for offsite work completed in 2016-2018 and both parties desire to use these funds as a quarterly reimbursement to pay contractors directly associated with the construction of the Park, which remains a Developer project not subject to any CWA agreements; and

WHEREAS, the City and the Developer execute this Agreement to memorialize the terms discussed herein; and

WHEREAS, the City and the Developer desire to execute this Agreement to memorialize the terms discussed herein; and

WHEREAS, the City has determined that it is necessary and desirable and in the public interest for the City and the Developer to enter into the Funding Agreement, attached as Exhibit A to this Resolution (the “Funding Agreement”), to fund Green Valley Park.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Perris, California, as follows:

Section 1. That the recitals set forth hereinabove are true and correct in all respects.

Section 2. That said form of Funding Agreement be and is hereby approved with such changes as may be approved by the City Manager or Mayor, said City Manager's or Mayor's execution thereof to be conclusive evidence of approval of said changes. The City Manager or Mayor is hereby authorized and directed to execute the Funding Agreement on behalf of the City with such execution to be attested to by the City Clerk.

ADOPTED, SIGNED and APPROVED this 14th day of May, 2024.

Michael M. Vargas, Mayor

ATTEST:

Nancy Salazar, City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Resolution Number 6399 was duly and regularly adopted by the City Council of the City of Perris at a regular meeting held the 14th day of May, 2024, by the following called vote:

AYES: CORONA, RABB, ROGERS, NAVA, VARGAS

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

Nancy Salazar, City Clerk

EXHIBIT A

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the “Agreement”) is entered into as of the ___ day of ___ April, by and between the City of Perris (the “City”), for and on behalf of Community Facilities District No. 2018-1 (Green Valley – West Elm) of the City of Perris (the “District”) and Green Valley Recovery Acquisition, LLC, a Delaware limited liability company (the “Developer”).

RECITALS

WHEREAS, the City has taken proceedings pursuant to the Mello-Roos Community Facilities Act of 1982 (constituting Sections 53311 *et. seq.* of the Government Code of the State of California) and formed the District, consisting of Improvement Area No. 1 and Improvement Area No. 2 (collectively, the “Improvement Areas” and each, an “Improvement Area”) and for the issuance of bonds by the District for each of Improvement Area No. 1 and Improvement Area No. 2; and

WHEREAS, the District is shown on the map attached as Exhibit A hereto; and

WHEREAS, the City and the Developer entered into an Acquisition and Funding Agreement, dated July 31, 2018 (“Acquisition Agreement”), relating to improvements associated with the District, including the Improvement Areas; and

WHEREAS, the Developer has built many of the offsite improvements required by its project and the Green Valley Specific Plan, such improvements outlined on Exhibit B hereto (the “Projects”), which include many of the improvements listed in the Acquisition Agreement; and

WHEREAS, the City and Developer entered into an Improvement and Credit Agreement, dated May 11, 2021 (the “Park Agreement”), pursuant to which Developer agreed to construct certain Park Improvements (as defined in the Park Agreement) and shall receive Park DIF Credits (as defined in the Park Agreement); and

WHEREAS, pursuant to the terms of the Park Agreement, which Park Agreement remains in full force and effect, Developer will soon commence the bidding of and construction of the Green Valley Park, which consists of approximately 30 acres of park improvements as depicted on Exhibit B (the “Green Valley Park”); and

WHEREAS, pursuant to a Memorandum of Understanding with the Developer related to the turnover of the improvements approved by the City on September 14, 2022, the City is to acquire the Projects from the Developer with certain proceeds of the Bonds, which proceeds shall be assigned to the City by the Developer to fund a portion of the Developer’s obligation to fund the construction of the Green Valley Park; and

WHEREAS, City and Developer desire to adjust the items in the Acquisition Agreement to permit the funding and/or acquisition of the Green Valley Park; and

WHEREAS, the Developer will comply with all requirements of the Acquisition Agreement and the Park Agreement related to public bidding and the payment of prevailing wages in connection with the construction of the Green Valley Park and the Green Valley Park shall become an eligible improvement to be acquired by the City pursuant to the Acquisition Agreement; and

WHEREAS, for assigning the Bond Proceeds to the City and using the Bond Proceeds to construct Green Valley Park, Developer is to receive a dollar-for-dollar reduction against the Park DIF Obligation Amount (as defined in the Park Agreement) that Developer has committed to expend under the Park Agreement to construct Green Valley Park. To clarify, any tract maps not covered under Park MOU (36988, 36989, 37223, 37262, 37722, 37816, 37817, 37818) are not included in the Park DIF Obligation Amount and will still need to pay fees to the City; and

WHEREAS, taking into account the reduction of the Park DIF Obligation Amount for the Bond Proceeds of \$6,000,000 [ENTER EXACT AMOUNT], and the reduction of the Park DIF Obligation for the \$2,400,000 already funded by the Developer, upon the assignment of the Bond Proceeds to the City the Park DIF Obligation shall have been reduced from \$11,600,000 to \$3,200,000 (\$11,600,000 less \$6,000,000 [UPDATE EXACT AMOUNT], less \$2,400,000 equals \$3,200,000); and

WHEREAS, the District has issued bonds for the Improvement Areas of the District, to wit:

(a) “Improvement Area No. 1 of Community Facilities District No. 2018-1 (Green Valley - West Elm) of the City of Perris Special Tax Bonds, 2020 Series” related to the “Perris Joint Powers Authority Local Agency Revenue Bonds (IA 1 of CFD No. 2018-1 (Green Valley - West Elm)), 2020 Series” (collectively, the “Improvement Area No. 1 Bonds”); and

(b) “Improvement Area No. 2 of Community Facilities District No. 2018-1 (Green Valley - West Elm) of the City of Perris Special Tax Bonds, 2021 Series” related to the “Perris Joint Powers Authority Local Agency Revenue Bonds (IA 2 of CFD No. 2018-1 (Green Valley - West Elm)), 2022 Series” (the “Improvement Area No. 2 Bonds” and together with the Improvement Area No. 1 Bonds, the “Bonds”); and

WHEREAS, the City and the Developer acknowledge that the CFD Proceeds held in the CFD trustee account belong to the Developer as a reimbursement for offsite work completed in 2016-2018 and both parties desire to use these funds as a quarterly reimbursement to pay contractors directly associated with the construction of the Park, which remains a Developer project not subject to any CWA agreements; and

WHEREAS, the City and the Developer desire to execute this Agreement to memorialize the terms discussed herein; and

WHEREAS, the City has determined that it is necessary and desirable and in the public interest to enter into the Funding Agreement to fund the Green Valley Park;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The City and Developer represent that the recitals hereto are true and correct and said recitals and Exhibits are incorporated herein by this reference.
2. Supplement to Acquisition Agreement. The Acquisition Agreement is hereby supplemented to permit the acquisition and/or construction of the Green Valley Park as a Financed Improvement listed in Exhibit B of the Acquisition Agreement. The Estimated cost of the Green Valley Park is \$ _____. The acquisition, construction and funding of the Green Valley Park shall be subject to the provisions of the Park Agreement and shall also be subject to the public bidding and prevailing wage provisions of the Acquisition Agreement. Concurrently with the turnover of the Projects, Developer shall requisition the proceeds of the Bonds and assign the rights to the proceeds to the City to be held in a separate account within the [Park Capital Improvement Fund] entitled “CFD 2018-1 Proceeds” (the “Proceeds Account”). The City shall hold such funds in trust to make payment on the Actual Costs (as defined in the Acquisition Agreement) of the Green Valley Park. The City shall record all investments in the Proceeds Account and shall not invest such proceeds at a rate higher than the arbitrage yield on the Bonds. The proceeds represent a portion of the Developer’s obligation, pursuant to the Park Agreement for the Green Valley Park and the amount of the proceeds may be credited against that obligation.
3. Park Agreement. The City and Developer acknowledge and agree that the Park Agreement remains in full force and effect, and that the assignment of the Bond Proceeds to the City for use by the City to construct the Green Valley Park shall satisfy a portion of the Developer’s Park DIF Obligation under the Park Agreement for the Green Valley Park and that the amount of the Bond Proceeds, together with all income earned on the Bond Proceeds, shall reduce dollar-for dollar the Developer’s Park DIF Obligation Amount.
4. Payment of Owner’s Contractor from Proceeds Account. The City agrees that the proceeds of the Bonds that have been deposited into the Proceeds Account, and all income earned on such proceeds, shall be disbursed by the City from the Proceeds Account to pay invoices from Owner’s Contractor (as defined in the Park Agreement) in the same fashion and on the same schedule as the City Contribution Amount has been, or will be, disbursed pursuant to Section 6.3 of the Park Agreement. To ensure that Developer has satisfied bidding and prevailing wage requirements, Developer confirms and agrees that it will comply with the requirements of Section 7.4 of the Park Agreement.
5. Park DIF Obligation Credit and Bonding Obligation. The City and Developer confirm and agree that concurrently with the execution and delivery of this Agreement and upon the deposit of the proceeds of the Bonds into the Proceeds Account, the Bond Proceeds shall

be deemed to be assigned to the City for use by the City to pay Owner's Contractor for construction of the Green Valley Park and (i) Developer shall concurrently receive a dollar-for-dollar reduction against the Park DIF Obligation Amount (as defined in the Park Agreement) in such amount of the Bond Proceeds, and (ii) the amount of the Completion Bond (as defined in the Park Agreement) delivered to the City under Section 16.1 of the Park Agreement may be reduced concurrently by the amount of Bond proceeds deposited into the Proceeds Account. Further, the City and Developer agree that the delivery of the Completion Bond shall satisfy any bonding obligation under the Acquisition Agreement relating to the Green Valley Park.

6. **Developer Representations and Warranties.** The Developer represents, warrants and confirms that (a) it has not received any reimbursement for the Projects from any other source of funds other than the moneys described in the MOU and herein, and (b) all the Projects were constructed in compliance with the prevailing wage, bidding requirements and other requirements of the Acquisition Agreement but that it has not retained the correct invoices for reimbursement for the Project. The Developer understands that the delay in the City's acquisition of these Projects under the MOU may create a potential issue for the City related to the Improvement Area No. 1 Bonds and Improvement Area No. Bonds under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. Developer agrees that Developer shall defend and indemnify the City pursuant to Section 6 below in connection with this issue. Such indemnification shall be in effect for at least the term of the Improvement Area No 1 Bonds and Improvement Area No. 2 Bonds.
7. **Indemnification.** Notwithstanding any provisions in the Agreement to the contrary, to the full extent permitted by law, the Developer shall assume the defense of, indemnify and hold harmless the City, the District, their officers, directors, employees and agents (each, and "Indemnified Party" and collectively, the "Indemnified Parties") and each of them, from and against all actions, damages, claims, losses, liability, costs, reasonable attorney fees, or expenses of every type and description to which such Indemnified Party may be subjected or put, to the extent resulting from (a) a default by the Developer under this Agreement and the Park Agreement, (b) a default by the Developer under the Acquisition Agreement, (c) an audit by the IRS relating to the Improvement Area No. 1 Bonds and/or Improvement Area No. 2 Bonds and the obligations related to expenditure of the proceeds of the Bonds, including but not limited to any delay in expenditure of the bond proceeds since issuance, and any effect of the related tax exemption on the Improvement Area No. 1 Bonds and/ or the Improvement Area No. 2 Bonds, (d) any claim, demand, investigation, audit or lawsuit, or controversy with respect to the owners, property owners, bondholders, or any other item resulting from this Agreement and/or the Acquisition Agreement, the Park Agreement, the MOU and/or Bonds and (e) any covenants and requirements or omissions in the Acquisition Agreement related to funding of the Financed Improvements, including but not limited to the payment of prevailing wages.
8. **Limitations on Rights under Agreement.** Nothing herein limits any obligation of the Developer to comply with the Acquisition Agreement, provided that the parties

acknowledge that if the provisions of the Park Agreement conflict with the provisions of the Acquisition Agreement, then the provisions of the Park Agreement shall control.

9. Cooperation. The parties agree to cooperate with each other and to execute any and all other documents reasonably necessary in order to consummate the intent of the parties with respect to this Agreement.
10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
11. Ratification of Funding Agreement. This Agreement is hereby approved, ratified and confirmed in all respects and all terms, conditions and provisions of this Agreement.
12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. Assignment. The rights, obligations and interests of the Developer in this Agreement, may be assigned with the consent of the City.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

GREEN VALLEY RECOVERY ACQUISITION,
LLC, a Delaware limited liability company

By: _____

Its: Authorized Signatory

CITY OF PERRIS, a municipal corporation and on
behalf of COMMUNITY FACILITIES DISTRICT
NO. 2018-1 (GREEN VALLEY-WEST ELM) OF
THE CITY OF PERRIS.

By: _____

Its: City Manager

EXHIBIT A

[ATTACH DISTRICT BOUNDARY MAP]

EXHIBIT B

[ATTACH TURNOVER IMPROVEMENTS OF PROJECT]