

RESOLUTION NO. 2024-037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AUTHORIZING THE CITY MANAGER TO EXECUTE THE PAYMENT AGREEMENT FOR STREET AND SEWER IMPROVEMENT FEE BY AND BETWEEN THE CITY OF ELK GROVE AND EG 25, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, IN THE AMOUNT OF \$226,329 FOR THE TELOS GREENS SUBDIVISION (PLNG21-017) PROJECT'S FAIR SHARE COSTS TOWARDS THE DESIGN AND/OR CONSTRUCTION COSTS OF NEW GROWTH AREA PROJECTS (CEQA EXEMPT)

WHEREAS, on April 7, 2022, the City of Elk Grove Planning Commission approved a Tentative Subdivision Map and Design Review for Subdivision Layout for the Telos Green Map (PLNG21-017) (Project) and;

WHEREAS, the Project's Condition of Approval No. 44 authorizes the City of Elk Grove (City) to recover the costs associated with the roadway and sewer improvements for Bilby Road that were installed by the City's New Growth Area (NGA) Project and;

WHEREAS, staff has determined that the costs for the Bilby Road improvements and the fair share cost towards the Sewer Lift Station are based upon the actual costs incurred by the City to design and deliver the NGA Project and;

WHEREAS, payment of the fee in full will satisfy the obligations under Condition of Approval No. 44.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby finds that no further environmental review is required under the California Environmental Quality Act for the Project pursuant to State CEQA Guidelines Section 15061(b)(3) based upon the following finding:

California Environmental Quality Act (CEQA)

Finding: Approval of the proposed agreement is exempt from environmental review under the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

Evidence: The California Environmental Quality Act (Section 21000, et seq., of the California Public Resources Code - hereafter CEQA) requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines, § 15378.)

Staff has reviewed the approval of the proposed agreement to determine the required level of review under CEQA. Approval of the proposed agreement is exempt from CEQA under State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). Section 15061(b)(3) of the CEQA Guidelines states that an activity is covered by the Common Sense Exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may

have a significant effect on the environment, the activity is not subject to CEQA review. The Payment Agreement will authorize the City to recover costs associated with the roadway and sewer improvements for Bilby Road that have previously been installed by the City's New Growth Area (NGA) project; therefore, the execution of the Payment Agreement will not bring about any physical change to the environment and will not have any potential for causing a significant effect on the environment.

AND BE IT FURTHER RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the Payment Agreement for Street and Sewer Improvement Fee, in substantially the form attached hereto as Exhibit A and incorporated by reference;

AND BE IT FURTHER RESOLVED that the City Council of the City of Elk Grove does hereby direct the City Clerk or designee to cause the Payment Agreement to be recorded with the Sacramento County Recorder.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 27th day of March 2024



BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A

NO FEE DOCUMENT

Government Code §6103
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITYOF ELK GROVE
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

Project Name: Telos Greens (PLNG21-017)

Address: Bilby Road

A.P.N: 132-0300-047-0000

The Above Space For Recorder's Use
Only

PAYMENT AGREEMENT FOR STREET AND SEWER IMPROVEMENT FEE

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2024, by and between the City of Elk Grove, a California municipal corporation (the "City"), and EG 25, LLC, a California limited liability company ("Applicant").

WHEREAS, the Applicant is developing property within the City at Bilby Road (APN: 132-0300-047-0000) (collectively, "Property") by dividing the Property, into a total of eighty-five (85) residential lots (the "Development"); and

WHEREAS, Condition of Approval No. 44 of the tentative subdivision map authorizes the City to recover the costs associated with the roadway and sewer improvements for Bilby Road; and

WHEREAS, the parties now desire to enter into a payment agreement providing for the Applicant's payment of such costs.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. The recitals are true and correct and incorporated into this Agreement.

Section 2. The City has determined that payment of the fee set forth in this Agreement will not adversely impact any approved or programmed capital facility.

Section 3. The Applicant agrees to pay, and the City agrees to accept, the amount of Two Hundred Twenty-Six Thousand Three Hundred Twenty-Nine Dollars (\$226,329) for Bilby Road and the Applicant's fair share towards the Sewer Lift Station, collectively based on the actual costs incurred by the City for designing and delivering the New Growth Area (NGA) Projects in advance of adjacent developments. Payment shall be made to the Finance Department of the City prior to approval by City Council of Subdivision No. 21-017 Final Map

for the Development. The City agrees that payment of this fee shall constitute satisfaction of the Applicant's obligation for a fair-share of the cost towards the design and/or construction costs of Bilby Road and the Sewer Lift Station under Condition of Approval No. 44. The Applicant agrees that this payment represents the Applicant's financial obligation arising from the Development for the installation of a portion of Bilby Road and the Sewer Lift Station as specified in Condition of Approval No. 44. Nothing herein shall preclude the City from seeking and/or imposing additional fees should Applicant change the Development to a different and/or more intense development project than the Development described herein. Nothing herein shall preclude Applicant from contesting the imposition of such additional fees.

Section 4. Nothing herein shall relieve the Applicant from the obligation to pay additional impact fees that may become due in the future in accordance with the provisions of the City's Municipal Code.

Section 5. Any notice or other communication to be given to either party pursuant to this Agreement shall be given by delivering same in writing to the parties at the addresses set forth below:

Applicant:

EG 25, LLC
10630 Mather Blvd
Mather, CA 95655
Attn: Katherine Bardis-Miry

City:

City Manager
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

Such notice shall be deemed given when deposited into the United States mail, postage prepaid, addressed to the parties at the addresses above. Nothing herein shall preclude the giving of personal notice.

Section 6. The Applicant waives any defense against the enforcement of its obligation hereunder to the extent such defense is related in whole or in part to the validity of this Agreement. Should any term, paragraph, provision, covenant, condition, or any other part of this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, in any respect, the remainder of this Agreement shall remain in full force and effect and shall in no way be invalidated or affected.

Section 7. Modifications or amendments affecting the terms and conditions contained in this Agreement shall not be valid unless they are in writing and executed by all parties.

Section 8. The Applicant, by execution of this Agreement, specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, including attorneys' and consultants' fees and expenses (collectively, "Liabilities"), to which they may be subjected or put, by reason of, or resulting from this Agreement, except Liabilities arising from the sole negligence or willful misconduct of the City, as determined by a Court or competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed to by the Parties. The Applicant

shall remain obligated to defend, indemnify, and hold harmless City, its officers, employees, consultants, and agents pursuant to this Agreement. This indemnification shall extend to Liabilities occurring after this Agreement is terminated, as well as while it is in force.

Section 9. This Agreement constitutes the entire agreement and understanding between the City and Applicant concerning the payment of the above-mentioned fee.

Section 10. This Agreement shall bind and inure to the heirs, devisees, assignees, and successors-in-interest of Applicant and to the successors-in-interest of the City in the same manner as if such parties had been expressly named herein.

Section 11. Applicant and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party.

Section 12. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 13. The Agreement shall be recorded in the Office of the Recorder of Sacramento County and shall constitute a covenant running with the land. Applicant hereby represents and warrants that Taylor Morrison of California, LLC is the current owner of the Property. Attached hereto as Exhibit A is a consent of Taylor Morrison of California, LLC authorizing the recordation of this Agreement against title to the Property in the official records of Sacramento County.

SEE SIGNATURES ATTACHED NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF ELK GROVE

APPLICANT: EG 25, LLC, a California limited liability company

By: _____
Jason Behrmann, City Manager

By: Artisan Land Holdings, Inc., a California corporation, its Manager

Date

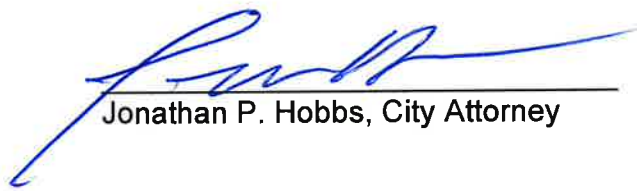
By: 
Katherine Bardis-Miry, Secretary

ATTEST:

Jason Lindgren, City Clerk

3-12-2024
Date:

APPROVED AS TO FORM:


Jonathan P. Hobbs, City Attorney

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Sacramento)

On **MARCH 12, 2024**, before me, **LORI A. RISPOLI**, a Notary Public, personally appeared **KATHERINE BARDIS-MIRY**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed this instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature *Lori A. Rispoli*



EXHIBIT A
CURRENT OWNER CONSENT TO RECORDATION

The undersigned, Taylor Morrison of California, LLC, a California limited liability company (“Owner”), hereby certifies that it is the owner of A.P.N. 132-0300-047 (“Property”). Owner hereby consents to the recordation of the following agreement against title to the Property in the official records of Sacramento County: Payment Agreement for Street and Sewer Improvement Fee, by and between City and EG 25, LLC, a California limited liability company.

Owner Signature:

Taylor Morrison of California, LLC, a California limited liability company

By: 
Scott Carey, Vice President

3.13.2024
Date

CALIFORNIA NOTARY ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____ before me, _____, a Notary Public personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS, my hand and official seal.

(Seal)

(Signature)

EXHIBIT A

Updated 06/20/2019 Wong NGA Bilby Road

Item No.	Description	Units	Takeoff Quantity	Bid Units	Estimated Quantity	Unit Price	Total price	Comments
81-95	FROM STA 80+39 to 88+97 General Items *	LF	429		1	\$ 55.29	\$ 23,718	
105	Roadway Excavation (6' wide x 2' deep)**	SOFT	5148	CY	381	\$ 28.00	\$ 10,677	
108	Lime Stabilized Soil (6' wide)	SOFT	5148	SOYD	572	\$ 6.00	\$ 3,432	
109	Class 2 AB (6' wide)	SOFT	5148	CY	95	\$ 60.00	\$ 5,720	
111	HMA (5' wide)	SOFT	4290	TON	161	\$ 80.00	\$ 12,870	1-foot key is typical
141	12" Ductile Iron Pipe (CL-350)	LF	60	LF	60	\$ 70.00	\$ 4,200	Applied half of total quantity within project segment
144	Fire Hydrant Assembly	EA	1	EA	1	\$ 8,000.00	\$ 8,000	Applied half of total quantity within project segment
145	12" Butterfly Valve	EA	1	EA	1	\$ 4,000.00	\$ 4,000	Applied half of total quantity within project segment
150	2" Water Service and Water Meter with Backflow Preventer	LF	429	EA	1	\$0.82	\$352	
152	10" VCP	LF	37	LF	37	\$ 100.00	\$ 3,700	Applied half of total 1 Service Stub
164	DIP WYE Fitting and Valving	LF	429	LS	1	\$ 2.31	\$ 989	
182	Joint Trench	LF	429	LF	429	\$ 115.00	\$ 49,335	Applied half of total quantity within project segment
183	Utility Services, Lines and Appurtenances	LF	429	LS	1	\$ 23.06	\$ 9,895	
	CCOs #4, #8, #13, #19 (electrical services, conduit, pull boxes etc.)						\$ 12,288	
					Subtotal	\$	\$ 149,177	
						\$	\$ 65,637.90	mitigation)
						\$	\$ 214,815	Total for Bilby Road
						\$	\$ 11,514	Fair Share of Unreimbursable Lift Station Soft Costs ²
						\$	\$ 226,329	Total NGA Cost for Mendes

*Including items such as mobilization, traffic control, clearing and grubbing, etc.

**Includes 1' of AC&AB plus 1' of lime treated subbase

²Based on final Unreimbursed Lift Station Costs

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2024-037

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on March 27, 2024 by the following vote:

AYES: **COUNCILMEMBERS:** *Singh-Allen, Brewer, Robles, Spease, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California