



BOARD MEETING AGENDA SUBMITTAL

TO: CVCS Board of Directors

FROM: Peter Kampa, General Manager

DATE: October 20, 2020

SUBJECT: Item 7e) Adoption of a resolution approving an Advance Funding Agreement with CV Holdings to establish the terms, conditions and deposits for District review of future land development plans, construction inspections, acceptance actions and administration

RECOMMENDED ACTION

I move to adopt a resolution approving an Advance Funding Agreement with CV Holdings to establish the terms, conditions and deposits for District review of future land development plans, construction inspections, acceptance actions and administration.

BACKGROUND

The District is in the process of preparing for adoption final design/construction standards and specifications to be followed by developers as they relate to public improvements to be dedicated to and operated by the District in the future. The District is under contract with Willdan for this work, at our expense. As the standards are finalized and adopted, we will begin working with the developer in the review of their development construction plans and a number of related future actions including preparation of development agreement(s), legal review, construction inspection, easement and related documentation review.

The cost of all work associated with the review and completion of the public improvements associated with a development project are to be funded by the developer. For orderly facilitation of this long term financial arrangement which can span many years, our development policies require the execution of an advance funding agreement to identify the responsibility for making certain deposits and administration and purpose of the account. A draft advance funding agreement is attached, which as of the date of this meeting is under legal review. This is primarily a financial agreement that will span the life of the project through the improvement warranty period.

The first step in the process is for the developer to place a deposit adequate to fully develop the agreement Exhibit B, Scope of Work and estimated cost. Exhibit B is intended to reasonably estimate the cost of work and deposits necessary, with the understanding that a minimum deposit of \$5000 will be maintained to ensure that all District costs are covered. We are in the process of establishing the scope of work, roles

of consultants and other professionals, and associated cost estimates which will ultimately populate Exhibit B. An initial deposit of \$10,000 for step 1 is recommended once the agreement has completed legal review. Upon the completion of the scope of work and estimated costs for Exhibit A, the District will immediately proceed with negotiation of the Development Agreement which establishes the roles, responsibilities and obligations of the parties in improvement plan review, construction and acceptance actions.

The Board can adopt the Resolution approving the Advance Funding Agreement pending legal review, or it can delay approval until legal review is complete.

**ADVANCE FUNDING AGREEMENT
REGARDING COSTS PERTAINING TO FACILITIES DEVELOPMENT PLAN
FOR THE _____ TENTATIVE MAP**

THIS ADVANCE FUNDING AGREEMENT (the "Agreement") dated as of _____, 2020 is entered into by and between the Copper Valley Community Services District, a community services district and a political subdivision of the State of California, formed and acting pursuant to Government Code Section 61000 et seq., (the "District"), and _____, a _____ corporation, ("Developer"). District and Developer are hereinafter sometimes referred to collectively herein as the "Parties."

RECITALS:

A. Developer owns certain real property (the "Property") either within the District or proposed to be annexed to the District which it intends to develop as a _____ (residential/commercial) community to be known as _____ (the "Project"). A map depicting the location of the Property is attached hereto as Exhibit "A" and is incorporated herein by this reference.

B. The Property is located within the County of Calaveras (the "County").

C. District is the public agency responsible for the development, operation, maintenance, repair, and improvement of road and road easement area, street lighting, storm drains and mosquito control located within its jurisdictional boundaries. District's Development Policies requires Developer to plan, design, fund, construct, and warrant all new roads and road easement areas, street lighting, storm drains and all other public improvements to be dedicated to or affecting the services provided by the District and which are intended to serve the residents of the Project. County has designated District as the public agency responsible for providing the development, operation, maintenance, repair and improvement of road and road easement area, maintenance, street lighting, storm drains and mosquito control located within its jurisdictional boundaries. It is therefore necessary that District and Developer agree on the plans and specifications for the development, operation, maintenance, repair and improvement of road and road easement area constructed within the Project to be dedicated to District. Upon acceptance of all such improvement projects and dedication to District, District shall be responsible for all operation and maintenance of such road and road easement area, maintenance, street lighting, storm drains and mosquito control within the Project.

D. District has adopted its Facilities Development Policies which require Developer to enter into this Advance Funding Agreement and a Development Agreement with the District specifying the obligations of the Developer and the needs of the District with respect to planning, constructing, operating and maintaining the Improvements to serve the residents of the Project. Said Facilities Development Policies also enact a fee program by which fees are charged to each Developer to cover the administrative, engineering, legal, environmental and consulting costs incurred by District in the planning, design, financing and construction of the Improvements to serve the Project (the "Fee Program").

E. In order to comply with the Fee Program, Developer hereby agrees to advance funds to District to reimburse the administrative, engineering, legal, environmental and other consulting costs incurred by the District for those services and in those amounts as specified in the Scope of Work attached hereto as Exhibit "B."

F. In consideration of Developer's advance funding of such administrative, engineering, legal, environmental and other consulting costs incurred by District, District agrees to undertake and complete the work described in the Scope of Work.

G. District has established the Project Development Trust Fund (hereinafter the "Fund") for the purpose of accepting advances of funds by Developer to District to be used by District to pay those costs and expenses incurred by District in performing the activities described in the Scope of Work.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.
2. Scope of Work. The Parties agree that the Scope of Work attached hereto contains the summary of the primary tasks to be performed by District and its staff in reviewing, revising, modifying, approving, inspecting, and accepting the Improvements to be constructed by Developer to serve the Project; estimating the costs of planning, designing and constructing such Improvements and providing such services; and developing a financing plan to provide for the design, planning, construction, operation and maintenance of the Improvements constructed within the Project to serve its residents.

District will retain, at Developer's expense, the necessary consultants to perform the tasks outlined in the Scope of Work, including, but not limited to engineers, special tax consultants, attorneys, architects, environmental consultants and any other consultants deemed necessary by District.

3. Advance Funding. In order to begin performing the tasks outlined in the Scope of Work, Developer will advance to District the sum of _____ (\$ _____) within fifteen (15) days after full execution of this Agreement. From time to time, Developer shall make additional advances to the District within fifteen (15) days following receipt from District of a written notice which will request an additional advance to cover the costs of District to perform the tasks outlined in the Scope of Work. Developer shall make such subsequent advances as requested by District up to a total of \$ _____. If Developer does not deliver the requested funding amount to District within such fifteen (15) day period, District will have no obligation to proceed with the tasks outlined in the Scope of Work unless or until such additional advances are received. Should Developer decide to abandon the Project, Developer shall be responsible to pay all costs and expenses incurred by the District or any District consultant or advisor relating to the tasks outlined in the Scope of Work until work with respect to the tasks outlined in the Scope of Work ceases following the receipt of Developer's notice of abandonment. In the event of Developer's decision to abandon the Project or otherwise refuse to deliver the requested additional funding amount to District as requested by

District within the applicable 15-day period, Developer hereby consents to, and hereby waives, any protest it may have to the following remedies to be exercised by District: (1) recording in the office of the County Recorder a Certificate declaring the amount of the charges and penalties unpaid and due from Developer, which, from the time of recordation, shall constitute a lien against all real property of Developer owned in Calaveras County; and (2) to the preparation and filing of a report with the County Auditor of Calaveras County requesting that the amount of charges and penalties unpaid by Developer be collected on the Property Tax Roll by the Calaveras County Tax Collector in the same manner as property taxes, all as provided in Government Code Section 61115(b) and (c).

The District will provide written notice to Developer when the balance of remaining advances is reduced to Five Thousand Dollars (\$5,000.00). District will provide to Developer upon request the summary of how the advances have been spent and the unexpended balance remaining.

The District shall give Developer thirty (30) days written notice in the event that the funds required to pay the costs and expenses of District exceed the total amount set forth above. Prior to such notice District shall be available to meet with the Developer to discuss the need for additional advances, including amounts, timing, and tasks to be completed. At such time the District shall provide the Developer with an estimate of additional costs and expenses to be incurred by the District to complete the tasks outlined in the Scope of Work. The Developer shall, within fifteen (15) days following receipt from District of such estimate, advance additional funds to pay such estimate costs and expenditures of the District. If the District does not receive additional advances for such costs and expenditures within such 15-day period, the District shall cease all work and effort related to the tasks outlined in the Scope of Work until such time as the Developer has advanced additional funds to pay such estimated costs and expenditures.

4. Deposit and Expenditure. District shall immediately deposit all advances from Developer into the Fund upon receipt from Developer. As District incurs the direct and indirect costs and expenses associated with the tasks specified in the Scope of Work, District shall disburse from the Fund the sums required to pay said costs and expenses. The General Manager of District shall have sole discretion as to the disbursement of said Funds, limited only by the provisions of this Agreement.

5. Reimbursement. If, for any reason, the Developer abandons the Project, and Developer delivers notice thereof to District pursuant to Paragraph 6 hereof, and in the manner described in Paragraph 7 hereof, District shall promptly return to Developer any funds advanced by Developer for those particular tasks outlined in the Scope of Work which will not be implemented to the extent such funds have not been expended or committed under contract for any authorized purpose by the time such tasks are either not implemented or abandoned.

6. Indemnification. Developer shall assume the defense of, and indemnify and save harmless, the District, its officers, employees and agents, and each and every one of them, from and against all actions, liability, damages, claims, losses, or expenses of every type and description to which they may be subjected or put to by reason of or resulting from: (1) performance of, or failure to perform, the work or any other obligations of this Agreement by Developer, any subcontractor or

Developer's agents or employees; (2) any negligent act or omission of Developer, any subcontractor, Developer's agents or employees, in connection with any acts performed or required to be performed pursuant to this Agreement; (3) any dangerous or defective condition arising or resulting from any of the actions or omissions of Developer, Developer's agents or employees carrying out the provisions of this Agreement. This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by the District as the party indemnified hereunder. This indemnification shall not include any claim arising from the sole negligence or willful misconduct of the District or its employees.

Developer further agrees to indemnify, defend and hold harmless the District, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement, or otherwise arising out of or stemming from this Agreement, its approval, and/or the process relating thereto, including, but not limited to, any legal proceeding alleging that the District has failed to comply with the California Environmental Quality Act ("CEQA") with respect to this Agreement or the Project.

7. Notices. Any notice to be provided pursuant to this Agreement shall be delivered to the following addresses:

Developer

Name:

Attention:

Telephone:

Email Addresses:

Copper Valley Community Services District

Attention:

Telephone:

Email Addresses:

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

8. Assignment. Developer may not assign its interest in this Agreement without the prior written consent of the District, which consent shall not be unreasonably withheld.

9. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.

10. Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the

subject matter hereof and supersedes all prior understandings, written or oral, with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by both Parties hereto.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

12. Attorneys' Fees. In the event any action is initiated by either party seeking to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs from the other party hereto. The prevailing party will be entitled to an award of attorneys' fees in an amount sufficient to compensate the prevailing party for all attorneys' fees incurred in goodfaith.

13. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement, either express or implied, is intended to confer upon any person or entity, other than the District and Developer, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

14. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

15. Term. This Agreement shall remain in full force and effect for a period of _____ () years from the date of full execution hereof, provided that the Agreement is subject to early termination by Developer, should Developer elect to abandon the Project pursuant to notice to the District as described insaid Paragraph 3.

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

DISTRICT:

COPPER VALLEY COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California

By: _____
Chairperson

By: _____
General Manager

DEVELOPER:

a _____ corporation

By: _____

Name: _____

Title: _____

EXHIBIT "A"

MAP DEPICTING THE PROPERTY

[To be attached]

EXHIBIT “B” SCOPE OF WORK

Description of Services

For all District activities involved in Step 1 of the District’s Facilities Development Policies including, but not limited to the following: Review Developer’s Preliminary Application; negotiate, prepare and approve this Advance Funding Agreement; determine the Scope of Work to be provided by District personnel and consultants in reviewing the Developer’s Preliminary Application; estimate the amount of administrative, legal, engineering, environmental and other consultant costs to be incurred by District in reviewing the application; produce applicable maps, models, and reports to assist Developer in preparing for Project development.

Estimated Costs:

All of those activities required for District review of Developer’s Request of District Services to Subdivision; establish and monitor a Trust Fund for deposit of funds by Developer pursuant to this Agreement;

Estimated Costs:

Perform all activities listed in the District’s Facilities Development Policies, including, but not limited to, all of those activities required to: Negotiate, prepare, present to Board of Directors for approval and execution of a Development Agreement between Developer and District for the Project; if all or any part of the Project is required to be annexed into the District, negotiation, preparation, Board review and approval of an Annexation Agreement between Developer and District; review, revision, and negotiation of Developer’s Project, Design by District Staff and Consultants in order to insure compliance with District’s Development Improvement Standards; all construction administration and inspection required for construction of the Improvements to comply with District standards; review, revision and approval of all security facilities required of Developer for construction of the Improvements whether performance bonds, payment bonds, irrevocable letters of credit, cash deposits, or otherwise; review and inspection of the construction of the Improvements upon completion in order to recommend final Project approval; revision and due diligence of any warranty security provided by Developer pursuant to the District’s Facilities Development Policies.

Estimated Costs:

Compliance with all the terms and conditions of the District’s Facilities Development Policies as follows: Analyze and inspect the Improvements for the two-year warranty period to ensure that all warranty obligations of Developer are satisfied; review, renew and update as possible any performance warranty bonds or irrevocable letters of credit offered by Developer to satisfy its warranty obligation; if necessary for the Project, comply with all the requirements of the annexation process including conducting public hearings and board meetings regarding annexation; negotiations with and meetings with Developer and the Local Agency Formation Commission (LAFCO) regarding terms and conditions of the annexation; reviewing any and all LAFCO documentation and attending all LAFCO hearings regarding annexation; reviewing and revising any terms or conditions of annexation assigned by LAFCO to any proposed annexation; analysis and legal/graphic documentation of all easements and rights of way for the maintenance, repair and replacement of all Improvements constructed by Developer pursuant to this Agreement; process all

requests for easements to be granted by the District on District property, including, but not limited to, review of all applicable Preliminary Title Reports on the affected property, field inspection and investigation of proposed easement locations, negotiation of the terms and conditions of each easement in an Easement Agreement, negotiate, prepare, and record any and all necessary grants of easements or other rights of way upon District property necessary for the development of the Project and to provide adequate graphic and legal documentation of such easements for the purpose of maintenance responsibilities to the satisfaction of the District.

Estimated Costs: _____

Estimated administrative costs of District personnel, consultants, engineers, and attorneys in providing the services specified in the Scope of Work:

Estimated Total Costs: _____

RESOLUTION _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE COPPER VALLEY COMMUNITY SERVICES DISTRICT APPROVING AN ADVANCE FUNDING AGREEMENT WITH CV SADDLE CREEK HOLDINGS LLC/CV SADDLE CREEK LLC FOR THE GOLF CLUB AT COPPER CREEK DEVELOPMENT

WHEREAS, the Saddle Creek Community Services District (herein referred to as District) is a local government agency formed and operating in accordance with Section §61000 et seq. of the California Government Code; and

WHEREAS, the district provides road, storm drain, mosquito control and easement maintenance services within its boundaries; and

WHEREAS, the district has received a request from Copper Valley Holdings, LLC (Developer) to provide services to their Golf Club at Copper Creek subdivision (Project) development recently approved by the County of Calaveras; and

WHEREAS, District development policies require that the Developer enter into various agreements with the District to facilitate orderly review and approvals associated with the Project improvements intended to be dedicated to the District; and

WHEREAS, the attached Advance Funding Agreement is necessary to secure financial deposits from the Developer to fund the District's costs associated with Project reviews, inspections, evaluations, administration, legal, engineering and other expenses directly related to the Project public improvements related to District services.

NOW THEREFORE BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF THE SADDLE CREEK COMMUNITY SERVICES DISTRICT DOES HEREBY approve an Advance Funding Agreement with CV Saddle Creek Holdings/CV Saddle Creek LLC for the Golf Club at Copper Creek development.

WHEREFORE, this Resolution is passed and adopted by the Board of Directors of the Copper Valley Community Services District on October 20, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Peter J. Kampa, Secretary

Roger Golden, President - Board of Directors

CERTIFICATE OF SECRETARY

I, Peter Kampa, the duly appointed and acting Secretary of the Board of Directors of the Copper Valley Community Services District, do hereby declare that the foregoing Resolution was duly passed and adopted at a Regular Meeting of the Board of Directors of the Copper Valley Community Services District, duly called and held on October 20, 2020.

DATED: _____