

Resolution No. 2018-01-09-1104

STOCKTON CITY COUNCIL

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RESOLUTION APPROVING ENTERING INTO A COOPERATIVE AGREEMENT WITH VCOR, LP FOR THE AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM

On October 2, 2017, the California Strategic Growth Council and the California Department of Housing and Community Development (HCD) announced the availability of approximately \$255 million in funding for the Affordable Housing and Sustainable Communities (AHSC) Program; and

VCOR, LP is proposing to construct an affordable housing and office/retail space project called Grand View Village along the south side of Miner Avenue between Hunter Street and San Joaquin Street; and

The project will also include transportation related improvements to downtown in addition to the construction of affordable housing; and

On January 16, 2018, VCOR, LP will submit an application to acquire partial funding through the AHSC Program for the Grand View Village project. AHSC Program guidelines require an executed agreement between VCOR, LP and the City be in place as part of the application submittal. If funding is obtained, the City is willing to cooperate with VCOR, LP in constructing transportation improvements; now, therefore,

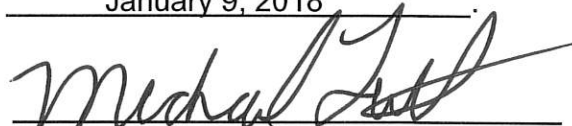
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. A Cooperative Agreement between the City of Stockton and VCOR, LP for the Grand View Village project, is hereby awarded, and the City Manager is authorized and directed to execute same, a copy of which is attached as Exhibit 1 and incorporated by this reference.

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2. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED January 9, 2018



MICHAEL D. TUBBS, Mayor
of the City of Stockton

ATTEST:



BRET HUNTER, CMC
Interim City Clerk of the City of Stockton



**CITY-DEVELOPER COOPERATIVE AGREEMENT
FOR THE
GRAND VIEW VILLAGE PROJECT**

THIS COOPERATIVE AGREEMENT FOR FUNDING OF TRANSPORTATION IMPROVEMENTS ("Agreement") is made and entered into this _____ day of _____, 2017, by and between the CITY OF STOCKTON, a Municipal Corporation to the State of California, ("CITY") and VCOR, LP ("DEVELOPER").

WHEREAS, CITY and DEVELOPER desire to enter into a Cooperative Agreement (Agreement) for funding of transportation improvements along Miner Avenue; and

WHEREAS, the CITY desires to receive funding from the DEVELOPER, or directly from the funder, from the Affordable Housing and Sustainable Communities Program for particular transportation improvements along Miner Avenue between Center Street and Sutter Street for Grand View Village, as more particularly described in Exhibit A ("PROJECT"); and

WHEREAS, the CITY and the DEVELOPER have agreed to form an Agreement as provided for under the Affordable Housing and Sustainable Communities (AHSC) Program; and,

WHEREAS, the DEVELOPER is constructing an affordable housing project (the "Housing Project") located along Miner Avenue (the "Developer Property") and will submit the application to AHSC for the Grand View Village project and, if selected for funding, execute the Full Application Agreement with AHSC, and;

WHEREAS, the CITY is willing to cooperate with the DEVELOPER in constructing the PROJECT, if funding is obtained; and;

WHEREAS, the City can demonstrate prior experience and provide evidence of at least two prior projects that are similar in scope and size which have been completed during the ten (10) years preceding Jan 16, 2018. Below is a list of these projects:

1. Weber Avenue Beautification
2. Airport Way Beautification

WHEREAS, the DEVELOPER agrees to provide funding for the transportation improvements of the CITY's Project according to the terms and conditions set forth herein; and,

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant, and agree as follows:

1. **Services to be Performed.** The City shall, in its sole responsibility, complete the Project in accordance with the terms of the AHSC requirements and the approved design and construction documents only if the required funding is obtained as more particularly described in Exhibit A.
2. **Indemnity.** With the exception that this section shall in no event be construed to require indemnification by Developer to a greater extent than permitted under the public policy of the State of California, Developer shall, indemnify, protect, defend with counsel approved by City, and at Developer's sole cost and expense, and hold harmless City, its Mayor, Council, officials, representatives, agents employees and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement related to the Housing Project and the Developer Property, or from any violation of any federal, state, or municipal law or ordinance, or City Policy, by Developer or Developer's officers, agents, employees, volunteers or subcontractors. Developer shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Developer to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Developer under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Developer to a greater extent than permitted under the public policy of the State of California, the parties agree that Developer's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement related to the Housing Project and the Developer Property by Developer or Developer's officers, agents, employees, volunteers or subcontractors. Developer's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined.

Developer shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse Developer for amounts paid in excess of Developer's proportionate share of responsibility for the damages within 30 days after Developer provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Developer is not obligated to defend or indemnify City in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Developer to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Developer shall indemnify, defend, and hold harmless City its Mayor, Council, officials, representatives, agents employees and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim related to the Housing Project and the Developer Property brought against the City by an employee, office, agent, or volunteer of Developer, regardless of whether such claim may be covered by any applicable workers compensation insurance. Developer's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Developer under workers' compensation acts, disability acts, or other employee benefit acts.

Developer's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

3. **City Indemnity.** City is responsible for carrying out the Project in accordance with the terms of the AHSC requirements and the approved design and construction documents. City shall indemnify, defend, protect, and hold harmless Developer, and its affiliates, directors, officers, partners, members, agents and employees (each, an "Developer Indemnified Party") against any and all claims, actions, suits, causes of action, losses, liabilities, injuries, costs, damages, or expenses (collectively, "Claims"), including, without limitation, any direct, indirect or consequential loss, liability, damage, or expense, court costs

and attorneys' fees, arising out of or in connection with the City's performance of or failure to perform its obligations to complete the Housing Project, in the manner and within the time periods, and to otherwise perform any covenants constituting City obligations, set forth in the AHSC Documents, including any claims, losses or liabilities of the Developer caused by a breach or default under the AHSC Documents. However, in no event shall the Developer Indemnified Party be indemnified hereunder for any Claims resulting from such party's sole negligence or willful misconduct.

4. **Attorney Fees.** If any litigation is commenced between the parties to this Agreement concerning the Housing Project, this Agreement, or the rights and duties of either in relation to the Housing Project or the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief granted, to a reasonable sum as and for its attorney fees. Arbitration is an action or litigation proceeding for the purposes of this provision.
5. **Business License.** Prior to its execution of this Agreement, Developer shall obtain a City business license.
6. **Audit.** City reserves the right to periodically audit all charges for goods and services provided by Developer.
7. **Changes to the Agreement.** This Agreement may not be modified except in writing by both parties. In the event that funds are not secured through the Affordable Housing and Sustainable Communities Program, this agreement between the City and Developer becomes void.
8. **Applicable Law.** This Agreement shall be governed by the laws of the State of California and venue for any action brought in state court shall be in the Superior Court, County of San Joaquin, and Stockton Branch or, for actions brought in federal court, the United States District Court for the Eastern District of California, Sacramento Division.
9. **Non-Assignability.** Developer shall not assign or transfer this Agreement or any interest or obligation in this Agreement without the prior written consent of the City and then only upon such terms and conditions as City may set forth in writing.
10. **Notices.** All notices herein required shall be in writing and shall be sent certified or registered mail, postage prepaid, addressed as follows:

VCOR, LP
315 N. San Joaquin Street
Stockton, CA 95202
Carol Ornelas

CITY OF STOCKTON
22 E. Weber Avenue, Room 301
Stockton, CA 95202
Kurt Wilson

11. Conformance to Applicable Laws. Developer shall comply with all applicable Federal, State and Municipal laws, rules and ordinances. Developer shall not discriminate in the employment of persons or in providing services under this Agreement on the basis of any legally protected classification including race, color, national origin, sex or religion of such person.
12. Entire Agreement. This Agreement and its exhibits contain the entire understanding between Developer and City. All previous communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

MISCELLANEOUS PROVISIONS

13. The work to be performed includes, but is not limited to: design, environmental clearance, permitting, public outreach, advertising, construction and construction management for the improvements along Miner Avenue from Center Street to Sutter Street and other transportation improvements along various City Streets.
14. The parties agree that the CITY is the lead agency responsible for completion of the design, and construction of street related portions of the PROJECT.
15. CITY will hire a Professional Engineering Firm to prepare the Plans, Specifications, Estimates, and permitting for street related portions of the PROJECT.
16. DEVELOPER shall cooperate with CITY's efforts to deliver the street related portions of the PROJECT so as to comply with the schedule and/or conditions prescribed by the CITY and/or its funding source.
17. DEVELOPER shall provide information and consultation to CITY to facilitate delivery of the PROJECT.
18. CITY shall coordinate with DEVELOPER any change orders that affect construction of improvements within PROJECT.
19. DEVELOPER shall assist in discussions with Residents and Property Owners as needed to resolve project issues or impacts.
20. DEVELOPER shall pay CITY actual costs of PROJECT, not to exceed \$2 million.

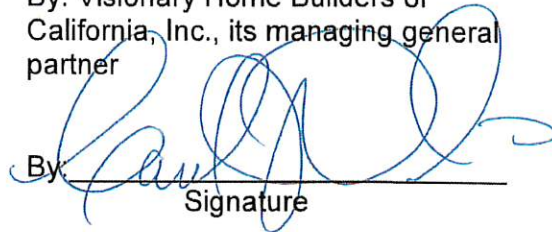
21. CITY shall make available to DEVELOPER all documents and/or information which pertain to PROJECT.
22. CITY hereby represents and warrants that the letting of street related portions of the PROJECT contracts and construction will be done pursuant to the laws of the State of California.

IN WITNESS WHEREOF, this agreement has been executed by the respective parties hereto through their respective authorized officers at Stockton, California, the day and year first above written.

CITY OF STOCKTON

VCOR, LP.,
a California limited partnership
By: Visionary Home Builders of
California, Inc., its managing general
partner

By: _____
KURT WILSON
CITY MANAGER

By:  _____
Signature

ATTEST:

Carol J. Ornelas
Print Name

Title: Chief Executive Officer

By: _____
BRET HUNTER
INTERIM CITY CLERK

APPROVED AS TO FORM:

By: _____
DEPUTY CITY ATTORNEY

AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM

