

RESOLUTION NO. 2020-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROCKLIN
AUTHORIZING EXECUTION OF A LANDSCAPING MAINTENANCE AGREEMENT WITH
BANNER REAL ESTATE GROUP
(Park Drive Self-Storage)

WHEREAS, on June 4, 2019, the City of Rocklin Planning Commission approved the Design Review for Park Drive Self-Storage; and

WHEREAS, Condition No. 6 in the Design Review requires the Developer and the City enter into a Landscape Maintenance Agreement whereby the property owner shall maintain the irrigation system and all plant materials.

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

Section 1. The City Council of the City of Rocklin authorizes the City Manager to execute the Landscaping Maintenance Agreement with the Developer, Banner Real Estate Group, in substantially the form attached hereto as Exhibit "A."

Section 2. The City Clerk is authorized to record the Landscaping Maintenance Agreement in the Office of the Placer County Recorder when fully executed and notarized.

PASSED AND ADOPTED this 8th day of December, 2020, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Mayor

ATTEST:

Hope Ithurburn, City Clerk

Recording Requested by
and Return to:

City Clerk
City of Rocklin
3970 Rocklin Road
Rocklin, CA 95677

LANDSCAPING MAINTENANCE AGREEMENT
(Park Drive Self-Storage)

This Agreement is entered into as of _____, 2020, by and between the City of Rocklin, a municipal corporation (“City”) and Banner Real Estate Group the (“Developer”).

RECITALS

1. Developer has received approval for and is pursuing construction of the project known as Park Drive Self-Storage (“Project”), located at 6025 Park Drive, Rocklin, CA, approved by City of Rocklin Planning Commission Resolution No. PC-2019-12.

2. A condition of approval of the Project requires Developer to landscape and maintain the perimeter of the site, a portion of which is immediately adjacent to the landscaped right-of-way of Park Drive. The landscaped areas of the Project and the adjacent right-of-way are depicted on Exhibit A, attached hereto and by this reference is incorporated herein, (“Landscaped Area”). The portion of the Landscaped Area within the City right-of-way would normally be maintained by City out of revenues generated by CFD 5 (the “District”) of which the Project is a part.

3. To insure a uniform landscaping treatment and simplify maintenance responsibilities, City and Developer enter into this Agreement to allow Developer to landscape the right-of-way portions of the Landscaped Area along with the Project landscaping and assume maintenance responsibility for the entire Landscaped Area.

4. Developer shall prepare and submit to the City’s Director of Community Development and the City’s Director of Public Services final landscape and irrigation plans for all of the Landscaped Area shown on Exhibit A and in compliance with all conditions of Project approval.

5. Developer shall obtain an encroachment permit for all improvements within the public right-of-way. Developer shall post a performance bond and labor and materials payment bond (or other equivalent financial security) in the amount of 100% of the cost of the improvements to be constructed in the public right-of-way as improvement security to ensure the faithful performance of all duties and obligations required of Developer in the construction of the improvements. Such improvement security shall be in a form acceptable to the City Attorney. Such security shall be either a corporate surety bond, a letter of credit, or other instrument of credit issued by a banking institution subject to regulation by the State or Federal government and pledging that the funds necessary to carry out this Agreement are on deposit and guaranteed for payment, or a cash deposit made either directly with the City or deposited with a recognized escrow agent for the benefit of the City.

6. Developer shall supply City with a complete set of as-built plans of the landscaping and irrigation system within five (5) days of final inspection and approval.

7. Developer shall at all times maintain the Landscaped Area in a professional manner commensurate with the standard of maintenance provided by City in its landscaped rights-of-way in the vicinity of the Project site.

8. **Insurance.**

A. Developer shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under this Agreement and the results of that work by Developer, its agents, representatives, employees, or subcontractors. All coverage available to the Developer as named insured shall be made available to the City, its officers, employees and volunteers as additional insured. Developer shall provide to City the full policy limits of Developer's insurance, with coverage at least as broad as, and limits no less than, the following:

1. **General Liability.** Developer shall maintain in full force and effect a policy of commercial general liability insurance (ISO occurrence form CG0001) with limits no less than the following: Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this agreement, or the general aggregate limit shall be twice the required occurrence limit.

2. **Worker's Compensation and Employer's Liability Insurance.** Developer shall fully comply with the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability Developer may have for worker's compensation. Developer shall also maintain in full

force and effect a policy of employer's liability insurance with limits no less than the following: one million dollars (\$1,000,000) each accident; one million dollars (\$1,000,000) policy limit bodily injury by disease; one million dollars (\$1,000,000) each employee bodily injury by disease.

3. Automobile. Developer shall maintain in full force and effect a policy of commercial automobile liability insurance (ISO Form CA0001 Code 1 (any auto) or Code 8, 9 if no automobiles owned), with limits no less than the following: one million dollars (\$1,000,000) per accident for bodily injury and property damage.

B. The general liability and automobile policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, employees and volunteers shall be added as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Developer, and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2782 of the Civil Code.

2. For any claims related to work or operations performed by or on behalf of Developer, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

3. Coverage shall not be cancelled by the Insurer except after thirty (30) days prior written notice has been given to the City.

C. The insurance company or companies providing Developer the coverages required by this Agreement shall be admitted in the State of California and have a current A.M. Best's rating of no less than A:VIII or equivalent acceptable to City.

D. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees and volunteers; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. The insurance shall be maintained from the time the work first commences until completion of the work under this Agreement and shall be on an occurrence policy form.

F. If Developer, for any reason, fails to maintain insurance coverage which is required under this Agreement, the failure shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from Developer resulting from the breach.

G. Developer shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Developer shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Agreement. The certificates and endorsements should be on forms provided by the City, or on other than the City's forms, provided those endorsements or certifications conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by this Agreement at any time.

Developer shall replace certificates of insurance for policies expiring prior to completion of the work under the Agreement, and shall continue to furnish certificates for five years beyond the Agreement terminate date, when the Developer has a claims made form of insurance.

I. The worker's compensation and employee's liability insurance are to contain, or be endorsed to contain, the following provision: the State Compensation Insurance Fund waives any right of subrogation against the City, its officers, employees, and volunteers, which might arise by reason of any payment by the State Compensation Insurance Fund in connection with work performed by Developer under this Agreement.

9. Developer shall defend, indemnify and hold harmless City, its officers, officials, employees and volunteers from and against all claims, damages, losses, and expenses, including litigation costs and attorneys fees, arising out of Developer's performance or non-performance of its duties and obligations under this Agreement, caused in whole or in part by any negligent act or omission of Developers, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of City.

10. Developer agrees to remedy any defects in the landscaping and irrigation system within the Landscaped Area arising from faulty or defective design or construction occurring at any time during the term of this Agreement.

11. **Attorney Fees; Litigation Costs.**

If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and other expenses in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever provision is made in this Agreement for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.

Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

12. This Agreement may be terminated by either party upon thirty (30) days written notice to the other. Upon notice of termination being given, and within that thirty (30) day period, Developer shall complete the following requirements:

A. Developer, at its sole cost, shall provide for the continued irrigation of the public right-of-way portion of the Landscaped Area, separate from the privately owned portion of the Landscaped Area.

B. Developer shall modify or replace the then existing irrigation system, to the satisfaction of City, and install, or pay the City the cost to have installed, a City water meter located within the public right-of-way. If the Developer fails to perform the work necessary to revise the irrigation system and install a City water meter, the City may at its option, perform or cause to be performed said work on behalf of Developer and assess a lien against Developer's property for the cost of the work.

13. The obligations set forth in this agreement are covenants that run with the land and are appurtenant to and shall burden Developer's property (and any portion into which such property may hereafter be divided), and are for the benefit of the adjacent City owned right-of-way.

14. This Declaration shall inure to the benefit of and be binding upon Developer, and their respective heirs, personal representatives, successors and assigns, and upon any person acquiring Developer's property, or any portion thereof, or any

interest therein, whether by operation of law, foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15. Notices shall be deemed given when mailed first class, postage prepaid, or personally delivered to the principal office of the other party at the following address:

City: City of Rocklin
c/o City Manager
3970 Rocklin Road
Rocklin, California 95677

Developer: Banner Real Estate Group
Attn: Samuel J. Sapp
20929 Ventruea Blvd. Ste 47-521
Woodland Hills, CA 91364-2334

Notices may be sent to such other persons and addresses as either party may designate from time-to-time in writing.

16. This Agreement shall be recorded in the Office of the Placer County Recorder.

The parties have executed this Agreement on the date first above written.

CITY OF ROCKLIN

By: _____
Aly Zimmermann, City Manager

DEVELOPER:

Signature

Print Name: _____

Title: _____

Signature

Print Name: _____

Title: _____

APPROVED AS TO FORM

Sheri Chapman, City Attorney

ATTEST

Hope Ithurnburn, City Clerk

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 Placer)

On this _____ day of _____, 20____, before me
_____, notary public,

(Notary Name and Title)

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 the 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.

My Commission Expires: _____

Notary Public in and for said county and state

(SEAL)

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 Placer)

On this _____ day of _____, 20____, before me
_____, notary public,

(Notary Name and Title)

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 the 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.

My Commission Expires: _____

Notary Public in and for said county and state

(SEAL)

Exhibit A

