

**RESOLUTION NO. 24-**           

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA APPROVING A SUM IN LIEU OF UTILITY UNDERGROUNDING DEFERRAL AND LIEN AGREEMENT AND SUM IN LIEU OF UNDERGROUNDING LIEN WITH PINNACLE REALTY & HOLDINGS, LLC FOR ASSESSOR PARCEL NUMBER 0236-052-47.**

**WHEREAS**, Pinnacle Realty & Holdings, LLC (“Owner”) is the fee owner of certain real property located at 14562 Slover Avenue, Fontana, CA, Assessor Parcel Number 0236-052-47, in the County of San Bernardino, State of California (“**Property**”); and

**WHEREAS**, Section 27-52 of the Fontana Municipal Code (“FMC”) requires that the Owner place underground of the Property all new, upgraded, or existing on-site or off-site utilities, all as more specifically described in Article 3 of Chapter 27 of the FMC; and

**WHEREAS**, Section 27-54 of the FMC permits the City’s Community Development Director to allow an applicant to pay a sum in lieu of undergrounding off-site utilities if it is determined that it would be impracticable, infeasible or disproportionately financially burdensome to require the undergrounding of off-site utilities pursuant to Section 27-52; and

**WHEREAS**, Section 27-54 of the FMC requires that the amount and time of payment shall be agreed upon in writing by the Parties and the City may require that the Owner provide security for the Owner’s payment in the form of an improvement bond, letter of credit and a lien against the Property; and

**WHEREAS**, the required sum in lieu of undergrounding the utilities due and payable by the Owner represents a proportionate and fair share of costs attributable to the Property, and

**WHEREAS**, the Owner wishes to enter into a Sum in Lieu of Utility Undergrounding Deferral and Lien Agreement with the City to defer payment of the sum in lieu of undergrounding the utilities as permitted under Section 27-54 of the FMC and the City will provide a lien against the Property as security as further described herein.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fontana resolves as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. CEQA. The approval of the draft agreement through this Resolution does not commit the City to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act. The City Clerk, acting on behalf of the City, is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

Section 3. Approval. The City Council approves the Sum in Lieu of Utility Undergrounding Deferral and Lien Agreement and Sum in Lieu of Utility Lien within the form attached hereto as Exhibit A and incorporated herein by reference, and authorizes the City Manager to sign such Agreement and Lien on behalf of the City.

Section 4. Effective Date. The City Clerk shall certify to the adoption of this Resolution. This Resolution shall become effective upon the passage by the City Council.

Section 5. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application.

**APPROVED AND ADOPTED** this 22<sup>nd</sup> day of October, 2024.

**READ AND APPROVED AS TO LEGAL FORM:**

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City Attorney

I, Germaine McClellan Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council of the City of Fontana, hereby certify that the foregoing Resolution is the actual resolution that was duly and regularly adopted by the City Council of the City of Fontana at a regular meeting on the 23<sup>rd</sup> day of July, 2024, by the following vote, to wit:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

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Germaine McClellan Key, City Clerk

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Acquanetta Warren, Mayor

ATTEST:

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Germaine McClellan Key, City Clerk

**EXHIBIT A**

**SUM IN LIEU OF UTILITY UNDERGROUNDING DEFERRAL  
AND LIEN AGREEMENT AND SUM IN LIEU OF  
UNDERGROUNDING LIEN WITH PINNACLE REALTY &  
HOLDINGS, LLC FOR ASSESSOR PARCEL NUMBER 0236-  
052-47**

**[ATTACHED]**