

March 14, 2016

Stephen L. Des Jardins
BBC Roseville Oaks, LLC
130 Diamond Creek Place, Suite 1
Roseville, CA 95747

RE: FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT
HP CAMPUS OAKS COMMUNITY FACILITIES DISTRICT NO. 1

At the meeting of March 2, 2016 the City Council adopted a resolution authorizing the City Manager to execute the agreement referenced above. The fully executed agreement is enclosed along with a certified copy of authorizing Resolution No. 16-76.

If you have any questions, please contact Administrative Analyst Jeannine Thrash at (916) 774-5473.

SONIA OROZCO, CMC
CITY CLERK

By:



Judy Moore
City Clerk Technician

Cc: Attorney
Jeannine Thrash/Finance

FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT
HP CAMPUS OAKS COMMUNITY FACILITIES DISTRICT NO. 1
(City of Roseville)

This Funding, Construction and Acquisition Agreement ("**Agreement**") is entered into as of the 2nd day of March, 2016, by and between the **CITY OF ROSEVILLE**, a California charter city and municipal corporation (the "**City**"), and **BBC ROSEVILLE OAKS, LLC**, an Illinois limited liability company ("**Owner**").

Recitals

A. On September 22, 2015, the City Council of the City adopted Resolution No. 15-443 entitled "A RESOLUTION OF FORMATION OF THE CITY COUNCIL OF THE CITY OF ROSEVILLE TO FORM HP CAMPUS OAKS COMMUNITY FACILITIES DISTRICT NO. 1 (PUBLIC FACILITIES)" (the "**Resolution of Formation**") with respect to HP Campus Oaks Community Facilities District No. 1 (Public Facilities) (the "**District**") of the City pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "**Act**"), and subsequently authorized the issuance of bonds to finance District authorized improvements for development within the District; and

B. Owner owns all of the real property in the District, which is shown on the map recorded in the Placer County Recorder's Office on September 3, 2015 in Book 3 at Page 72, as Document No. 2015-0077844 of Maps of Assessment and Community Facilities Districts (the "**Property**"). The Property is located within the corporate limits of the City and comprises the land within the District.

C. Owner proposes to make improvements to the Property (the development of the Property is defined herein as the "**Project**") as required by the Project Approvals (as defined below), which Project includes construction of public facilities authorized to be financed by the District (the "**Public Facilities**" or separately, a "**Public Facility**"), described in the Resolution of Formation and attached as Exhibit A hereto, needed for development of the Project and authorized to be financed by special taxes of the District.

D. On August 1, 1996, the City and Hewlett-Packard Company ("**Hewlett-Packard**") entered into that certain agreement entitled "Development Agreement By and Between The City of Roseville and Hewlett-Packard Company Relative to the Roseville Master Plan" (the "**Original Development Agreement**"). The Original Development Agreement was recorded in the Official Records of Placer County on August 16, 1996, as Instrument No. 96-0047544 and re-recorded on March 25, 1998 as Instrument No. 98-0019739. On May 23, 2001, the City and Hewlett-Packard entered into that certain amendment entitled "First Amendment of Development Agreement By and Between The City of Roseville and Hewlett-Packard Relative to the Roseville Master Plan" ("**First Amendment**"); the First Amendment was recorded in the Official Records of Placer County on June 7, 2001, as Instrument No. 2001-0056191. On August 19, 2015, the City, Hewlett-Packard and Owner entered into that certain amendment entitled "Second Amendment for Parcels 1 and 4 of the Development Agreement By and Between The City of Roseville and Hewlett-Packard Company and BBC Roseville Oaks, LLC Relative to the Roseville Master Plan" (the "**Second Amendment**"); the Second Amendment was recorded in the Official Records of Placer County on August 21, 2015, as Instrument No.

2015-0073371. Also on August 19, 2015, the Original Development Agreement was amended by a "Third Amendment of Development Agreement By and Between The City of Roseville and Hewlett-Packard Company Relative to the Hewlett-Packard Property of the Roseville Master Plan" and a "Fourth Amendment of Development Agreement By and Between The City of Roseville and BBC Roseville Oaks, LLC Relative to the Campus Oaks Property of the Roseville Master Plan"; the Third Amendment and the Fourth Amendment were recorded in the Official Records of Placer County on September 16, 2015, as Instrument No. 2015-0081192 and Instrument No. 2015-0081193, respectively. The Original Development Agreement, as amended by the aforementioned amendments and any subsequent amendments, is referred to herein as the "**Development Agreement.**" The Development Agreement, including conditions of approval, and other existing and subsequent approvals granted by City and agreements between Owner and City in implementation of the Project, as the same may be amended from time to time, including amendments thereto, are herein collectively referred to as the "**Project Approvals.**"

E. Section 53313.5 of the California Government Code provides that a community facilities district may finance the purchase of public facilities completed after the adoption of the resolution of formation establishing the community facilities district if the facilities have been constructed as if they had been constructed under the direction and supervision, or under the authority of, the local agency whose governing body is conducting proceedings for the establishment of the District.

F. The purpose of this Agreement is to provide for the acquisition of public facilities authorized to be financed by the District, the issuance and sale of the bonds for the District to finance the design and acquisition of such public facilities and expenses incidental thereto and to provide the terms of any reimbursement to Owner.

AGREEMENTS

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties agree as follows:

1. Establishment of District. The City has conducted proceedings pursuant to the Act for the establishment of the District. Such proceedings included but are not limited to, elections pursuant to Sections 53326 and 53327 of the California Government Code on the questions of (i) the issuance of bonds for the District to finance the construction or acquisition of the Public Facilities, (ii) the annual levy of special taxes on all taxable property within the District to finance the Public Facilities and certain incidental expenses, including payment of certain impact fees and annual administrative expenses of the City and the District, including paying the principal and interest on bonds of the District, providing for the registration, exchange and transfer of such bonds, costs of issuance, including the fees of fiscal agents and paying agents, and any necessary replenishment for the reserve fund for such bonds, accumulation of funds for future bond payments, and (iii) the establishment of an appropriations limit for the District. Owner shall cooperate with City in its conduct of the proceedings for the establishment of the District.

Resolution No. 15-447 adopted on September 22, 2015 by the City Council of the City authorized the issuance of bonds payable from special taxes levied on taxable property within the District according to a methodology approved by the City and qualified electors in the District in order to finance a portion of the Public Facilities. An aggregate principal amount of \$36,000,000 of bonds are authorized to be issued by the District. It has not yet been

~~determined whether one series or multiple series of bonds will be issued. The timing of the issuance and sale of bonds, the aggregate principal amount thereof, and the terms and conditions upon which they shall be sold shall be reasonably determined by the City.~~

This Agreement is applicable to proceeds from the first series of such bonds only; such first series, as described in Section 2 hereof, is herein referred to as the "**Bonds.**" In the event additional series of bonds are issued, disbursement of proceeds of such later series of bonds for Public Facilities shall be as set forth in a separate agreement or amendment to this Agreement.

2. Sale of Bonds. The City shall proceed, as hereinafter provided, with the sale of bonds for the District in an aggregate amount to be determined by the City not to exceed \$36,000,000, for the purpose of raising an amount to pay for the design and construction or acquisition of a portion of the Public Facilities, impact fees for Public Facilities and related expenses. Said authorized Public Facilities and the estimated costs thereof are described in the Resolution of Formation.

3. Tax Requirements. The City shall take all actions which, in the opinion of City's bond counsel, are necessary in order to avoid classification of the Bonds as "arbitrage bonds" or the loss of tax exemption for the Bonds for any other reason.

4. Amounts to be Included in Bonds. The aggregate principal amount of the Bonds shall include an amount needed to fund a reserve fund for the payment of principal of and interest on the Bonds as is determined by the City to be necessary and appropriate, capitalized interest on the Bonds for such period as the City shall determine is appropriate, the amount of the discount of the underwriter who purchases the Bonds, and other expenses incurred by the City in connection with the issuance and sale of the Bonds, including bond counsel fees, legal fees, fees of the bank which will act as transfer agent, registrar and paying or fiscal agent for the Bonds, other fees and costs normally incidental to the sale of Bonds, and such other fees and costs enumerated in Section 53345.3 of the California Government Code as the City determines are necessary and appropriate. The City may also include within the aggregate principal amount of the Bonds an amount determined by the City to equitably reimburse Owner for costs and expenses incurred by it which are related to the establishment of the District and the design and construction of the Public Facilities; provided that the City shall determine the amount to be so reimbursed on the basis of detailed itemizations of costs provided by Owner and the decision of the City shall be final. In no event shall Owner be reimbursed from Bond proceeds for (i) in-house administrative overhead (except that Owner shall be entitled to payment equal to four percent (4%) of actual construction costs as and for project and construction management services, unless otherwise agreed by the City), (ii) interest expense incurred by Owner on moneys advanced during the proceedings for formation of the District and issuance of Bonds, and during construction of the Public Facilities; and (iii) any other costs and expenses incurred by Owner which are not authorized by the Act.

5. Design; Reimbursements. Public Facilities to be acquired by the City shall be designed in conformance with all applicable City standards and requirements, and the Development Agreement. Upon completion of the design of each such Public Facility to the satisfaction of the City and when Owner has paid to the City all applicable plan checking and other fees, the City shall notify Owner that the design of the Public Facility is completed and acceptable to the City. It shall be the responsibility of Owner, not the City, to determine the requirements for design and construction of Public Facilities to be acquired by or dedicated to

~~other public agencies, and City's acceptance of Owner's design shall not relieve Owner of this responsibility.~~

Owner has been authorized by the City to commence the design of the Public Facilities, and the City has approved Owner's retention of Morton & Pitalo, civil engineers, to design streets, traffic signals, water, sewer and storm drainage facilities, and Fuhrman Leamy, landscape architects, to plan and design street median and open space landscaping. Owner may, after obtaining approval of the City, retain the services of additional consultants to design other portions of the Public Facilities. Any substitution of consultants after initial selection and approval shall require City's approval.

Owner shall be reimbursed out of the proceeds of the sale of the Bonds for Owner's expenses incurred in designing the Public Facilities, including all applicable plan checking and other fees paid by Owner as provided above in this Section, subject to the City's determination of the amount to be so reimbursed pursuant to the terms hereof, and subject to the limitation that reimbursement in all cases is to be made from available Bond proceeds and from no other source.

Notwithstanding the preceding provisions of this Section, if the City determines that Owner is not proceeding with the design of the Public Facilities on a reasonable schedule which will enable the City to insure that construction of all of the Public Facilities can be completed within the time specified in Section 6 hereof, the City may take over the design of the Public Facilities by giving Owner written notice thereof as provided in Section 14. If the City takes over the design of the Public Facilities, the City shall reimburse Owner from the proceeds of the sale of the Bonds a reasonable amount, reasonably determined by the City, for the expenses incurred by Owner in connection with the design of the Public Facilities which have not previously been reimbursed, provided there are sufficient funds remaining, after payment for the Public Facilities, to do so.

6. Construction for Acquisition. The City shall only be required to acquire from Owner those Public Facilities which will ultimately be owned by the City. Owner shall proceed with the construction of the Public Facilities in accordance with the approved plans and specifications (either prior to or following the formation and confirmation of the authority of the District). For construction of Public Facilities under this Section, Owner shall comply with all of the following requirements to insure that the Public Facilities will be constructed as if they had been constructed under the direction and supervision, or under the authority of the City:

The plans and specifications, the bidding and contract award procedures, and the bidding and contract documents shall be approved by the City Engineer for conformance with City Codes and policy.

Based on qualifications submitted by the contractors, Owner, in consultation with the City Engineer, shall select a list of qualified bidders for each element of work. If Owner determines that the nature of a particular element of the construction does not require a pre-qualified bid list, Owner may allow a particular element of the work to be publicly bid without a pre-qualified bid list.

(a) Owner shall receive and open bids, and report the results to the City Engineer. On elements of work with a pre-qualified bid list, bids will only be accepted from pre-qualified bidders. Any value engineering proposals shall be submitted to the

~~City Engineer for approval. The City Engineer may, after consulting with Owner, require changes to the work. Owner shall promptly order such changes. The City Engineer shall be consulted with respect to any proposed change to the originally-approved design. The contract or contracts for the construction of the Public Facilities shall be awarded to the lowest responsive, responsible bidder(s) for the construction of the Public Facilities, as determined by Owner.~~

(b) Owner is required, and the specifications and bid and contract documents shall require all contractors and subcontractors, to pay prevailing wages and to otherwise comply with applicable provisions of the California Labor Code, Government Code and Public Contract Code relating to public works projects of cities and as required by the procedures and standards of the City with respect to the construction of its public works projects.

(c) All contractors and subcontractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Public Facilities which they will construct in conformance with the City's standard procedures and requirements.

(d) No contractor or subcontractor may be listed on a bid proposal for the Public Facilities unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. No contractor or subcontractor may work on the Public Facilities unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Owner shall be responsible for ensuring that these contractor registration requirements are adhered to since the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(e) As required by California Senate Bill 854 (Stat. 2014, chapter 28), Owner shall notify the Department of Industrial Relations of the Project within five (5) calendar days of the award of a contract to a contractor for the Public Facilities.

Owner shall cause the Public Facilities to be constructed in an expeditious manner so that construction of all such Public Facilities shall be completed by March 2019, or such earlier date as may be required by the Development Agreement or upon a later date which the City and Owner may agree; provided, however, that the construction of the Public Facilities shall proceed and be completed so that the proceeds of the Bonds may be expended for the construction or acquisition of the Public Facilities within three (3) years from the date of their issuance.

7. Payment; Cost Overruns; Shortfalls. The City and Owner agree that it is in their mutual best interest for Owner to construct the Public Facilities with the understanding that the City shall acquire those portions of the Public Facilities constructed by Owner as may be paid for with the proceeds of the sale of the Bonds; interest earnings on the reserve fund and improvement fund established in connection with the sale of the Bonds; excess special taxes, if available and in accordance with the Development Agreement and this Agreement and as determined by City; and Owner contributions. All portions of the Public Facilities not acquired with the proceeds of the Bonds shall nonetheless be constructed by Owner, as required by the Project Approvals. All cost overruns in the construction of the Public Facilities shall be the responsibility of Owner. Any cost savings achieved in an element of any of the Public Facilities constructed in whole or in part with the proceeds of the sale of the Bonds shall be aggregated with all other such savings achieved throughout the District, and shall be used for any other element of the Public Facilities, as approved by the City.

8. Inspection and Approval of Construction. The City shall provide such level of inspection of the progress of construction of the Public Facilities to be constructed by Owner for acquisition by the City as it deems necessary, and its inspectors shall have access to the construction sites at all times for the purpose of conducting their inspection. Owner and its contractors shall cooperate in every way with the City and its inspectors to ensure that they are afforded an adequate opportunity to inspect each and every phase of the progress of construction of each and every such Public Facility. Upon completion of the construction of a Public Facility (either in its entirety, or a portion thereof), constructed by Owner, and upon receipt of written notification from City's inspectors that construction thereof has been completed in accordance with the plans and specifications thereof and the City's standard requirements, and upon receipt of satisfactory proof, based on the records of Owner and the City and such certifications as the City may require, that the requirements of Section 6 hereof have been satisfied, the City shall notify Owner in writing that the construction of the Public Facility, or portion thereof has been satisfactorily completed; provided, however, that Owner, not the City, shall be responsible for determining satisfaction of requirements of other public agencies with respect to the Public Facilities. Upon receiving such notification of a completed Public Facility, the City Clerk staff shall file with the County Recorder of the County of Placer a Notice of Completion pursuant to the provision of Section 8182 of the California Civil Code, and supply to Owner a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Records. The costs incurred by the City in inspecting and approving the construction of the Public Facilities may be paid or reimbursed from the proceeds of the sale of the Bonds and any excess special taxes.

9. Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Section 8412 and Section 8414 of the California Civil Code, Owner shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Public Facilities (or approved portion thereof) constructed by Owner for acquisition by the City have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

10. Acquisition; Maintenance. Upon completion of the construction of each Public Facility or portion thereof constructed by Owner for acquisition by the City, the City shall determine the acquisition price to be paid by the City for the acquisition of the completed Public Facility or portion thereof from Owner. The acquisition price as to each Public Facility or portion thereof shall include the actual cost of construction thereof as determined by the contract prices as set forth in contracts and purchase orders entered into by Owner with its contractors, and suppliers, in accordance with standards and procedures therefor as prescribed by the City. Owner shall furnish to the City such proof of the amounts which Owner contends should be included in the acquisition price for a completed Public Facility or portion thereof as the City shall require, together with lien releases from all contractors and suppliers providing work and materials for the completed Public Facility or portion thereof in form satisfactory to the City. The City shall have ten (10) calendar days to determine the acquisition price. The determination of the City as to the acquisition price for a completed Public Facility or portion thereof shall be final.

Upon determining the acquisition price for a completed Public Facility or portion thereof, the City shall promptly notify Owner in writing of such acquisition price. Upon presentation by Owner to the City of such documents, including lien releases, as the City shall require as to the completed Public Facility or portion thereof, the City shall, within ten (10) calendar days

thereafter, pay from the proceeds of the sale of the Bonds the amount of the acquisition price for the completed Public Facility or portion thereof but, in the case of a completed Public Facility for which certain Punch List work remains to be completed, less a retention of one hundred and fifty percent (150%) of the value of Punch List work not completed. Upon payment and acceptance of the acquisition price for each completed Public Facility or portion thereof, Owner shall have no further claim for payment from the City with respect to the retentions until completion of the Punch List work. The City shall hold the retention amount on all Public Facilities acquired until the Punch List work is completed and accepted by the City.

The administrative procedure to implement the foregoing is as follows, and may be subject to revision by City upon notice to Owner. Owner shall notify the City Engineer that a Public Facility, or particular stage of the Public Facility, is complete and shall furnish proof of the amounts to be included in the acquisition price, together with lien releases. Development Services staff shall then inspect the Public Facility to confirm completion. Development Services staff shall then notify City's Finance Department regarding completion and shall request payment to Owner. Within ten (10) calendar days thereafter, and provided that the improvement has been conveyed to City or irrevocably offered for dedication, or, in the case of Public Facilities for which progress payments are provided for in the Development Agreement, invoices for actual work constructed have been presented by Owner to the City and the particular Public Facilities have been signed off by City inspectors, City shall issue payment to Owner in the requested amount, further provided and to the extent that funds are available, except that Owner shall choose one of the following options prior to release of the final five percent (5%): (1) City shall retain five percent (5%) of the acquisition price until expiration of the one-year warranty period for the subject Public Facility; or (2) Owner shall obtain a maintenance bond until expiration of the one-year warranty period for the subject Public Facility. Upon expiration of the one-year warranty period, the five percent (5%) retention shall be disbursed to Owner or the maintenance bond shall be released, less any amounts utilized by the City for warranty work. Notwithstanding the preceding provisions of this Section, the City will not pay for the acquisition of any Public Facilities or portion thereof unless and until the street, drainage or other utility rights of way where they are located have been irrevocably offered to the City for dedication, except in the case of Public Facilities for which progress payments are to be paid by City as provided for in the Development Agreement, based on invoices for actual work constructed that have been signed off by City inspectors.

Until a Public Facility is acquired by the City, Owner shall maintain it, and shall transfer it to the City free of any liens and in good operating condition. Upon the acquisition of a Public Facility by the City, the City shall, except as otherwise provided in the Project Approvals, become responsible for its maintenance, subject to any contractor's warranty or maintenance provisions of bonds required under the Final Map or other City approval, or under any other agreement.

11. Indemnification; Insurance. To the fullest extent allowed by law, Owner shall defend, indemnify and hold harmless the City, the District, and their officers, agents, employees, and volunteers from any and all liability, cost and expense in connection with the construction of the Public Facilities to be constructed by Owner for acquisition by the City, including, but not limited to, liability, costs, expenses and claims arising, under the procedures set forth in Section 6. Owner shall also defend, indemnify and hold harmless the City, the District, and their officers, agents, employees, and volunteers from any and all liability, cost and expense in connection with the ownership of the Public Facilities to be constructed by Owner for acquisition by the City prior to the time the City accepts the Public Facilities, whether or not such Public Facilities are to be acquired with bond proceeds. Owner shall procure and provide or cause its general contractor to procure and provide, until construction of all of the

~~Public Facilities to be constructed by Owner is completed and acceptance thereof by the City~~ has occurred, a broad form comprehensive general liability policy of insurance, in a form acceptable to the City, naming the City, the District and their officers, agents, employees, and volunteers as additional insureds, in the amount of: (i) for construction of a Public Facility over \$1,000,000, Five Million Dollars (\$5,000,000) each occurrence and Ten Million Dollars (\$10,000,000) aggregate as to all coverages provided thereby, and (ii) for construction of a Public Facility under \$1,000,000, Two Million Dollars (\$2,000,000) each occurrence and Four Million Dollars (\$4,000,000) aggregate as to all coverages provided thereby. Before commencing the construction of any Public Facility, Owner shall provide the City with a certification of insurance and endorsement as to such insurance in a form acceptable to the City, and Owner shall upon each renewal of such insurance policy provide the City with a new certificate of insurance with respect thereto.

Owner shall also furnish to the City, prior to commencing the construction of any Public Facility to be constructed by Owner for acquisition by the City, a certificate of insurance evidencing that Owner has procured or caused its general contractor to procure and has in force a current policy of workers' compensation insurance in compliance with California law as to all workers to be employed by Owner in connection with the design and construction of the Public Facilities. Owner shall require each person, firm or corporation with whom it contracts in connection with the design and construction of the Public Facilities to provide and maintain such workers' compensation insurance and a broad form, comprehensive general liability insurance policy in the amount hereinabove specified and in a form acceptable to the City. Owner shall provide to the City proof, in the form described below, that each contractor with whom it contracts has procured and is maintaining such insurance.

Upon the execution of each contract with each person, firm or corporation with whom Owner contracts in connection with the design and construction of the Public Facilities and prior to permitting any such person, firm or corporation to commence work under such contract, Owner shall provide to the City a certificate from the insurance providers for each such contractor that the contractor has in force the insurance policies required of it under this Section 11, that the City is named as an additional insured on the broad form comprehensive general liability insurance policy of such contractor, and that the policies will not be canceled, modified or allowed to lapse without thirty (30) calendar days written notice to the City.

The premiums paid by Owner for the insurance required by this Section may be included in the acquisition price to be paid by the City for the Public Facilities to be constructed by Owner as an incidental cost.

12. Ownership of Facilities. Notwithstanding that some of the Public Facilities to be constructed by Owner for acquisition by the City may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated or offered for dedication to the City, the District or a public utility, such Public Facilities or any portion thereof shall be and remain the property of Owner, and Owner shall be responsible for any loss or damage thereto or liability arising therefrom, until they are acquired by the City or other agencies. Such ownership by Owner shall likewise not be affected by any agreement which Owner may enter into with the City pursuant to the provisions of the Subdivision Map Act, Section 66410 et seq. of the California Government Code, which may contain or include provisions with respect to the construction and ownership of public facilities which may seem to be contradictory to the provision of this Agreement, and the provisions of this Section shall control.

13. Improvement Security. Notwithstanding any other provisions of this Agreement, Owner shall be required to agree to construct and to secure the construction and completion of construction of the Public Facilities, or portions thereof, as a condition precedent to the approval of subdivision or parcel maps for portions of the Property as required by the City pursuant to Section 66462 and Sections 66499 through 66499.10 of the California Government Code.

The aggregate principal amount of the improvement bonds or other security provided by Owner pursuant to this Section shall be reduced by such amount as the City shall determine is appropriate upon receipt of the proceeds from the sale of the Bonds. The amount of the reduction of such aggregate principal amount shall be determined by the City based on the amount of each such improvement bond or other security which relates to the Public Facilities to be constructed or acquired with the proceeds of the sale of the Bonds.

All subdivision and performance bonds shall provide, inter alia, that the principal thereof whether that be Owner or its contractor(s), guarantees that the completed Public Facilities shall be free from defects resulting from faulty workmanship and materials for a period of one year from the date of acceptance by the City, and the obligation of the surety shall extend to the fulfilling of that guarantee. At the end of said one year period and subject to certification of the City Engineer that any defects have been corrected, the obligation of the principal and surety named therein shall cease.

14. Failure to Complete Construction. Notwithstanding the preceding provisions of this Agreement, if Owner fails to expeditiously prosecute the construction of the Public Facilities to be constructed by Owner for acquisition by the City, the City shall have the right and may elect to take over the construction of such Public Facilities, or any part thereof, if City determines it is necessary for City to so proceed in order to protect the City's interests. If the City elects to so proceed, it shall notify Owner in writing that if Owner does not satisfy the City that construction is proceeding expeditiously on the construction of a Public Facility within thirty (30) calendar days after receipt of such notice, the City will take over the construction of such Public Facilities. If after receiving such a written notification, Owner does not satisfy the City that it is proceeding expeditiously to construct that portion of the Public Facilities identified in the written notification to the satisfaction of the City, within thirty (30) calendar days from the date of receipt thereof, Owner shall relinquish to the City all design documents, plans and specifications, and shall cooperate with the City in every way to ensure that the construction of the Public Facilities will be completed expeditiously.

Notwithstanding the provisions of this Section, the only sources of funds to be utilized by the City for the construction of any such Public Facilities shall be (i) the proceeds of the sale of the Bonds and, at City's discretion, (ii) the proceeds of applicable City development fees collected pursuant to the applicable codes, ordinances and policies of the City, including development fees paid through levies of the special taxes of the District, (iii) proceeds from the sale of the bonds of another community facilities district or assessment district established over and including property in the City, (iv) interest earnings on the reserve fund for the Bonds, to the extent such earnings are determined by the City to be available for construction of the Public Facilities, (v) Owner's subdivision bond or bonds to the extent applicable, (vi) any other performance security that may have been provided by Owner, and (vii) Owner's and/or contractors' performance bonds. To the extent that the proceeds of the sale of the Bonds and such other funds may be insufficient to pay for the construction of a Public Facility which will be constructed by the City pursuant to this Section, the City may either construct only those Public Facilities which can be constructed within the total of the amounts of the proceeds from the sale of the Bonds and such other funds which are available therefor, or the City may proceed to

complete the Public Facilities and charge Owner, Owner's bond or any contractor's bond for the costs thereof.

15. Owner Responsibility for Satisfaction of Improvements required by Conditions of Approval. If the Bonds are not sold in an aggregate principal amount sufficient to construct and acquire all of the Public Facilities, Owner shall nevertheless construct and dedicate to the City the Public Facilities required by the Project Approvals, and the City may require such assurances of performance as the City deems appropriate, provided however the City shall cooperate with Owner to provide for a levy of the component of the special taxes referred to in the Rate and Method of Apportionment, and Manner of Collection of Special Tax (the "RMA") for the District as the "Pay-As-You-Go-Basis" (as defined in the RMA) component, for a period not exceeding the first 10 years of the Special Tax levy to reimburse Owner for an amount, when added to the amount deposited into the Improvement Fund established under the Fiscal Agent Agreement upon issuance of the Bonds, equal to \$22 million, representing that amount of costs of Public Facilities not paid from proceeds of the Bonds. Such pay-as-you-go component shall be generated by levying 100% of the maximum special tax on all Taxable Parcels within the District during such 10-year period, consistent with the RMA and this Agreement (excluding, however, the period when no special tax would otherwise be levied in consideration of the reservation of capitalized interest from the Bond sale). In addition to such reimbursement City and Developer agree that Developer shall receive an interest component amount, as referred to in Section 3.22.1(i)(e) of the Development Agreement, for any authorized Public Facility reimbursed provided with pay-as-you-go proceeds at a rate based on the then most recent May rate established by the Engineering New Record Construction Cost Index for the Twenty (20) City Average plus San Francisco, calculated for a time period from the date of approval by the City of the reimbursement request to the date of payment.

16. Construction of Other Facilities. Owner shall also proceed expeditiously with the design and construction of the other improvements and facilities, other than the Public Facilities, which are necessary to the development of the Property and the provision of municipal services within the District and to the residents therein. Such other public improvements and facilities shall be designed and constructed on a schedule which will not delay or interfere in any way with the design and construction of the Public Facilities. The provisions of this Section shall not supersede those of any other agreement between Owner and the City.

17. Development Schedule. Owner shall also proceed with the development of the Property with all reasonable diligence to ensure that such development is completed in a reasonable time. If Owner does not so proceed with the development of the Property, the City may take action as specified in Section 14 hereof and, in addition, may withhold payment of acquisition costs hereunder.

18. Termination. If for any reason the City is unable to sell the Bonds, this Agreement shall not become effective.

19. Binding on Community Facilities District. The District shall automatically become a party to this Agreement to the extent permitted by California law, and all provisions hereof which apply to the City shall also apply to the District. The City Council of the City, acting as the legislative body of the District, shall perform all parts of this Agreement which require performance on the part of the District.

20. Assignment. Owner may not assign this Agreement or any right or duty hereunder without the express written approval of the City. The City may condition any such

~~approval on proof of the financial responsibility and experience of a proposed assignee to undertake and perform the duties and responsibilities of Owner under this Agreement. The City's approval of an assignment of this Agreement and the rights and duties of Owner hereunder shall not be unreasonably withheld.~~

21. Prompt Action. All consents, approvals and determinations required of either the City or Owner pursuant to this Agreement shall be promptly given or made, and shall not be unreasonably withheld.

22. General. This Agreement, together with the agreements and other undertakings described herein, contains the entire agreement between the parties with respect to the matters herein provided for, and may be amended by a subsequent written agreement signed on behalf of both parties. This Agreement is for the exclusive benefit of Owner and the City and shall not be construed to confer any rights or benefits upon any persons other than the City and Owner. This Agreement shall, however, inure to the benefit of and be binding upon the successors and assigns of the parties. This Agreement shall be construed and governed by the Constitution and laws of the State of California. Should either party to this Agreement commence a court action or proceeding against the other party with respect to this Agreement or the design and acquisition or construction of the Public Facilities, the party prevailing in such action or proceeding shall be entitled to receive from the losing party its attorney's fees, expert witness fees, court costs, and other costs incurred by it in prosecuting or defending such action or proceeding. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie. The captions of the sections of this Agreement are provided for convenience temporarily, and shall not have any bearing on the interpretation of any section hereof. This Agreement may be executed in several counterparts, each of which shall be an original of the same Agreement. If any of the provisions contained in this Agreement are for any reason held invalid or unenforceable, such holding shall not affect the remaining provisions or the validity and enforceability of the Agreement as a whole.

[Signatures on Following Page]

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attested to by its City Clerk under the authority of Resolution No. 16-76 adopted by the Council of the City of Roseville on the 2nd day of March, 2016.


CITY:

CITY OF ROSEVILLE,
a municipal corporation

By:  For
Rob Jensen, City Manager

OWNER:

BBC ROSEVILLE OAKS, LLC,
an Illinois limited liability company

By: 
Stephen L. Des Jardins
Member

ATTEST:


Sonia Orozco, City Clerk

APPROVED AS TO FORM:


Robert R. Schmitt, City Attorney

APPROVED AS TO SUBSTANCE:

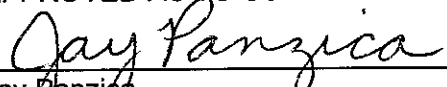

Jay Panzica
Chief Financial Officer

EXHIBIT A

DESCRIPTION OF THE FACILITIES

Transportation Improvements

Improvements to the following roadways, as well as other public roadway improvements designed to meet the needs of the project:

- Woodcreek Oaks Boulevard
- Blue Oaks Boulevard
- HP Way
- Painted Desert Drive
- Crimson Ridge Drive
- New Meadow Drive

Eligible roadway improvements include, but are not limited to, these: acquisition of land and easements; roadway design; project management; bridge crossings and culverts; clearing, grubbing, and demolition; grading, soil import/export, paving (including slurry seal), and decorative/enhanced pavement concrete or pavers; joint trenches, underground utilities, and undergrounding of existing utilities; dry utilities and appurtenances; curbs, gutters, sidewalks, bike trails (including onsite and off-site), enhanced fencing, and access ramps; street lights, signalization, and traffic signal control systems; bus turnouts and shelters; signs and striping; erosion control; median and parkway landscaping and irrigation; entry monumentation; Bus Rapid Transit improvements, including transfer stations and park-and-ride facilities; regional public transit improvements; masonry walls; traffic control and agency fees; and other improvements related thereto. Eligible improvements for the roads listed above also include any and all necessary underground potable and non-potable water, sanitary sewer, and storm drainage system improvements.

Potable and Non-Potable Water System Improvements

Authorized facilities include any and all on- and off-site backbone water and recycled (or non-potable) water facilities designed to meet the needs of development of the project. These facilities include, but are not limited to, potable and non-potable mains, valves, services, and appurtenances; wells; and water treatment and storage facilities.

Facility improvements include, but are not limited to, these: site clearing, grading, and paving; curbs and gutters; recycled water storage tanks, booster pump stations, and all appurtenances thereto; wells; water treatment; stand-by generator; site lighting, drainage, sanitary sewer, and water service; landscaping and irrigation; access gates and fencing; and striping and signage:

- Water lines in all authorized facility roads.
- Recycled water lines in all authorized facility roads.
- Recycled water lines in all City parks.
- Well construction on Lot 24 (CO-76).
- Off-site recycled water pump station improvements.

Drainage System Improvements

Authorized facilities include any and all on-site and off-site backbone drainage and storm drainage improvements designed to meet the needs of development of the Project. These facilities include, but are not limited to, mains, pipelines and appurtenances; outfalls and water quality measures, temporary drainage facilities, detention/retention basins, and drainage pretreatment facilities; drainage ways/channels, pump stations, landscaping, and irrigation; access roads, gates, and fencing; and striping and signage:

- All storm drain lines and facilities in authorized facility roadways.
- Detention and drainage facilities.
- Outfall channel improvements on Lots 1, 2, 4, and 5 (CO-31, CO-41, CO-42, and CO-51).

Wastewater System Improvements

Authorized facilities include any and all backbone wastewater facilities designed to meet the needs of development of the Project. These facilities include, but are not limited to, pipelines and all appurtenances thereto, manholes, tie-in to existing main line, force mains, lift stations, odor-control facilities, sewer treatment plant improvements and permitting related thereto, and related sewer system improvements:

- All wastewater facilities in authorized facility roadways.

Park and Paseo Improvements

Authorized facilities include any and all improvements to parks and paseos located in the Project:

- Construction of Park Sites HP-2, CO-64, CO-61, and CO-62.
- Construction of Paseo Sites CO-63 and CO-65.

Open Space Improvements

Authorized facilities include any and all open space improvements designed to meet the needs of development of the Project, including, but not limited to, bike trails, bike/pedestrian bridges, storm drain crossings, storm drain detention/retention, wetland mitigation, tree mitigation, off-site hawk mitigation, agricultural mitigation or wetland mitigation, property acquisition, endowment payments for open space management, landscaping and irrigation, access gates and fencing, and related open space improvements:

- Improvements related to CO-81 and CO-82 other than those included in the Storm Drain section above. Wetland creation mitigation, fencing, etc.

Utilities

Authorized facilities include any and all utility improvements designed to meet the needs of development of the Project. All utility improvements, easement payments, and land acquisition not located under or alongside transportation improvements are considered authorized facilities.

Other Public Facilities

Authorized facilities include any and all public facilities or infrastructure, including the Project's pro rata contribution to the land acquisition of the off-site fire station site; site clearing; grading; and street frontage improvements, including curbs, gutters, and paving:

- Fire Station site acquisition and improvement obligations on Lot 6 (CO-75).

Formation, Administrative, and Incidental Expenses

In addition to the above facilities, other incidental expenses as authorized by the Mello-Roos Community Facilities Act of 1982, include, but are not limited to, these: the cost of planning, permitting, approving, and designing the facilities (including the cost of environmental evaluation, orthophotography, environmental remediation/mitigation, and preparation of an overarching Operation and Maintenance [O&M] Plan for the City of Roseville Open Space Preserves); land acquisition and easement payments for authorized CFD facilities; project management, construction staking; engineering studies and preparation of an engineer's report for the use of recycled water; utility relocation and demolition costs incidental to the construction of the public facilities; cost associated with the creation of the CFD, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes or costs otherwise incurred to carry out the authorized purposes of the CFD; reimbursements to other areas for infrastructure facilities or planning purposes serving development in the CFD; and any other expenses incidental to the construction, completion, and inspection of the facilities and related expenses associated with any of the foregoing.

RESOLUTION NO. 16-76

**A RESOLUTION APPROVING FUNDING, CONSTRUCTION
AND ACQUISITION AGREEMENT IN CONNECTION WITH
HP CAMPUS OAKS COMMUNITY FACILITIES DISTRICT NO. 1
(PUBLIC FACILITIES)**

WHEREAS, on December 16, 2015, this City Council (the "Council") of the City of Roseville (the "City") adopted Resolution No. 15-528 (the "Prior Resolution") with respect to HP Campus Oaks Community Facilities District No. 1 (Public Facilities) (the "CFD") of the City that, among other things, authorized the Authorized Officers (as defined herein) to draft, negotiate and execute a Funding, Construction and Acquisition Agreement (the "Acquisition Agreement") by and between the City, for itself and on behalf of the CFD, and BBC Roseville Oaks, LLC (the "Developer"), the owner of all the land within the CFD; and

WHEREAS, the Authorized Officers have drafted and negotiated a form of Acquisition Agreement with the Developer and wishes to bring it to this Council for final approval prior to the execution thereof.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROSEVILLE RESOLVES AS FOLLOWS:

1. Approval of Acquisition Agreement. As a part of the proceedings for the CFD, this Council hereby approves the Funding, Construction and Acquisition Agreement (the "Acquisition Agreement") by and between the City and the Developer, the form of which is on file with the City Clerk. The purpose of the Acquisition Agreement is to provide for the acquisition of certain public facilities and payment of certain incidental expenses relating thereto, all benefiting the property in the CFD, the issuance and sale of the bonds for the CFD financing, including incidental expenses, and to provide the terms of any reimbursement to owners of land within the CFD. The Mayor, the Finance Director, the City Manger, the City Attorney or such other person or persons as any one of them may designate (collectively, the "Authorized Officers"), each acting alone or together with any other Authorized Officer, is authorized and directed, on behalf of the City, to execute and deliver the Acquisition Agreement.

2. Actions Authorized. All actions heretofore taken by the Authorized Officers and other officers and agents of the City with respect to the Acquisition Agreement are hereby approved, confirmed and ratified, and each of the Authorized Officers is hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which or any of them may deem necessary or advisable in order to carry out the purpose of this Resolution, and any certificate, agreement, and other document described in the documents herein approved. All actions to be taken by an Authorized Officer may be taken by such Authorized Officer or any designee, with the same force and effect as if taken by the Authorized Officer.

3. Effectiveness. This Resolution shall take effect upon its adoption.

I hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Roseville, California, at a regularly scheduled meeting thereof, held on the 2nd day of March, 2016, by the following vote of the City Council:

AYES:	COUNCILMEMBERS	Gore, Herman, Roccucci, Garcia
NOES:	COUNCILMEMBERS	None
ABSENT:	COUNCILMEMBERS	Rohan
ABSTAIN:	COUNCILMEMBERS	None



Mayor

ATTEST:



City Clerk