

**FIRST AMENDMENT TO THE FUNDING, CONSTRUCTION  
AND ACQUISITION AGREEMENT**

DATED AS OF April 16, 2003

Executed by the

CITY OF ROSEVILLE

and by

JOHN MOURIER CONSTRUCTION, INC.

relative to the

CROCKER RANCH COMMUNITY FACILITIES DISTRICT NO. 1

CITY OF ROSEVILLE,  
PLACER COUNTY, CALIFORNIA



**FUNDING CONSTRUCTION AND ACQUISITION AGREEMENT  
CROCKER RANCH COMMUNITY FACILITIES DISTRICT NO. 1**

THIS AGREEMENT is entered into as of the 16 day of April, 2003 by and between the CITY OF ROSEVILLE, a California chartered municipal corporation ("City"), and JOHN MOURIER CONSTRUCTION, INC., a California corporation ("JMC").

**RECITALS**

A. On March 20, 2002, City and JMC entered into an agreement entitled Funding, Construction and Acquisition Agreement executed by the City of Roseville and John Mourier Construction Inc. relative to the Crocker Ranch Community Facilities District No. 1 (the "**Original Agreement**"). The purpose of the Original Agreement was to provide for the establishment of the District, the acquisition of and payments for such public facilities to be financed thereby, 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 JMC. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Original Agreement. The Original Agreement and this Amendment are collectively the "**Agreement.**"

B. On April 25, 2002, City issued and sold bonds for the District in the amount of \$4,525,000.00.

C. City now intends to issue the remaining \$15,475,000.00 authorized to be sold for the District.

D. JMC and City now desire to amend the Original Agreement to update the list of authorized facilities and the acquisition price for various improvements and to address other related matters.

**AGREEMENT**

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

1. **Recitals.** The foregoing recitals are incorporated herein.

2. **Amendments.** The Original Agreement shall be amended as follows:

a. The following sentences are added to the end of the first paragraph of Section 6:

"Notwithstanding the foregoing and any other provision to the contrary in the Agreement, JMC and City expressly acknowledge that in no case shall City acquire or otherwise




pay more than \$2,605,939.00 (TWO MILLION SIX HUNDRED FIVE THOUSAND NINE HUNDRED THIRTY NINE AND 00/100 DOLLARS) for the facilities identified as "Bond Funded Fees" on Exhibit "A," as revised."

b. The original Exhibit "A" is hereby deleted and replaced with a new Exhibit "A" which is attached hereto a made a part of the Agreement.

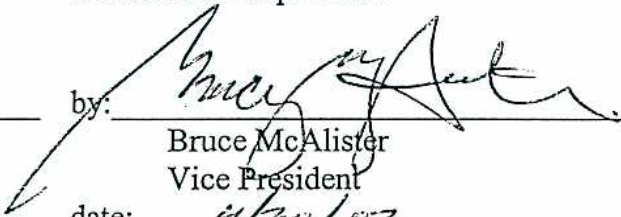
3. **Remaining Terms of Agreement.** Except as modified hereby, the remaining terms of the Original Agreement shall remain in full force and effect. To the extent there may be any ambiguity between the terms of this Amendment and the Original Agreement, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Amendment in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. 03-163, adopted by the City Council of the City of Roseville on April 16, 2003 and John Mourier Construction, Inc. has caused this Amendment to be executed on the date ascribed by its signature below.

**CITY OF ROSEVILLE,**  
a municipal corporation


by:   
W. Craig Robinson  
City Manager  
date: April 16, 2003

**JOHN MOURIER CONSTRUCTION, INC.,**  
a California corporation


by:   
Bruce McAlister  
Vice President  
date: 4/30/03

ATTEST:

  
Carolyn Parkinson  
City Clerk

by:   
Rod Yamanaka  
Chief Financial Officer  
date: 4/30/03

APPROVED AS TO FORM:

  
Mark J. Doane  
City Attorney



**Exhibit "A"**  
**Summary of Facility Costs and Funding Sources**  
**Backbone Infrastructure, Off-site Improvements, and Citywide Obligations**

Item	Total	Phase I Facilities	Phase II Facilities
<b><u>Facility Costs [1]</u></b>			
<b>Backbone Infrastructure</b>			
Blue Oaks Boulevard	\$623,356	\$623,356	
Crocker Ranch Road (south of creek)	\$2,219,560	\$2,219,560	
Crocker Ranch Road (north of creek)	\$3,405,712		\$3,405,712
Crocker Ranch Road (adjacent to Park)	\$583,468		\$583,468
Fiddymment Road (north of Casa Sedona intersection)	\$1,440,367		\$1,440,367
Casa Sedona Drive	\$678,806		\$678,806
Opal Drive	\$1,642,401		\$1,642,401
Offsite Utility Trench	\$738,996	\$59,889	\$679,107
<b>Subtotal</b>	<b>\$11,332,667</b>	<b>\$2,902,805</b>	<b>\$8,429,862</b>
Engineering, Contingency, Project Management, Plan Check, and Inspection	\$1,755,171	\$406,393	\$1,348,778
<b>Subtotal Backbone Infrastructure Costs</b>	<b>\$13,087,838</b>	<b>\$3,309,198</b>	<b>\$9,778,640</b>
<b>Project Wide CFD Obligations/Contributions [2]</b>			
Cirby/Riverside Contribution	\$55,111	\$55,111	
Youth Baseball Field Contribution	\$99,527	\$99,527	
Community Center Contribution	\$298,581	\$298,581	
Construction of Veterans Park	\$653,592		\$653,592
City Funds for Fiddymment Road	\$303,403		\$303,403
Oak Tree Mitigation	\$13,275		\$13,275
Masonry Wall Along Northern Property Edge	\$145,750		\$145,750
Contributions to Public Benefit	\$571,800		\$571,800
Supplemental Water Fee	\$1,100,000		\$1,100,000
Wetland and Environmental Costs of Public Improvements	\$122,500	\$122,500	
Bikeway and Transit Master Plan Update	\$20,000		\$20,000
<b>Subtotal CFD Obligations/Contributions</b>	<b>\$3,383,539</b>	<b>\$575,719</b>	<b>\$2,807,820</b>
<b>Total Facility Costs Before Impact/Development Fees</b>	<b>\$16,471,377</b>	<b>\$3,884,917</b>	<b>\$12,586,460</b>
Bond Funded Fees	\$2,605,939		\$2,605,939
<b>Total Authorized Facilities</b>	<b>\$19,077,316</b>	<b>\$3,884,917</b>	<b>\$15,192,399</b>
<b><u>Funding Sources</u></b>			
Estimated CFD Bond Proceeds	\$17,346,148	\$3,801,148	\$13,545,000
Developer Funding or Other Sources [3]	\$1,731,167	\$83,769	\$1,647,399
<b>Total Funding Sources</b>	<b>\$19,077,316</b>	<b>\$3,884,917</b>	<b>\$15,192,399</b>

"cost\_sum"

[1] Provided by JMC

[2] As required by the Mourier 160 and Doctor's Ranch Development Agreements.

[3] Other sources of funding include 1) initial Developer funding with reimbursement from pay-as-you-go revenues,  
2) pay-as-you-go revenue during construction, 3) interest earnings on construction fund.



RESOLUTION NO. 03-163

APPROVING A FIRST AMENDMENT TO AGREEMENT  
BETWEEN THE CITY OF ROSEVILLE AND JOHN MOURIER CONSTRUCTION, INC.  
AND AUTHORIZING THE CITY MANAGER TO EXECUTE IT ON BEHALF  
OF THE CITY OF ROSEVILLE

WHEREAS, a first amendment to funding, construction and acquisition agreement regarding the Crocker Ranch Community Facilities District No. 1, between the City of Roseville and John Mourier Construction, Inc., has been reviewed by the City Council.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roseville that said amendment is approved and that the City Manager is authorized to execute it on behalf of the City of Roseville upon receipt and approval of all signed documents and insurance by the City Attorney.

PASSED AND ADOPTED by the Council of the City of Roseville this 16th day of April, 20 03 by the following vote on roll call:

AYES COUNCILMEMBERS: Earl Rush, Richard Roccucci, Jim Gray, Rocky Rockholm

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: Gina Garbolino

  
MAYOR

ATTEST:

  
Assistant City Clerk



**FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT**

DATED AS OF March 20, 2002

Executed by the

CITY OF ROSEVILLE

and by

JOHN MOURIER CONSTRUCTION, INC.

RELATIVE TO THE

CROCKER RANCH COMMUNITY FACILITIES DISTRICT NO. 1

CITY OF ROSEVILLE  
PLACER COUNTY, CALIFORNIA

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**FUNDING CONSTRUCTION AND ACQUISITION AGREEMENT  
CROCKER RANCH COMMUNITY FACILITIES DISTRICT NO. 1**

THIS AGREEMENT is entered into as of the 20th day of March, 2002 by and between the CITY OF ROSEVILLE, a California chartered municipal corporation (the "City"), and JOHN MOURIER CONSTRUCTION, INC., a California corporation ("JMC").

**RECITALS**

(A) JMC and Mourier Land Investment Corporation own the real property described as the Mourier 160 and Doctor's Ranch portions of the North Roseville Specific Plan, as more particularly described in the Development Agreement referred to below (the "Property"). The Property is located within the corporate limits of the City.

(B) JMC proposes to make improvements to the portion of the Specific Plan that includes the Property (the development of such portion of the Specific Plan is defined herein as the "Project") as required by the Project Approvals (as defined below). The City Council of the City approved a Specific Plan for the development of the Property (and properties owned by others) on August 6, 1997, which Plan was amended several times and most recently on January 16, 2002, the "North Roseville Specific Plan and Design Guidelines" (the "Specific Plan"). The Specific Plan sets forth a comprehensive land use plan and establishes detailed regulations, conditions and programs for development of the property that includes the Property. The City Council has approved two development agreements with respect to the Property. On September 22, 1999, the City Council of the City approved a development agreement between the City and Mourier Land Investment Company pursuant to the provisions of Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 of Title 7 of the California Government Code (the "Development Agreement Statute") with respect to the southern portion of the Property, commonly known as the Mourier 160. Said development agreement was amended on October 11, 2000. On October 11, 2000, the City Council of the City approved another development agreement between City and Mourier Land Investment Company pursuant to the Development Agreement Statute with respect to the northern portion of the Property, commonly referred to as Doctor's Ranch (collectively, the two development agreements and their amendments are referred to hereinafter as the "Development Agreement"). The Specific Plan, Development Agreement, including conditions of approval, and other existing and subsequent approvals granted by City and agreements between JMC 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."

(C) In accordance with the Development Agreement, as amended, JMC requested that the City commence and complete proceedings for the establishment of a community facilities district pursuant to the provisions of Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982," (the "Act"), over and including the Property for the purpose of paying a share of the costs for certain public facilities which are necessary to the development of the Specific Plan and the provision of municipal services to the Specific Plan, including the issuance of special tax bonds. Said community facilities district is to be known as "Crocker Ranch Community Facilities District No. 1, of the City of Roseville, County of Placer, State of California" (the "District").

(D) Section 53313.5 of the California Government Code provides that a community facilities district may finance the purchase of 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.

(E) The purpose of this Agreement is to provide for the establishment of the District, the acquisition of and payments for such public facilities, 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 JMC.

## AGREEMENTS

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

Section 1. Establishment of District. The City has initiated and concluded proceedings pursuant to the Act for the establishment of the District. Such proceedings included elections pursuant to Sections 53326 and 53327 of the California Government Code on (i) the question of the issuance of bonds for the District to finance the design, construction or acquisition of the below described authorized facilities, (ii) the issue of the annual levy of special taxes on all taxable property within the District for the payment of principal and interest on the bonds of the District and the annual administrative expenses of the City and the District in levying and collecting such special taxes, paying the principal and interest on such bonds and providing for the registration, exchange and transfer of such bonds, 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, or the acquisition of authorized facilities and payment of authorized costs from the proceeds of such special taxes, and (iii) the question of the establishment of an appropriations limit for the District.

Section 2. Sale of Bonds. The City shall proceed, as hereinafter provided, with the sale of bonds for the District in an aggregate principal amount not to exceed \$20,000,000 (the "**Bonds**") for the purpose of raising an amount to pay for the design, construction or acquisition of, or the payment for the aforementioned authorized facilities. Said authorized facilities (the "**Authorized Facilities**") are generally described in **Exhibit "A"** attached hereto. The timing of the issuance and sale of the Bonds, aggregate principal amount thereof, and the terms and conditions upon which they shall be sold shall be determined by the City. If the first series of bonds is not sold within one (1) year of this Agreement, neither the City nor the JMC shall have any obligation hereunder, and this Agreement shall terminate without the requirement for any further notice or action by any party.

Section 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.

Section 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 and interest of 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 (if and to the extent not provided by

the levy and collection of special taxes in advance of such Bond sale), 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 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 JMC, or any related entity thereto, for costs and expenses incurred by it which are related to the establishment of the District and reimburse JMC for the design and construction of the Authorized Facilities; provided that the City shall determine the amount to be so reimbursed on the basis of detailed itemizations of costs provided by JMC and the decision of the City shall be final. (All of the foregoing fees, costs, and expenses described in this paragraph are hereinafter "**Formation Fees and Costs.**") In no event shall JMC be reimbursed from Bond proceeds for (i) in-house administrative overhead (except that JMC shall be entitled to payment equal to four percent (4%) of actual construction costs as and for project and construction management services), (ii) interest expense incurred by JMC on moneys advanced during the proceedings for formation of the District and issuance of Bonds, and during construction of the Authorized Facilities (provided, that JMC shall be entitled to interest on acquisition proceeds as provided in Section 15 hereof); and (iii) any other costs and expenses incurred by JMC which are not authorized by the Act.

Section 5. Design. Authorized Facilities to be acquired by the City shall be designed in conformance with all applicable City standards, requirements and the Development Agreement. Upon completion of the design of each such Authorized Facility to the satisfaction of the City and when JMC has paid to the City all applicable plan checking and other fees, the City shall notify JMC that the design of the Authorized Facility is completed and acceptable to the City. It shall be the responsibility of JMC, not the City, to determine the requirements for design and construction of Authorized Facilities to be acquired by or dedicated to other public agencies, and City's acceptance of JMC's design shall not relieve JMC of this responsibility.

JMC has been authorized by the City to commence the design of the Authorized Facilities, and the City has approved JMC's project engineer to design streets, traffic signals, water, sewer and storm drainage facilities, and JMC's landscape architect to plan and design street and open space landscaping. JMC may, after obtaining approval of the City, retain the services of additional consultants to design other portions of the Authorized Facilities.

JMC shall be reimbursed out of the "**Available Construction Proceeds**" (which shall be the proceeds of the sale of the Bonds, less the Formation Fees and Costs to be deducted therefrom), for JMC's expenses, and the expenses of any entity related thereto, incurred in designing those Authorized Facilities set forth in Exhibit "A" hereto, including all applicable plan checking and other fees paid by JMC 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 special tax revenues of the District and from no other source. Reimbursement for design and plan check services shall be made in one or more lump sum payments only after City has received and approved all invoices for such services associated with any particular Authorized Facility.

Notwithstanding the preceding provisions of this Section, if the City determines that JMC is not proceeding with the design of the Authorized Facilities on a reasonable schedule which will enable

the City to insure that construction of all of the Authorized Facilities can be completed within the time specified in Section 6 hereof, the City may take over the design of the Authorized Facilities by giving JMC written notice thereof. Upon receipt of such a notice, JMC shall surrender to the City all plans and specifications which have then been completed or which are in progress.

If the City takes over the design of the Authorized Facilities as provided above, the City shall reimburse JMC from the Available Construction Proceeds a reasonable amount, reasonably determined by the City, for the expenses incurred by JMC in connection with the design of the Authorized Facilities which have not previously been reimbursed, provided there are sufficient funds remaining, after payment for the Authorized Facilities, to do so.

Section 6. Construction for Acquisition. The City shall only be required to acquire from JMC, and otherwise pay JMC for, the Authorized Facilities set forth in Exhibit "A." JMC shall proceed with the construction of and/or payment for the Authorized 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 Authorized Facilities under this Section, JMC shall comply with all of the following requirements to insure that the Authorized Facilities will be constructed as if they had been constructed under the direction and supervision, or under the authority of the City:

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

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

(c) JMC 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 JMC, require changes to the work. JMC 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 Authorized Facilities shall be awarded to the responsible bidder(s) submitting the lowest responsible bid(s) for the construction of the Authorized Facilities, as determined by JMC.

(d) JMC shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages and to otherwise comply with applicable provisions of the California Labor Code, Government Code and Public Contracts 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.

(e) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Authorized Facilities which they will construct in conformance with the City's standard procedures and requirements. JMC shall cause the Authorized Facilities to be constructed in an expeditious manner so that construction of all such Authorized Facilities financed with the first series of bond proceeds shall be completed by July 1, 2002, or such other date as the City and JMC may agree to; provided, however, that the construction of the Authorized Facilities shall proceed and be completed so that the proceeds of any series of Bonds may be expended for the construction or acquisition of the Authorized Facilities within three (3) years from the date of their issuance.

Section 7. Payment; Cost Overruns; Shortfalls. The City and JMC agree that it is in their mutual best interest for JMC to design, construct and/or pay for the Authorized Facilities with the understanding that the City shall acquire from JMC and reimburse JMC for those portions of the Authorized Facilities designed, constructed and/or paid for by JMC from the proceeds of the sale of the Bonds and from special tax revenues that may be collected in advance of such sale of Bonds or in excess of the amount required to service such Bonds. All portions of the Authorized Facilities not acquired with the proceeds of the Bonds and from special tax revenues, shall nonetheless be constructed by JMC, as required by the Project Approvals. All cost overruns in the design and construction of and payments for the Authorized Facilities shall be the responsibility of JMC. Subject to the reasonable approval of the City, all said cost overruns, including change orders, shall be eligible for reimbursement from the City from proceeds of excess special taxes as provided in section 15 herein. Any cost savings achieved in an element of any of the Authorized Facilities constructed in whole or in part with the proceeds of the sale of the Bonds shall be available for reimbursement to JMC for other Authorized Facilities.

Section 8. Inspection and Approval of Construction. The City shall provide such level of inspection of the progress of construction of the Authorized Facilities to be constructed by JMC for acquisition or reimbursement therefor 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. JMC 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 Authorized Facility. Upon completion of the construction of an Authorized Facility, either in its entirety, or a segment or phase, as shown on Exhibit "A" by JMC, 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 JMC 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 JMC in writing that the construction of the Authorized Facility, segment or phase has been satisfactorily completed; provided, however, that JMC, not the City, shall be responsible for determining satisfaction of requirements of other public agencies with respect to the Authorized Facilities. Upon receiving such notification of a completed Authorized Facility, JMC shall forthwith file with the County Recorder of the County of Placer a Notice of Completion pursuant to the provision of Section 3093 of the California Civil Code. JMC shall furnish to the City 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 bond financed Authorized Facilities shall be paid from Available Construction Proceeds or, if Available Construction Proceeds have been exhausted, then by JMC.

Section 9. Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Section 3115 and 3116 of the California Civil Code, JMC 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 Authorized Facilities (or approved segment or phase thereof, as shown on Exhibit "A" hereof) constructed by JMC 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.

Section 10. Acquisition; Maintenance. Upon completion of the obligation or construction of each Authorized Facility, segment or phase by JMC for acquisition and/or reimbursement thereof by the City, the City, through its Finance Director, shall determine the Acquisition Price (or in the case of a reimbursement, the reimbursement amount, which hereinafter is included in the term "Acquisition Price") to be paid by the City for the acquisition of the completed Authorized Facility, segment or phase from JMC. The Acquisition Price for each Authorized Facility, segment or phase 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 JMC with its contractors, and suppliers, in accordance with standards and procedures therefor as prescribed by the City. JMC shall furnish to the City such proof of the amounts which JMC contends should be included in the Acquisition Price for a completed Authorized Facility, segment or phase as the City shall require, together with lien releases from all contractors and suppliers providing work and materials for the completed Authorized Facility, segment or phase in form satisfactory to the City. The City shall have seven (7) business days from receipt of a payment claim from JMC to determine the Acquisition Price. The determination of the City as to the Acquisition Price for a completed Authorized Facility, segment or phase shall be final.

Upon determining the Acquisition Price for a completed Authorized Facility, segment or phase, the City shall promptly notify JMC in writing of such Acquisition Price. Upon presentation by JMC to the City of such documents, including lien releases, as the City shall require as to the completed Authorized Facility, segment or phase, the City shall, within seven (7) business days thereafter, pay from the Available Construction Proceeds, or available Special Tax Revenues the amount of the Acquisition Price for the completed Authorized Facility, segment or phase, but in the case of a completed Authorized Facility less a retention of 150% of the value of "Punch List" work not completed. Upon payment and acceptance of the Acquisition Price for each completed Authorized Facility, segment or phase, JMC shall have no further claim for payment from the City with respect to the retentions. The City shall hold the retention amount on all Authorized Facilities acquired until the Punch List work is completed and accepted by the City.

Notwithstanding the preceding provisions of this Section, the City will not pay for the acquisition of any Authorized Facilities, segment or phase 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.

Until an Authorized Facility is acquired by the City, JMC shall maintain it, and shall transfer it to the City free of any liens and in good operating condition. Upon the acquisition of an Authorized 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.

Section 11. Indemnification; Insurance. JMC shall defend, indemnify and hold harmless the City, the District, and their officers, agents and employees from any and all liability, cost and

expense in connection with the construction of the Authorized Facilities to be constructed by JMC for acquisition by the City, including, but not limited to, liability, costs, expense and claims arising under the procedures set forth in Section 6 of this Agreement. JMC shall also defend, indemnify and hold harmless the City, the District, and their officers, agents and employees from any and all liability, cost and expense in connection with the ownership of the Authorized Facilities to be constructed by JMC for acquisition by the City prior to the time the City accepts the Authorized Facilities, whether or not such Authorized Facilities are to be acquired with bond proceeds. JMC shall procure and provide, until construction of all of the Authorized Facilities to be constructed by JMC 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 and employees as additional insureds, having a single aggregate liability limit as to all coverages provided thereby in the amount of \$2,000,000. Before commencing the construction of any Authorized Facility, JMC shall provide the City with a certification of insurance and endorsement as to such insurance, in a form acceptable to the City, and JMC shall upon each renewal of such insurance policy provide the City with a new certificate of insurance with respect thereto.

JMC shall also furnish to the City, prior to commencing the construction of any Authorized Facility to be constructed by JMC for acquisition by the City, a certificate of insurance evidencing that JMC has procured and has in force a current policy of workers' compensation insurance in compliance with California law as to all workers to be employed by JMC in connection with the design and construction of the Authorized Facilities. JMC shall require each person, firm or corporation with whom it contracts in connection with the design and construction of the Authorized 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. JMC shall provide to the City proof, in such form and at such intervals as set forth below, that each contractor with whom it contracts has procured and is maintaining such insurance.

Within thirty (30) days of the date of this Agreement, and thereafter, upon the execution of each contract with each person, firm or corporation with whom JMC contracts in connection with the design and construction of the Authorized Facilities, and prior to permitting any such person, firm or corporation to commence, or continue, work under such contract, as applicable, JMC shall provide to the City a certificate from the insurance provider 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 or allowed to lapse without 30 days written notice to the City.

The premiums paid by JMC for the insurance required by this Section may be included in the Acquisition Price to be paid by the City for the Authorized Facilities to be constructed by JMC as an incidental cost.

Section 12. Ownership of Facilities. Notwithstanding the fact that some of the Authorized Facilities, segments or phases to be constructed by JMC 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, District or Public Utility, such Authorized Facilities, segments or phases shall be and remain the property of JMC, and JMC shall be responsible for any loss or damage thereto or liability arising therefrom, until they are acquired by the City or other agencies as provided in the preceding Sections of this Agreement. Such ownership by JMC shall likewise not be affected by any agreement which JMC 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 Authorized Facilities which may seem to be contradictory to the provision of this Agreement, and the provisions of this Section shall control.

Section 13. Improvement Security. Notwithstanding the provisions of this Agreement, JMC shall be required to agree to construct and to secure the construction and completion of construction of the Authorized Facilities, or portions thereof, as a condition precedent to the approval of final 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 Government Code.

The aggregate principal amount of the improvement bonds or other security provided by JMC 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 Authorized Facilities to be constructed or acquired with the proceeds of the sale of the Bonds.

All subdivisions and performance bonds shall provide, inter alia, that the principal thereof, whether that be JMC or its contractor(s), guarantees that the completed Authorized Facilities shall be free from defects resulting from faulty workmanship and materials for a period of one (1) 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 from the City Engineer that any defects have been corrected, the obligation of the principal and surety named therein shall cease.

Section 14. Failure to Complete Construction. Notwithstanding the preceding provisions of this Agreement, if JMC fails to expeditiously prosecute the construction of the Authorized Facilities to be constructed by JMC for acquisition by the City, the City shall have the right and may elect to take over the construction of such Authorized Facilities, or any part thereof, if it determines it is necessary for it to so proceed in order to protect the City's interests. If the City elects to so proceed, it shall notify JMC in writing that if JMC does not satisfy the City that construction is proceeding expeditiously on the construction of the Authorized Facility within 30 days after receipt of such notice, the City will take over the construction of such Authorized Facilities. If after receiving such a written notification JMC does not satisfy the City that it is proceeding expeditiously to construct that portion of the Authorized Facilities identified in the written notification to the satisfaction of the City, within 30 days from the date of receipt thereof, JMC shall relinquish to the City all design documents, and shall cooperate with the City in every way to ensure that the construction of the Authorized 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 Authorized Facilities shall be (i) the proceeds of the sale of the Bonds and any available Special Tax Revenues, (ii) the proceeds of applicable City development fees collected pursuant to the applicable codes, ordinances and policies of the City, (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 Authorized Facilities, (v) JMC's subdivision bond or bonds to the extent applicable, (vi) any other performance security that may have been provided by JMC, and (vii) JMC'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 the Authorized Facility which will be constructed by the City pursuant to this Section, the City may either construct only those Authorized 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 Authorized Facilities and charge JMC, JMC's bond or any contractor's bond for the costs thereof.

**Section 15. JMC Responsibility for Improvements Required by Conditions of Approval**

If the bonds are not sold in an aggregate principal amount sufficient to design, construct or acquire all of the Authorized Facilities or reimburse JMC for payment of the cost of any Authorized Facility, JMC shall nevertheless construct and dedicate to the City the Authorized Facilities required by the Specific Plan Development Agreement, and the City may require such assurances of performance as the City deems appropriate. The parties anticipate that a shortfall will occur between: (a) the anticipated cost of the Authorized Facilities as determined from the actual construction and design contracts and related invoices therefor and the actual costs of all other Authorized Facilities, and (b) the amount of construction funds anticipated to be generated from the sale of bonds (hereafter referred to as the "Gap Shortfall.") To cover such Gap Shortfall, JMC agrees with the City to: (1) waive its right to payment from the Bond proceeds for the portion of Authorized Facilities cost incurred by JMC equal to the actual Gap Shortfall, and (2) defer such payment until the District can impose and collect special taxes in excess of the amounts required to pay required debt service and City administration costs associated therewith. In consideration of such deferral of payment of the Acquisition Price, City covenants to assess the special tax against all properties within the District at the maximum rate permitted under the District, commencing with the levy of special taxes required to service the bonds after the planned interest reserve therefore, if any, has been exhausted, and to pay to JMC on an annual basis (commencing on the first day of the next succeeding month following the satisfactory completion of or payment for, the Authorized Facilities described in Item Nos. 1 through 8, inclusive, on Exhibit "A" hereto), payments towards such deferred Acquisition Price until the actual Gap Shortfall plus accrued interest is paid in full. The method described herein of funding authorized facilities from accumulated special tax revenues is known as the "Pay-As-You-Go" method of funding. Regardless of who pays the cost for any authorized facilities (except for payment for the Authorized Facilities described in Item No. 9 on Exhibit "A" hereto), the payment of the Gap Shortfall hereunder shall be personal to JMC, shall not run with the land, and shall not be assigned by JMC without the written consent of the City, which shall not be unreasonably withheld. Any funding of City and County Development Impact Fees (Item No. 9 on Exhibit "A") from bond proceeds shall create credits against such fees which will run with the land designated by JMC to be the recipient of such credits. Payment of that portion of the Acquisition Price which represents approved cost overruns as described in Section 7 above, shall be paid to JMC from excess special tax proceeds only after the Gap Shortfall has been paid in full. The Gap Shortfall and the portion of the Acquisition Price which represents approved cost overruns as described in Section 7 above shall accrue simple interest calculated from the first day of the next succeeding month following the date that each reimbursement submittal is made by JMC for costs related to the Authorized Facilities for which payment otherwise would have been made from bond proceeds in the absence of such Gap Shortfall. Provided, the parties agree that Bond proceeds shall first be exhausted prior to payment by JMC for any such costs. Upon the first payment by JMC (after exhaustion of available Bond proceeds), the rate of interest to be paid for purposes of all deferred payments described above shall be fixed as of the date of such first payment by JMC, at the prime rate in effect as of said date as published in the Money Rates section of The Wall Street Journal plus two percent (2%) per annum. The resulting interest rate shall be applied monthly on a 30/360 basis, by taking the ratio of the annual interest rate over a 360-day year, multiplied by the number of days the principal balance has been outstanding for the month. For example, if the stated annual interest rate

is 7% (prime rate of five percent, plus two percent), and a principal balance of \$100,000 has been outstanding for 15 days, the accrued interest for the month would total \$291.67, calculated as  $[(7\%/360 \times 15) \times \$100,000 = \$291.67]$ . Notwithstanding any provisions of this Section 15 or this Agreement to the contrary, the parties agree that Item No. 9 on Exhibit "A" (City and County Development Fees) will not be eligible for Pay-As-You-Go Funding and will only be eligible for funding from bond proceeds. However, interest earnings on bond proceeds specifically set aside for the payment of City and County Development Fees shall be used solely to acquire from JMC, and otherwise pay JMC for, the Authorized Facilities and any cost overruns thereto.

Section 16. Construction of Other Facilities. JMC shall also proceed expeditiously with the design and construction of the other improvements and facilities, other than the Authorized Facilities, which are necessary to the development of the Specific Plan 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 Authorized Facilities. The provisions of this Section shall not supersede those of any other agreement between JMC and the City.

Section 17. Termination. If for any reason the City is unable to sell the Bonds, this Agreement shall not become effective.

Section 18. 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 so apply to the District. The City Council of the City, acting for the District, shall perform all parts of this Agreement which require performance on the part of the District.

Section 19. Assignment. JMC 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 JMC under this Agreement. The City's approval of an assignment of this Agreement and the rights and duties of JMC hereunder shall not be unreasonably withheld.

Section 20. Prompt Action. All consents, approvals and determinations required of either the City or JMC pursuant to this Agreement shall be promptly given or made, and shall not be unreasonably withheld.

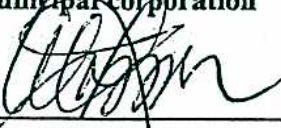
Section 21. General. This Agreement contains the entire agreement between the parties with respect to the matters herein provided for, and may be amended by a subsequent written agreement signed on behalf of both parties. This Agreement is for the exclusive benefit of the parties and shall not be construed to confer any rights or benefits upon any persons other than the City and JMC. 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 Authorized 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. The captions of the sections of this Agreement are provided for convenience only, 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date first above written.


**CITY OF ROSEVILLE,**  
a municipal corporation

By: \_\_\_\_\_


  
Allen E. Johnson  
City Manager

**JOHN MOURIER CONSTRUCTION,**  
INC., a California corporation


By: \_\_\_\_\_

  
Name: JOHN L. MOURIER III  
Title: PRESIDENT

ATTEST:

  
\_\_\_\_\_  
Carolyn Parkinson  
City Clerk

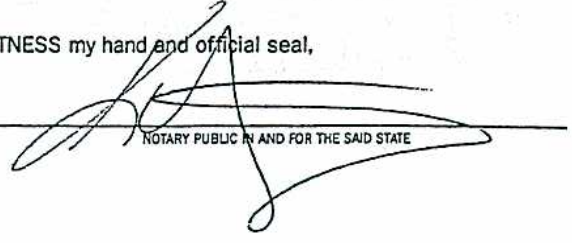
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mark J. Doane  
City Attorney

**ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF California  
COUNTY OF Placer }

On February 6, 2002 before me, Karen Headley  
personally appeared John L. Mowbr III  
personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed in 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.

WITNESS my hand and official seal,  
  
NOTARY PUBLIC IN AND FOR THE SAID STATE



**CAPACITY CLAIMED BY SIGNER**  
NAME OF PERSON(S) OR ENTITY(IES)  
 INDIVIDUAL(S)  
 CORPORATE \_\_\_\_\_  
OFFICER(S) \_\_\_\_\_  
 PARTNER(S)  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 SUBSCRIBING WITNESS  
 GUARDIAN/CONSERVATOR  
OTHER \_\_\_\_\_

**SIGNER IS REPRESENTING**  
NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTENTION NOTARY:** Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

**THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT THE RIGHT:**

Title or Type of Document \_\_\_\_\_  
Number of Pages \_\_\_\_\_  
Date of Document \_\_\_\_\_  
Signer(s) Other Than Named Above \_\_\_\_\_

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## EXHIBIT "A"

### LIST OF AUTHORIZED FACILITIES

The City contributions, City and County fees, and public improvements and ancillary design and construction costs therefor proposed to be financed consist of the following, which may be acquired upon completion of each Improvement or any Segment thereof described below. With respect to each of the road improvements described below, the sidewalk, median landscaping, corridor landscaping and soundwalls described as part of such improvements may be treated as separate Segments of the Improvements, in which case the balance of each road improvement, upon completion thereof, may be acquired prior to completion of the sidewalk, landscape and soundwall improvements related thereto:

#### 1. **Transportation Improvements**

Authorized Facilities include the following transportation-related improvements:

- Blue Oaks Boulevard
- Crocker Ranch Road
- Fiddymment Road
- Casa Sedona Drive
- Opal Drive
- Other public roadway improvement required to meet the needs of the project

Eligible roadway improvements include: purchase of right-of-way; roadway design; project management; bridge crossings, demolition, grading and paving; joint trenches and underground utilities; curbs; gutters and sidewalks (including sidewalks on some or all of the above-mentioned roads); street lights (including reimbursements to the City) and signalization; intersection improvements; signs and striping; soundwalls and fencing; and median and corridor landscaping related thereto.

#### 2. **Wastewater System Improvements**

Authorized Facilities include any and all wastewater facilities designed to meet the needs of development within Crocker Ranch CFD No. 1. These facilities include sewer improvements consistent with the Master Wastewater Plan.

#### 3. **Water System Improvements**

Authorized Facilities include any and all water facilities designed to meet the needs of development within Crocker Ranch CFD No. 1. These facilities include water distribution facilities, including fire hydrants, and related water system improvements; pressure reducing stations, flow meters, and recycled water improvements.

Landowner's fair share for the retrofit of water/irrigation system at Diamond Oaks Golf Course.

4. **Drainage System Improvements**

Authorized Facilities include any and all drainage and storm sewer improvements designed to serve the needs of development within the CFD, including, but not limited to, pipelines and appurtenances, temporary drainage facilities, detention basins, and drainage pretreatment facilities.

5. **Electric Facilities**

Authorized Facilities include on-site and off-site electric distribution facilities.

6. **Park Improvements**

Authorized Facilities include any and all improvements to park facilities located in the Crocker Ranch portion of the North Roseville Specific Plan, including acquisition of property and the design and construction thereof.

7. **Masonry Wall / Fencing**

Authorized Facilities include masonry wall fencing along the project's northern boundary.

8. **Contributions to City Projects**

Authorized Facilities include contributions to the following public improvements, including, but not limited to, the following items:

- Construction of the Mahany Community Center and the off-site softball fields;
- Contributions to a transportation study of the Riverside/Cirby intersection;
- Landowners' fair share for the update of the City's Bikeway Master Plan and City's Short Range and Long Range Transit Master Plans;
- Mahany Park facilities;
- Diamond Oaks Golf Course irrigation facilities;
- Other City park facilities; and
- Other citywide facility contributions as specified in the Mourier 160 or Doctors Ranch Development Agreement(s) entered into by the Developer and the City of Roseville.

9. **City and County Development Impact Fees**

Authorized Facilities include payments of City of Roseville and Placer County development impact fees, including, but not limited to:

- Water fees, including supplemental water fees;
- Sewer connection fees;
- Traffic mitigation fees; and
- Placer County Authorized Facility fee.

## 10. - Other Expenses

In addition to the above facilities, other incidental expenses as authorized by the Mello-Roos Community Facilities Act of 1982, including, but not limited to, the cost of planning and designing the facilities (including the cost of environmental evaluation and environmental remediation or mitigation); construction staking; utility relocation and demolition costs incident to the construction of the Authorized Facilities, costs associated with the creation of the Mello-Roos CFD; issuance of bonds; determination of the amount of taxes, collection of taxes; payment of taxes; or costs otherwise incurred in order to carry out the authorized purposes of the CFD; reimbursements to other areas for infrastructure facilities serving the Crocker Ranch project; and any other expenses incidental to the construction, completion and inspection of the facilities.

## 11. Segments / Phasing

Segments or Phases of any Authorized Facility may be acquired by the City using CFD proceeds provided that, prior to acquisition of such segment or phase intended to be acquired using proceeds from any given bond series, JMC shall submit to the City for its reasonable approval a list of the segments or phases for which JMC intends to request acquisition utilizing the proceeds of such bond series. It is expected that from the first series of bonds, JMC will request acquisition of the following segments:

- grading and all underground wet and dry utilities
- concrete and paving work
- sound walls
- landscaping

Acquisition segments or phases to be acquired utilizing the proceeds of subsequent bond series shall in any event be determined pursuant to the process set forth above.

