

May 2, 2007

Stephen Des Jardins
Diamond Creek Partners, Ltd.
130 Diamond Creek Place, Suite 1
Roseville, CA 95747

RE: FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT
DIAMOND CREEK COMMUNITY FACILITIES DISTRICT NO. 1

At the meeting of April 4, 2007 the City Council adopted a resolution authorizing the City Manager to execute the agreement for the above. The fully executed agreement is enclosed along with a certified copy of authorizing Resolution No. 07-160.

If you have any questions, please contact Financial Analyst Rebecca Santini at (916) 774-5109.

SONIA OROZCO, CMC
CITY CLERK

By:



Judy Moore
Records Coordinator

Cc: Attorney
Finance
Becky Santini/Finance

FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT
DATED AS OF APRIL 2007

Executed by the

CITY OF ROSEVILLE

and by

DIAMOND CREEK PARTNERS, LTD.

DIAMOND CREEK COMMUNITY FACILITIES DISTRICT NO 1

CITY OF ROSEVILLE
PLACER COUNTY, CALIFORNIA

FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT
DIAMOND CREEK COMMUNITY FACILITIES DISTRICT NO. 1

THIS AGREEMENT is entered into as of the 4th day of April, 2007, by and between the CITY OF ROSEVILLE, a California chartered municipal corporation (the "City"), and DIAMOND CREEK PARTNERS, LTD., a California limited partnership (the "Owner").

RECITALS

(A) Owner owns the real property described in Exhibit "A" attached hereto, and shown on the map attached hereto as Exhibit "B" (the "Property"). The Property is located within the corporate limits of the City.

(B) 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). The City Council of the City approved a General Plan Amendment and an amendment to the North Roseville Specific Plan (the "Specific Plan") on February 21, 2007 and rezoned the Property pursuant to Ordinance No. 4505, dated March 7, 2007. The General Plan and Specific Plan, as amended, set forth a comprehensive land use plan and establish detailed regulations, conditions and programs for development of the Property. On March 7, 2007, the City Council of the City adopted Ordinance No. 4506 approving a development agreement amendment between the City and Owner 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 with respect to the permitted uses of the Property, and said agreement has been entered into and is dated March 7, 2007 (the "Development Agreement"). The General Plan, Specific Plan, zoning, and 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, are herein collectively referred to as the "Project Approvals."

(C) Owner has 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 for certain public facilities which are necessary to the development of the Property and the provision of municipal services to the Property within the proposed community facilities district, including the issuance of special tax bonds. Said community facilities district is to be known as "Diamond Creek 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 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 the Owner.

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 shall initiate and prosecute proceedings pursuant to the Act for the establishment of the District. Such proceedings shall include but not be limited to, 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 construction or acquisition of the aforementioned public facilities, (ii) the issue of 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, and (iii) the question of the establishment of an appropriations limit for the District. Owner shall cooperate with City in its conduct of the proceedings for and the establishment of the District.

Section 2. Sale of Bonds. Upon the completion of the proceedings for the establishment of the District as provided in Section 1 hereof, the City shall proceed as hereinafter provided, with the sale of bonds for the District in an aggregate principal amount not to exceed \$7,850,000.00 (the "Bonds") for the purpose of raising an amount to pay for the design and construction or acquisition of the aforementioned public facilities. Said authorized public facilities (collectively, the "Public Facilities" and each, a "Public Facility") and the estimated costs thereof are generally described in Exhibit "C" 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 bonds are not sold within six (6) months of this Agreement neither the City nor the Owner 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 of 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, 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), (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.

Section 5 Design. Public 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 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 Ubara, Fehr + Pears, and Andregg to design streets, traffic signals, water, sewer, and storm drainage facilities, and HLA Group and Dahlin Group, landscape architects, to plan and design the street 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.

Owner shall be reimbursed, to the extent moneys are available, out of the proceeds of the sale of the Bonds and such other sources as provided in Sections 7 and 14 for Owner's expenses incurred in designing those Public Facilities set forth in Exhibit "C", attached hereto, 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 moneys described herein. 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 Public Facility.

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. If, after receiving such a written notification, Owner does not satisfy the City that it is proceeding expeditiously with the design of the Public Facilities, within 30 days from the date of receipt thereof, Owner 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 Public Facilities as provided above, the City shall reimburse Owner from the proceeds of the sale of the Bonds or other available sources 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.

Section 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 according to all applicable law, including but not limited to such requirements as are set forth in Roseville Municipal Code 4.12 095:

(a) 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.

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

(c) Owner shall receive and open bids and report the results to the City Engineer. On elements of work with pre-qualified bid list, bids will be 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 responsible bidder(s) submitting the lowest responsible bids(s) for the construction of the Public Facilities, as determined by the Owner.

(d) 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 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 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.

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 April 3, 2009, or such other date as may be required by the Development Agreement or as the City and Owner may agree to provide, 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 acquisition of the Public Facilities within three (3) years from the date of their issuance.

Section 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 using, to the extent available, the following sources of funds: (i) available proceeds of the sale of the Bonds; (ii) pay-as-you-go special tax revenues for a period of five years commencing on the first day of the first fiscal year for which Special Taxes are levied; (iii) earnings on the Improvement Fund balance; and (iv) Owner contributions. All portions of the Public Facilities not paid for by the proceeds of the Bonds, pay-as-you-go special tax revenues or Improvement Fund earnings shall nonetheless be constructed by Owner, as required by the Project Approvals, and shall not preclude acquisition by the City. All cost overruns in the construction of the Public Facilities shall be the responsibility of Owner and the acquisition price will not include the additional cost unless the City determines sufficient moneys are available therefor. 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.

Section 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 reasonable 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 of the Public Facilities. Upon completion of the construction of a Public Facility (either in its entirety, or a segment or phase) 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 Sections 6 hereof have been satisfied, the City shall notify Owner in writing that the construction of the Public Facility, segment or phase has been satisfactorily completed, provided, however, that Owner and 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, Owner shall forthwith file with the County Recorder of the County of Placer a Notice of Completion pursuant

to the provisions of Section 3093 of the California Civil Code. Owner shall furnish to the City a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Recorder. 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.

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, 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 any Public Facility (or approved segment or phase thereof as shown on Exhibit "D" hereof) 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.

Section 10. Acquisition; Maintenance. Upon completion of the construction of each Public Facility, segment or phase 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, segment or phase from Owner. The acquisition price as to each Public 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 Owner with its contractors, and supplier 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, segment or phase as the City shall require, together with lien releases from all contractors and suppliers providing work and materials for the completed Public Facility segment or phase in form satisfactory to the City. The City shall have ten (10) days to determine the acquisition price. The determination of the City as to the acquisition price for a completed Public Facility segment or phase shall be final and the acquisition price is not required to be sufficient to fully reimburse all of the cost of the Public Facility acquired.

Upon determining the acquisition price for a completed Public Facility, segment or phase, 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, segment or phase, the City shall, within ten (10) days thereafter, pay from moneys available for such purpose the amount of the acquisition price for any completed Public Facility, segment or phase. In no event will the City pay the acquisition price for any Public Facility, segment or phase which has not been fully completed, including "Punch List" work.

Reimbursement of the "Required Fees" portion of the Public Facilities shall be made at such time as the City deems appropriate subsequent to submission by Owner that such fees are due or have been advanced by Owner.

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 City's Director of Public Works that a Public Facility is complete and shall furnish proof of the amounts to be included in the acquisition price, together with lien releases. Then Public Works staff shall inspect the

Public Facility to confirm completion. Then Public Works staff shall notify City's Finance Department regarding completion and shall request payment to Owner. Within ten (10) days thereafter, and provided that the improvement has been conveyed to City or irrevocably offered for dedication, 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 ten percent (10%): (1) City shall retain ten percent (10%) 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 ten percent (10%) 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, segment or phase unless and until the street, drainage or other utility rights of way where such Public Facilities, segment or phase are located have been irrevocably offered to the City for dedication.

For each Public Facility, 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 City's acquisition of a Public Facility, 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.

Section 11. Indemnification; Insurance 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, expense and claims arising, under the procedures set forth in Section 6 of this Agreement. 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, until construction of all 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, 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 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 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 such form and at such intervals as set forth 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 30 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.

Section 12. Ownership of Facilities. Notwithstanding that some of the Public Facilities, segments or phases 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, such Public Facilities, segments or phases 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 as provided in the preceding Sections of this Agreement. 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, Sections 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 provisions of this Agreement, and the provisions of this Section shall control.

Section 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 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.

Section 14 Failure to Complete Construction. Notwithstanding the preceding provisions of this Agreement, if Owner fails to expeditiously prosecute the construction of any 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 one or more Public Facility within 30 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 30 days from the date of receipt thereof, Owner shall relinquish to the City all design documents, 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 the funds which may be utilized by the City for the construction of any such Public Facilities shall be (i) the proceeds of the sale of the Bonds, (ii) at the discretion of the City, 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 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.

Section 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 all the Public Facilities, Owner shall nevertheless construct and dedicate to the City the Public Facilities required by the Development Agreement, and the City may require such assurances of performance as the City deems appropriate and any shortfall in the cost of the Public Facilities over the available moneys for acquisition shall be the sole responsibility of the Owner. Such assurances of performance shall be those measures that are reasonably related to the nature and extent of the shortfall encountered at the time, as well as the types of assurances contained in the

Development Agreement, the financing documents and at law. Examples include, without limitation, surety bonds and corporate guarantees.

Section 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.

Section 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.

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

Section 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 for the District, shall perform all parts of this Agreement which require performance on the part of the District.

Section 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.

Section 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.

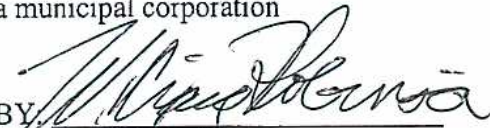
Section 22. General. This Agreement contains the entire agreement between the parties with respect to the matters herein provided for, and may be amended by a subsequent written agreement signed on behalf of both parties. This Agreement is for the exclusive benefit of the parties and shall not be construed to confer any rights or benefits upon any persons other than the City and the 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. 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.

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

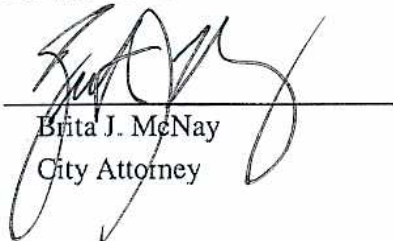
CITY OF ROSEVILLE,
a municipal corporation

BY: 
W. Craig Robinson
City Manager

ATTEST:

BY: 
Sonia Orozco
City Clerk

APPROVED AS TO FORM:

BY: 
Brita J. McNay
City Attorney

DIAMOND CREEK PARTNERS, LTD., a
California limited partnership

By: Diamond Equities, Inc.,
a California corporation,
General Partner

By: 
Stephen L. Des Jardins
President

EXHIBIT A

LEGAL DESCRIPTION OF PARCEL 31

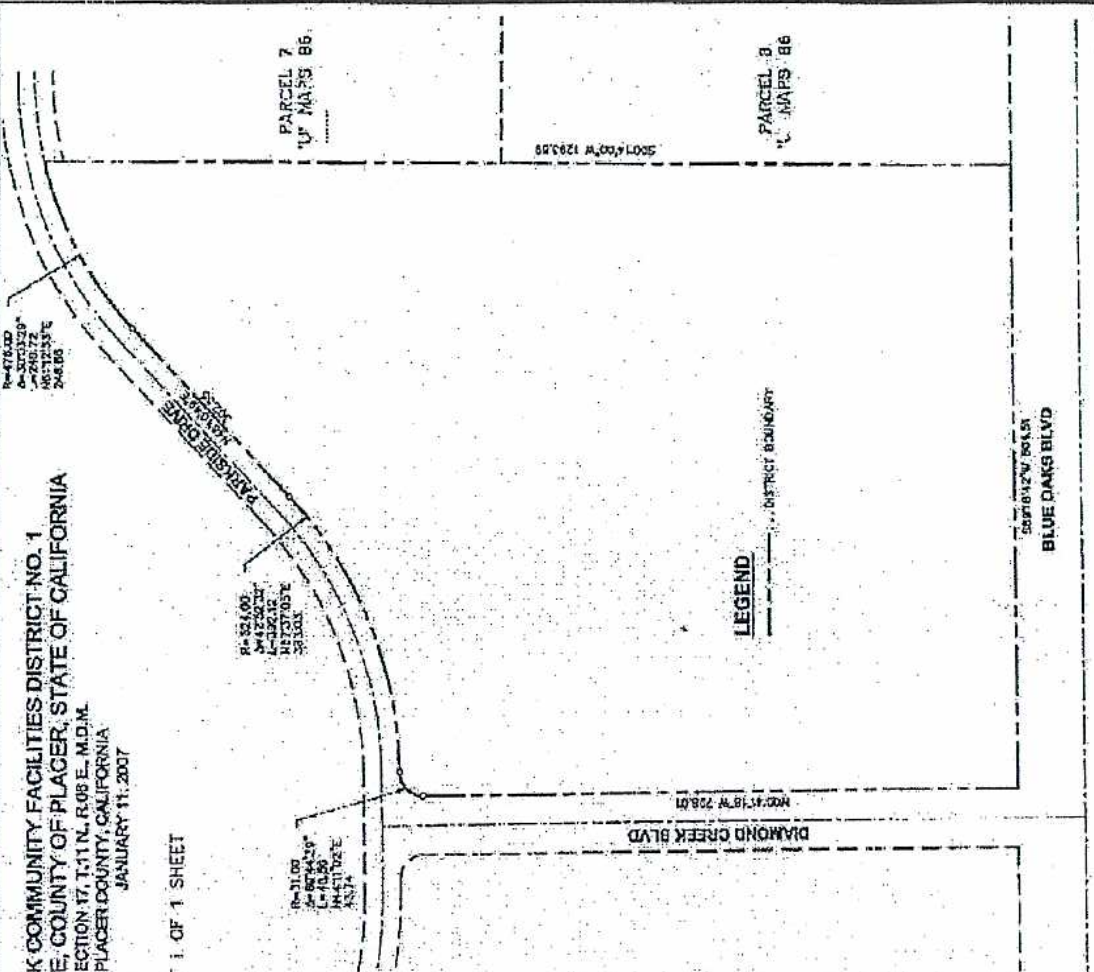
That certain real property situate in the City of Roseville, County of Placer, State of California described as follows:

Parcel 31, as shown on that certain map entitled "Plat of Diamond Creek Large Lot Subdivision", filed in the Office of the County Recorder of Placer County, California, on July 22, 1998, in Book U of Maps, at Page 86.

APN: 017-115-032-000

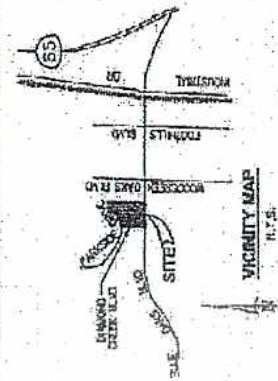
Exhibit B

BOOK 3 OF COMMUNITY FACILITIES DISTRICTS, PAGE 60



BOUNDARY MAP - DIAMOND CREEK COMMUNITY FACILITIES DISTRICT NO. 1
 (PUBLIC FACILITIES), CITY OF ROSEVILLE, COUNTY OF PLACER, STATE OF CALIFORNIA
 BEING A PORTION OF SECTION 17, T.11N., R.09E., M.D.M.
 CITY OF ROSEVILLE, PLACER COUNTY, CALIFORNIA
 SCALE 1"=100'

SHEET 1 OF 1 SHEET



I HEREBY CERTIFY THAT THE WITHIN MAP, SHOWING PROPOSED BOUNDARIES OF DIAMOND CREEK COMMUNITY FACILITIES DISTRICT NO. 1 (PUBLIC FACILITIES), CITY OF ROSEVILLE, COUNTY OF PLACER, STATE OF CALIFORNIA WAS APPROVED BY THE CITY CLERK OF THE CITY OF ROSEVILLE, CALIFORNIA, ON THIS 15 DAY OF February, 2007, IN ACCORDANCE WITH THE CITY CHARTER AND RESOLUTION NUMBER 07-07.

Anna O'Keefe
 SONJA GROSSO, CITY CLERK
 CITY OF ROSEVILLE
 PLACER COUNTY, CALIFORNIA

FILED THIS 15 DAY OF February, 2007,
 AT THE HOUR OF 10:00 O'CLOCK, A.M. & P.M.
 IN BOOK 3 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS
 AT PAGE 60 IN THE OFFICE OF THE COUNTY RECORDER IN THE COUNTY OF
 PLACER, STATE OF CALIFORNIA.

Jim McCallister
 JIM MCCALLISTER
 COUNTY RECORDER
 PLACER COUNTY, CALIFORNIA

DOCUMENT NO. 2007-01497
 FEE \$ 500

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF ROSEVILLE, PLACER COUNTY, CALIFORNIA, ON THIS 15 DAY OF February, 2007.

Sonia Grosso
 SONJA GROSSO, CITY CLERK
 CITY OF ROSEVILLE
 PLACER COUNTY, CALIFORNIA



Exhibit C

12/5/06

Item No.	Description	Units	Estimated Quantity	Estimated Unit Price	Estimated Cost	
Grading & Paving						
1	Clear & Grub	AC	19	\$ 1,000.00	\$ 19,000.00	
2	Earthwork (mass grading)	CY	22,700	\$ 3.60	\$ 81,720.00	
3	Earthwork (finish pads)	EA	131	\$ 400.00	\$ 52,400.00	
4	Retaining Wall	SF	1,330	\$ 25.00	\$ 33,250.00	
5	Enhanced Concrete	SF	13,350	\$ 15.00	\$ 200,250.00	
6	4" CG/1" F&B	SF	51,500	\$ 3.70	\$ 190,550.00	
7	Curb & Gutter (Type 2)	LF	4,200	\$ 18.00	\$ 75,600.00	
8	Sidewalk Ramp	EA	14	\$ 3,000.00	\$ 42,000.00	
9	Sidewalk (including ramps)	SF	26,200	\$ 12.00	\$ 314,400.00	
10	Sidewalk Frontage (Blue Oaks & Diamond C	SF	10,800	\$ 14.00	\$ 151,200.00	
					Subtotal	\$ 1,263,970.00
Storm Drain						
11	12" Storm Drain Pipe	LF	1,130	\$ 59.00	\$ 67,000.00	
12	15" Storm Drain Pipe	LF	420	\$ 60.00	\$ 25,200.00	
13	18" Storm Drain Pipe	LF	770	\$ 62.00	\$ 47,740.00	
14	24" Storm Drain Pipe	LF	1,000	\$ 65.00	\$ 66,000.00	
15	30" Storm Drain Pipe	LF	200	\$ 90.00	\$ 18,000.00	
16	48" Manhole	EA	21	\$ 4,000.00	\$ 84,000.00	
17	Drain Inlet Type "D"	EA	54	\$ 2,300.00	\$ 124,200.00	
18	Sand/Oil Separator	EA	3	\$ 10,000.00	\$ 30,000.00	
19	Connect to Existing System	EA	3	\$ 2,000.00	\$ 6,000.00	
					Subtotal	\$ 498,940.00
Sanitary Sewer						
20	6" Sewer Pipe (alleys)	LF	3,740	\$ 49.00	\$ 183,260.00	
21	8" Sewer Pipe	LF	675	\$ 50.00	\$ 33,750.00	
22	10" Sewer Pipe	LF	310	\$ 55.00	\$ 17,050.00	
23	48" Manhole	EA	34	\$ 4,000.00	\$ 136,000.00	
24	4" Lateral Service (alleys)	EA	144	\$ 1,200.00	\$ 172,800.00	
25	Connect to Existing System	EA	2	\$ 2,000.00	\$ 4,000.00	
					Subtotal	\$ 360,000.00
Water System						
26	6" Water Main (including fittings) - alleys	LF	3,750	\$ 50.00	\$ 187,500.00	
27	8" Water Main (including fittings) - streets	LF	1,250	\$ 50.00	\$ 62,500.00	
28	12" Water Main (including fittings)	LF	1,650	\$ 50.00	\$ 82,500.00	
29	Fire Hydrant Installation (w/Gate Valve)	EA	14	\$ 3,500.00	\$ 49,000.00	
30	8" Gate Valve	EA	40	\$ 2,000.00	\$ 80,000.00	
31	12" Butterfly Valve	EA	10	\$ 3,000.00	\$ 30,000.00	
32	1" Air Vacuum Release Valve	EA	2	\$ 2,600.00	\$ 5,200.00	
33	3/4" Service (alleys)	EA	141	\$ 1,350.00	\$ 190,350.00	
34	Connect to Existing System	EA	3	\$ 3,500.00	\$ 10,500.00	
					Subtotal	\$ 697,550.00
Misc.						
35	Street Lights	EA	20	\$ 4,000.00	\$ 80,000.00	
36	Signage and Striping	LS	5	\$ 5,000.00	\$ 25,000.00	
37	Monument Well	EA	3	\$ 500.00	\$ 1,500.00	
38	Joint Trench (along public streets)	LF	2,200	\$ 40.00	\$ 88,000.00	
39	Joint Trench (alleys)	LF	3,750	\$ 40.00	\$ 150,000.00	
40	Sound Wall	LF	700	\$ 100.00	\$ 70,000.00	
41	Landscaping (Everything except pavers & utility)	SF	130,000	\$ 4.50	\$ 585,000.00	
42	Erosion Control	AC	12	\$ 10,000.00	\$ 120,000.00	
					Subtotal	\$ 1,129,500.00
					TOTAL	\$ 3,919,360.00
					15% Contingency	\$ 587,904.00
					CONSTRUCTION TOTAL	\$ 4,508,000.00

Diamond Creek Partners
PRELIMINARY ESTIMATE OF DEVELOPMENT COSTS
Diamond Creek Village Phase A (Public Improvements)

12/6/06

TOTAL CONSTRUCTION COST (PUBLIC)	\$4,508,000
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Soft Costs	% of Overall	Total Costs
Design Engineering	4.0%	\$181,000
Design Surveys & Boundary	0.5%	\$23,000
Final Map & Monuments	0.6%	\$28,000
Construction Staking	2.0%	\$91,000
Soils Report & Soils observation & testing	2.0%	\$91,000
Construction Administration	4.0%	\$181,000
Construction Observation	0.3%	\$15,000
Landscape Plans	-	\$25,000
SWPPP Preparation, Monitoring & Maintenance	-	\$25,000
Reproduction Services (Estimate)	\$5,000.00	\$5,000
	Subtotal:	\$665,000

Required Fees	Amount	Total Costs
Plan Check (Public Works & Environmental Utilities)	5%	\$226,000
J.T. (PG&E Gas, Roseville Electric & Telephone, etc.)	-	\$200,000
Misc. (Encroachment, Final Map, Irrigation, etc.)	0.50%	\$23,000
	Subtotal:	\$449,000.00

Sub -Total Soft Cost And Fees	\$1,114,000.00
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Grand Total	\$5,622,000
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CITY COUNCIL OF THE CITY OF ROSEVILLE

RESOLUTION NO. 07- 160

**RESOLUTION APPROVING FUNDING, CONSTRUCTION
AND ACQUISITION AGREEMENT IN CONNECTION WITH
DIAMOND CREEK COMMUNITY FACILITIES DISTRICT NO. 1
(PUBLIC FACILITIES)**

WHEREAS, on February 21, 2007, this Council adopted Resolution No 07-99 "RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF ROSEVILLE TO FORM COMMUNITY FACILITIES DISTRICT AND LEVY A SPECIAL TAX IN DIAMOND CREEK COMMUNITY FACILITIES DISTRICT NO. 1 (PUBLIC FACILITIES) TO FINANCE THE ACQUISITION AND CONSTRUCTION OF CERTAIN PUBLIC FACILITIES IN AND FOR SUCH COMMUNITY FACILITIES DISTRICT" (the "Resolution of Intention") with respect to Diamond Creek Community Facilities District No. 1 (Public Facilities) (the "CFD") 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

WHEREAS, the facilities to be provided as stated in the Resolution of Intention are set forth in an exhibit attached thereto and hereby made a part hereof; and

WHEREAS, subsequent to formation of the CFD pursuant to the Act, the City desires to acquire the facilities in accordance with the provisions of the Act and to enter into an agreement for such purpose.

NOW THEREFORE, the City Council of the City of Roseville (the "City") resolves:

1. As a part of the proceedings for the CFD, this City Council hereby approves a Funding, Construction and Acquisition Agreement (the "Agreement") by and between the City of Roseville and Diamond Creek Partners, Ltd., the form of which is attached hereto. The purpose of the Agreement is to provide for the establishment of the CFD, the acquisition of certain public facilities and payment of certain incidental expenses relating thereto, all of 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.

2. The City Council hereby approves the Agreement in the form presented to the City Council at this meeting. The Mayor, the Administrative Services Director, the Finance Director, the City Manager, the City Attorney or such other person or persons as any one of them may designate (collectively, the "Authorized Officers"), are each hereby authorized and directed to execute the Agreement and the City Clerk is hereby authorized to attest its execution, for and in the name and on behalf of the City and the CFD, in such form, together with any additions thereto or changes therein deemed necessary or advisable by the Authorized Officer, upon consultation with the City Attorney.

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 4th day of April, 2007, by the following vote of the City Council:

AYES: COUNCILMEMBERS Allard, Roccucci, Garcia, Garbolino, Gray
NOES: COUNCILMEMBERS None
ABSENT: COUNCILMEMBERS None
ABSTAIN: COUNCILMEMBERS None



Mayor

ATTEST:



City Clerk of the City of Roseville