

**FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT
WESTBROOK COMMUNITY FACILITIES DISTRICT NO. 1
(City of Roseville)**

This Funding, Construction and Acquisition Agreement ("**Agreement**") is entered into as of the 1st day of December, 2014, by and between the **CITY OF ROSEVILLE**, a California charter city and municipal corporation (the "**City**"), and **WP DEVELOPMENT COMPANY, LLC**, a California limited liability company ("**Owner**").

Recitals

A. On April 16, 2014, the City Council of the City adopted Resolution No. 14-131 entitled "RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROSEVILLE TO FORM WESTBROOK COMMUNITY FACILITIES DISTRICT NO. 1 (PUBLIC FACILITIES)" with respect to Westbrook Community Facilities District No. 1 (Public Facilities) (the "**District**") of the City pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "**Act**") and subsequently authorized the issuance of bonds to finance District authorized improvements for Phase 1 development within the District; and

B. At the time of formation of the District, Westpark S.V. 400, LLC, a California limited liability company, owned all of the land in the District; in contemplation of development the Phase 1 area was transferred to Owner, a wholly owned affiliate comprised of the same principals as Westpark S.V. 400, LLC, for lot development and sales

C. Owner and Westpark S.V. 400, LLC collectively own all of the real property in the District, and shown on the map recorded in the Placer County Recorder's Office on March 10, 2014 in Book 3 at Page 70, as Document No. 2014-0014814 of Maps of Assessment and Community Facilities Districts (the "**Property**"). Owner currently owns the Phase 1 development area and Westpark S.V. 400, LLC currently owns the Phase 2 & 3 development areas and the Phase 2 & 3 areas are contemplated to be transferred to Owner in the future for project development. The Property is located within the corporate limits of the City.

D. Westpark S.V. 400, LLC submitted an application on May 11, 2011 to process a General Plan Amendment, Specific Plan Amendment, Rezone and Development Agreement for an approximately 400 acre property designated Urban Reserve in the "Sierra Vista Roseville Specific Plan" (the "**Specific Plan**") area. The proposed land use plan includes 2,029 residential units in a mix of low, medium and high density. The land use plan also includes 43.3 acres of commercial, a 10-acre elementary school site, three neighborhood parks and a 0.3-acre well site. Approximately 36.6 acres of the site will be set aside as open space preserve. The Specific Plan sets forth a comprehensive land use plan and establishes detailed regulations, conditions and programs for development of the Property.

E. The City Council of the City approved the amendment to the Specific Plan on June 6, 2012.

F. 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).

G. On June 20, 2012, the City Council of the City adopted Ordinance Number 5079 approving a development agreement 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 June 20, 2012 (the "**Development Agreement**"). The Specific Plan, Development Agreement, including conditions of approval, and other existing and subsequent approvals granted by City and agreements between Westpark S.V. 400, LLC 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.**"

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

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

AGREEMENTS

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

1. Establishment of District. The City has conducted proceedings pursuant to the Act for the establishment of the District. Such proceedings included but are not limited to, elections pursuant to Sections 53326 and 53327 of the California Government Code on (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 to finance the facilities authorized for the District, including bonds of the District, payment of certain impact fees for facilities, and for 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, costs of issuance, including the fees of fiscal agents and paying agents, and any necessary replenishment for the reserve fund for such bonds, accumulation of funds for future bond payments, and (iii) the question of the establishment of an appropriations limit for the District. Owner shall cooperate with City in its conduct of the proceedings for the establishment of the District.

Pursuant to Resolution No. 14-293 adopted on July 2, 2014 by the City Council of the City authorized the issuance of bonds payable from Special Taxes levied on property within the District according to a methodology approved by the City. The Bonds (as defined below) represent the first series of a total of \$90,000,000 of bonds authorized by the District and the issuance of additional bonds in the future are contemplated. The timing of the issuance and sale of additional bonds, the aggregate principal amount thereof, and the terms and conditions upon which they shall be sold shall be reasonably determined by the City. Multiple series of bonds are contemplated; this Agreement is applicable to proceeds from the first series of such bonds; such first series, as described in Section 2 hereof, is herein referred to as the "**Bonds.**" Such Bonds are contemplated to be issued to finance the portion of the Public Facilities, described in Exhibit A hereto, needed for development of Westpark S.V. 400, LLC's designated "Phase 1" of the Project. Proceeds from subsequent series of bonds for the District may be made applicable to this Agreement by mutual agreement of the parties hereto, or may be made applicable to a separate agreement.

2. Sale of Bonds. The City shall proceed, as hereinafter provided, with the sale of bonds for the District in an aggregate amount to be determined by the City not to exceed Fourteen Million Three Hundred Fifty-Five Thousand Dollars (\$14,355,000), for the purpose of raising an amount to pay for the design and construction or acquisition of a portion of the public facilities authorized to be financed by the District, impact fees for public facilities and related expenses. Said authorized public facilities (the "**Public Facilities**") and the estimated costs thereof are described in Resolution No. 14-131 adopted on July 2, 2014 by the City Council of the City.

Pursuant to the terms of the Development Agreement, bonds (the "Later Bonds") may be issued for the purpose of financing deferred fees, all as described in Section 3.17 of the Development Agreement, which bonds are projected for possible issuance upon payment of the bonds contemplated herein for the near-term direct construction and acquisition of Public Facilities. References to the "Bonds" herein do not include the Later Bonds.

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

4. Amounts to be Included in Bonds. The aggregate principal amount of the Bonds shall include an amount needed to fund a reserve fund for the payment of principal of and interest on the Bonds as is determined by the City to be necessary and appropriate, capitalized interest on the Bonds for such period as the City shall determine is appropriate, the amount of the discount of the underwriter who purchases the Bonds, and other expenses incurred by the City in connection with the issuance and sale of the Bonds, including bond counsel fees, legal fees, fees of the bank which will act as transfer agent, registrar and paying or fiscal agent for the Bonds, other fees and costs normally incidental to the sale of Bonds, and such other fees and costs enumerated in Section 53345.3 of the California Government Code as the City determines are necessary and appropriate. The City may also include within the aggregate principal amount of the Bonds an amount determined by the City to equitably reimburse Owner for costs and expenses incurred by it which are related to the establishment of the District and the design and construction of the Public Facilities; provided that the City shall determine the amount to be so reimbursed on the basis of detailed itemizations of costs provided by Owner and the decision of the City shall be final. In no event shall Owner be reimbursed from Bond proceeds for (i) in-house administrative overhead (except that Owner shall be entitled to payment equal to four percent (4%) of actual construction costs as and for project and construction management services), (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.

The Later Bonds, if issued, shall be issued at the discretion of the City and in accordance with the provisions of 3.17.1.2 of the Development Agreement, as amended from time to time.

5. Design; Reimbursements. 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 Morton and Pitalo Civil Engineers to design streets, traffic signals, water, sewer and storm drainage facilities, and Fuhrman Leamy Land Group, landscape architects, to plan and design 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 out of the proceeds of the sale of the Bonds for Owner's expenses incurred in designing those Public Facilities set forth in Exhibit A, 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 bond proceeds of the District and from no other source. Pursuant to Section 3.5.2 of the Development Agreement, reimbursement for the cost of construction of all arterial roadways and underground facilities below such roadways, including design and plan check services, shall be made via progress payments, based on invoices for actual work constructed, for stages of the arterial roadway improvements as described in Section 3.5.2 of the Development Agreement that have been signed off by City inspectors, and, for all other Public Facilities, 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. Upon receipt of such a notice, 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 a reasonable amount, reasonably determined by the City, for the expenses incurred by Owner in connection with the design of the Public Facilities which have not previously been reimbursed, provided there are sufficient funds remaining, after payment for the Public Facilities, to do so.

6. Construction for Acquisition. The City shall only be required to acquire from Owner those Public Facilities which will ultimately be owned by the City. Owner shall proceed with the construction of the Public Facilities in accordance with the approved plans and specifications (either prior to or following the formation and confirmation of the authority of the District).

For construction of Public Facilities under this Section, the Owner shall comply with all of the following requirements to insure that the Public Facilities will be constructed as if they had been constructed under the direction and supervision, or under the authority of the City:

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

Based on qualifications submitted by the contractors, 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 a 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.

(a) Owner shall receive and open bids, and report the results to the City Engineer. On elements of work with a pre-qualified bid list, bids will only be accepted from pre-qualified bidders. Any value engineering proposals shall be submitted to the City Engineer for approval. The City Engineer may, after consulting with Owner, require changes to the work. Owner shall promptly order such changes. The City Engineer shall be consulted with respect to any proposed change to the originally-approved design.

The contract or contracts for the construction of the Public Facilities shall be awarded to the responsible bidder(s) submitting the lowest responsible bid(s) for the construction of the Public Facilities, as determined by the Owner.

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

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

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 December 2016, or such earlier date as may be required by the Development Agreement or upon which the City and Owner may agree; provided, however, that the construction of the Public Facilities shall proceed and be completed so that the proceeds of the Bonds may be expended for the construction or acquisition of the Public Facilities within three (3) years from the date of their issuance.

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

8. Inspection and Approval of Construction. The City shall provide such level of inspection of the progress of construction of the Public Facilities to be constructed by Owner for acquisition by the City as it deems necessary, and its inspectors shall have access to the construction sites at all times for the purpose of conducting their inspection. Owner and its contractors shall cooperate in every way with the City and its inspectors to ensure that they are afforded an adequate opportunity to inspect each and every phase of the progress of construction of each and every such Public Facility. Upon completion of the construction of a Public Facility (either in its entirety, or a portion thereof), constructed by Owner, and upon receipt of written notification from City's inspectors that construction thereof has been completed in accordance with the plans and specifications thereof and the City's standard requirements, and upon receipt of satisfactory proof, based on the records of Owner and the City and such certifications as the City may require, that the requirements of Section 6 hereof have been satisfied, the City shall notify Owner in writing that the construction of the Public Facility, or portion thereof has been satisfactorily completed; provided, however, that Owner, not the City, shall be responsible for determining satisfaction of requirements of other public

agencies with respect to the Public Facilities. Upon receiving such notification of a completed Public Facility, the City Clerk staff shall file with the County Recorder of the County of Placer a Notice of Completion pursuant to the provision of Section 3093 of the California Civil Code, and supply to Owner a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Records. The costs incurred by the City in inspecting and approving the construction of the bond financed Public Facilities may be paid or reimbursed from the proceeds of the sale of the bonds for the District.

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 the Public Facilities (or approved portion thereof) constructed by Owner for acquisition by the City have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

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

Upon determining the acquisition price for a completed Public Facility or portion thereof, the City shall promptly notify Owner in writing of such acquisition price. Upon presentation by Owner to the City of such documents, including lien releases, as the City shall require as to the completed Public Facility or portion thereof, the City shall, within ten (10) days thereafter, pay from the proceeds of the sale of the Bonds the amount of the acquisition price for the completed Public Facility or portion thereof but in the case of a completed Public Facility 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 Public Facility or portion thereof, Owner shall have no further claim for payment from the City with respect to the retentions. The City shall hold the retention amount on all Public Facilities acquired until the Punch List work is completed and accepted by the City.

The administrative procedure to implement the foregoing is as follows, and may be subject to revision by City upon notice to Owner. Owner shall notify the City Engineer that a Public Facility, or particular stage of the Public Facility, as provided in Section 3.5.2 of the Development Agreement, is complete and shall furnish proof of the amounts to be included in the acquisition price, together with lien releases. Development Services staff shall then inspect the Public Facility to confirm completion. Development Services staff shall then notify City's Finance Department regarding completion and shall request payment to Owner. Within ten (10) days thereafter, and provided that the improvement has been conveyed to City or irrevocably

offered for dedication, or, in the case of Public Facilities for which progress payments are provided for in the Development Agreement, invoices for actual work constructed have been presented by Landowner to the City and the particular Public Facilities have been signed off by City inspectors, City shall issue payment to Owner in the requested amount, further provided and to the extent that funds are available, except that Owner shall choose one of the following options prior to release of the final five percent (5%): (1) City shall retain five percent (5%) of the acquisition price until expiration of the one-year warranty period for the subject Public Facility; or (2) Owner shall obtain a maintenance bond until expiration of the one-year warranty period for the subject Public Facility. Upon expiration of the one-year warranty period, the five percent (5%) retention shall be disbursed to Owner or the maintenance bond shall be released, less any amounts utilized by the City for warranty work. Notwithstanding the preceding provisions of this Section, the City will not pay for the acquisition of any Public Facilities or portion thereof unless and until the street, drainage or other utility rights of way where they are located have been irrevocably offered to the City for dedication, except in the case of Public Facilities for which progress payments are to be paid by City as provided for in Section 3.5.2 of the Development Agreement, based on invoices for actual work constructed that have been signed off by City inspectors

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

11. Indemnification; Insurance. Owner 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 Public Facilities to be constructed by Owner for acquisition by the City, including, but not limited to, liability, costs, expenses and claims arising, under the procedures set forth in Section 6 of this Agreement Owner 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 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 of the Public Facilities to be constructed by Owner is completed and acceptance thereof by the City has occurred, a broad form comprehensive general liability policy of insurance, in a form acceptable to the City, naming the City, the District and their officers, agents and employees as additional insureds, having a single aggregate liability limit as to all coverages provided thereby in the amount of Two Million Dollars (\$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.

12. Ownership of Facilities. Notwithstanding that some of the Public Facilities to be constructed by Owner for acquisition by the City may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated or offered for dedication to the City, District or Public Utility. Such Public Facilities or any portion thereof shall be and remain the property of Owner, and Owner shall be responsible for any loss or damage thereto or liability arising therefrom, until they are acquired by the City or other agencies 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, Section 66410 et seq. of the California Government Code, which may contain or include provisions with respect to the construction and ownership of public facilities which may seem to be contradictory to the provision of this Agreement, and the provisions of this Section shall control.

13. Improvement Security. Notwithstanding any other provisions of this Agreement, Owner shall be required to agree to construct and to secure the construction and completion of construction of the Public Facilities, or portions thereof, as a condition precedent to the approval of subdivision or parcel maps for portions of the Property as required by the City pursuant to Section 66462 and Sections 66499 through 66499.10 of the 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. The foregoing provisions notwithstanding, upon the issuance and proceeds from the sale of the Bonds, Landowner shall not be required to post any other security for roadway Capital Improvement Program improvements as provided in Section 3.5.4.2 of the Development Agreement.

All subdivision and performance bonds shall provide, inter alia, that the principal thereof whether that be Owner or its contractor(s), guarantees that the completed Public Facilities shall be free from defects resulting from faulty workmanship and materials for a period of one

year from the date of acceptance by the City, and the obligation of the surety shall extend to the fulfilling of that guarantee. At the end of said one year period and Subject to certification of the City Engineer that any defects have been corrected, the obligation of the principal and surety named therein shall cease.

14. Failure to Complete Construction. Notwithstanding the preceding provisions, of this Agreement, if Owner fails to expeditiously prosecute the construction of the Public Facilities to be constructed by Owner for acquisition by the City, the City shall have the right and may elect to take over the construction of such Public Facilities, or any part thereof, if City determines it is necessary for City to so proceed in order to protect the City's interests. If the City elects to so proceed, it shall notify Owner in writing that if Owner does not satisfy the City that construction is proceeding expeditiously on the construction of a Public Facility within thirty (30) days after receipt of such notice, the City will take over the construction of such Public Facilities. If after receiving such a written notification Owner does not satisfy the City that it is proceeding expeditiously to construct that portion of the Public Facilities identified in the written notification to the satisfaction of the City, within thirty (30) 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 funds to be utilized by the City for the construction of any such Public Facilities shall be (i) the proceeds of the sale of the Bonds and, at City's discretion, (it) the proceeds of applicable City development fees collected pursuant to the applicable codes, ordinances and policies of the City, including development fees paid through levies of the special taxes of the District, (iii) proceeds from the sale of the bonds of another community facilities district or assessment district established over and including property in the City, (iv) interest earnings on the reserve fund for the Bonds, to the extent such earnings are determined by the City to be available for construction of the Public Facilities, (v) the Owner's subdivision bond or bonds to the extent applicable, (vi) any other performance security that may have been provided by the Owner, and (vii) the 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 the Owner, the Owner's bond or any contractor's bond for the costs thereof.

15. Owner Responsibility for Satisfaction of Improvements required by Conditions of Approval. If the bonds are not sold in an aggregate principal amount sufficient to construct and acquire all of the Public Facilities, Owner shall nevertheless construct and dedicate to the City the Public Facilities required by the Development Agreement, and the City may require such assurances of performance as the City deems appropriate, provided however the City shall cooperate with Owner to provide for a levy of a pay-as-you-go component of the special taxes within the time the Bonds are outstanding and as contemplated by the Development Agreement to reimburse Owner for costs of Public Facilities not paid from proceeds of the Bonds. As set forth in Section 3.17.1.2(e) of the Development Agreement, City agrees that there shall be an interest component for any authorized Public Facility reimbursed with pay-as-you-go proceeds at a rate based on the May rate established by the Engineering New Record Construction Cost Index for the Twenty (20) City Average plus San Francisco.

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

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

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

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

20. Assignment. Owner may not assign this Agreement or any right or duty hereunder without the express written approval of the City. The City may condition any such approval on proof of the financial responsibility and experience of a proposed assignee to undertake and perform the duties and responsibilities of Owner under this Agreement, The City's approval of an assignment of this Agreement and the rights and duties of Owner hereunder shall not be unreasonably withheld.

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

22. General. This Agreement contains the entire agreement between the parties with respect to the matters herein provided for, and may be amended by a subsequent written agreement signed on behalf of both parties. This Agreement is for the exclusive benefit of Owner and the City 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 temporarily, and shall not have any bearing on the interpretation of any section hereof. This Agreement may be executed in several counterparts, each of which shall be an original of the same Agreement.

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

CITY OF ROSEVILLE

By: Jay Panzica
Jay Panzica
City Treasurer/Financial Executive

ATTEST:

By: Sonia Orozco
for: Sonia Orozco
City Clerk

APPROVED AS TO FORM:

By: Robert R Schmitt
for Brita J. Bayless
City Attorney

WP DEVELOPMENT COMPANY, LLC,
A California limited liability company

By: _____

Name: _____

Title: _____

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

CITY OF ROSEVILLE

By: _____
Jay Panzica
City Treasurer/Financial Executive

ATTEST:

By: _____
Sonia Orozco
City Clerk

APPROVED AS TO FORM:

By: _____
Brita J. Bayless
City Attorney

WP DEVELOPMENT COMPANY, LLC,
A California limited liability company

By: _____
Name: JEFF JONES
Title: Manager

EXHIBIT A
Westbrook Funding Construction & Acquisition Agreement
Phase 1 Authorized Facilities

Authorized Facilities

Phase 1

Wetland Mitigation as required by the US Army Corps of Engineers 404 Permit
Swainson Hawk Mitigation
Pleasant Grove Blvd
Westbrook Blvd
Sierra Trail Drive
Mountain Glen Drive
Well Site (W-61)
Park Site (W-51)
Planning & Entitlement Costs
Placer 2780 Reimbursement Payment