

Folsom City Council Staff Report

| | |
|------------------------|---|
| MEETING DATE: | 8/22/2023 |
| AGENDA SECTION: | Consent Calendar |
| SUBJECT: | Resolution No. 11092 – A Resolution Authorizing the City Manager to Execute the First Amendment to the Acquisition & Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch) |
| FROM: | Community Development Department |

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends that the City Council move to adopt:

Resolution No. 11092 – A Resolution Approving the First Amendment to the Acquisition & Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch) and Authorizing the City Manager to Execute the First Amendment to the Acquisition & Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch).

BACKGROUND / ISSUE

On November 14, 2017, the City Council adopted Resolution No. 10035, a resolution approving the formation of Community Facilities District No. 20 (CFD No. 20), providing for the levy of special taxes therein, and adopted Resolution No. 10036, a resolution deeming it necessary to incur bond indebtedness in and for the City of Folsom CFD No. 20. Special tax revenues generated from CFD No. 20 funded a portion of or in some cases all of Russell Ranch's share of the backbone infrastructure and public facilities and improvements, related environmental mitigation obligations and design and engineering costs. The CFD No. 20 boundaries include Russell Ranch Phase 1, Phase 2 and Phase 3. Phase 1 was owned and developed by The New Home Company. Lennar Homes of California, LLC purchased from The New Home Company both Phase 2 and Phase 3 and are currently constructing subdivision improvements in both of these phases.

On May 8, 2018, the City Council adopted Resolution No. 10116 approving the Acquisition & Shortfall Agreement for CFD No. 20 (Russell Ranch). The Acquisition & Shortfall Agreement (Agreement) included a comprehensive list of public improvements which were eligible for reimbursement with bond proceeds from CFD No. 20 (Russell Ranch). These eligible public improvements included Alder Creek Parkway, Grand Prairie Road, portions of Mangini Parkway and Rough Horse Way and various landscape and streetscape improvements within and along those same roadway segments.

The list of eligible public improvements in the approved Acquisition and Shortfall Agreement for CFD No. 20 did not include the required Sanitary Sewer Lift Station necessary to serve certain residential units in the Russell Ranch Phase 2 subdivision portion of the overall Russell Ranch Phase development area. It also did not include landscape, irrigation and streetscape improvements for those eligible portions of Empire Ranch Road within the same Phase 2 portion of the overall Russell Ranch development area. The subdivider is requesting to add both the Sanitary Sewer Lift Station and the landscape, irrigation and streetscape improvements in Empire Ranch Road to those public improvements eligible for reimbursement from bond proceeds from CFD No. 20.

POLICY / RULE

Chapter 5 of the Folsom Plan Area (FPA) Public Facilities Financing Plan authorizes the formation of CFD's to finance the construction, acquisition and servicing of backbone infrastructure and other public improvements

Section 2.5.3 of the First Amended and Restated Tier 1 Development Agreement authorizes the formation of infrastructure CFD's

Resolution No. 9282 – A Resolution of the City Council of the City of Folsom Approving Goals and Policies for Community Facilities Districts

Mello-Roos Community Facilities Act of 1982

ANALYSIS

In order to obtain reimbursement from proceeds from the sale of bonds for CFD No. 20 for eligible public improvements a City Council approved Acquisition and Shortfall Agreement is required and the eligible public improvements are required to be included in the list of eligible public improvements in the approved Acquisition & Shortfall Agreement. The approved Acquisition & Shortfall Agreement for CFD No. 20 has been approved by the City Council but it did not originally include either the Sanitary Sewer Lift Station or the landscape, irrigation and streetscape improvements in the Russell Ranch Phase 2 portion of Empire Ranch Road.

The subdivider requested the City to consider amending the approved Acquisition & Shortfall Agreement to include the addition of both the Sanitary Sewer Lift Station and the

landscape, irrigation and streetscape public improvements in the Russell Ranch Phase 2 portion of Empire Ranch Road. The First Amendment to the Acquisition & Shortfall Agreement for CFD No. 20, once approved, will add the public improvements for both the Sanitary Sewer Lift Station and the landscape, irrigation and streetscape to the list of improvements eligible for reimbursement from bond proceeds from CFD No. 20.

The first bond sale for CFD No. 20 was completed in 2018. Proceeds from the first bond sale were reimbursed to the original subdivider, The New Home Company, of Russell Ranch Phase 1 for eligible backbone infrastructure which included water booster pump stations, a water tank and various Phase 1 Water infrastructure to serve the development in the FPA. The City completed the second bond sale for CFD No. 20 in the Spring of 2023.

FINANCIAL IMPACT

There is no direct financial impact on the City of Folsom. The CFD No. 20 bonded indebtedness and expenses are solely the responsibility of CFD No. 20.

ENVIRONMENTAL REVIEW

This action is exempt from environmental review pursuant to Section 15061 (b)(3) of the CEQA Guidelines. Environmental review for the public improvements subject to the Acquisition & Shortfall Agreement was completed in the FPASP EIR dated June 14, 2011.

ATTACHMENTS

1. Resolution No. 11092- A Resolution Approving the First Amendment to the Acquisition & Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch) and Authorizing the City Manager to Execute the First Amendment to the Acquisition & Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch)
2. First Amendment to the Acquisition and Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch)
3. Acquisition & Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch)

Submitted



PAM JOHNS, Community Development Director

ATTACHMENT 1

**Resolution No. 11092 – A Resolution Authorizing the City Manager
to Execute the First Amendment to the Acquisition & Shortfall
Agreement for Community Facilities District No. 20 (Russell Ranch)**

RESOLUTION NO. 11092

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO THE ACQUISITION & SHORTFALL AGREEMENT FOR COMMUNITY FACILITIES DISTRICT NO. 20 (RUSSELL RANCH)

WHEREAS, the City Council has adopted Resolution No. 10116 approving the Acquisition & Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch); and

WHEREAS, the approved Acquisition & Shortfall Agreement included various eligible public improvements to be constructed in Community Facilities District No. 20 (Russell Ranch); and

WHEREAS, the approved Acquisition & Shortfall Agreement did not include other various eligible public improvements to be constructed within the boundaries of the Community Facilities District No. 20 (Russell Ranch); and

WHEREAS, the Subdivider has requested to amend the Acquisition & Shortfall Agreement to include certain eligible public improvements that will be constructed by the Subdivider within the boundaries of the Community Facilities District No. 20 (Russell Ranch); and

WHEREAS, the Subdivider has prepared the First Amendment to the Acquisition & Shortfall Agreement for Community Facilities District No. 20 to add certain eligible public improvements to be constructed by the Subdivider.

NOW, THEREFORE, BE IT RESOLVED that the First Amendment to the Acquisition and Shortfall Agreement for Community Facilities District No. 20 (Russell Ranch) is hereby approved, and the City Manager is authorized to execute said Agreement in a form approved by the City Attorney.

PASSED AND ADOPTED this 22nd day of August 2023, by the following roll-call vote:

| | |
|-----------------|-------------------|
| AYES: | Councilmember(s): |
| NOES: | Councilmember(s): |
| ABSENT: | Councilmember(s): |
| ABSTAIN: | Councilmember(s): |

Rosario Rodriguez, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

ATTACHMENT 2

1st Amendment to Acquisition Agreement

**FIRST AMENDMENT
TO
ACQUISITION AND SHORTFALL AGREEMENT**

THIS FIRST AMENDMENT TO ACQUISITION AND SHORTFALL AGREEMENT (this "**Amendment**") is dated as of July __, 2023 (the "**Effective Date**"), by and between CITY OF FOLSOM, a Municipal corporation ("**City**") and LENNAR HOMES OF CALIFORNIA, LLC, a California limited liability company ("**Developer**"), who agree as follows:

RECITALS:

WHEREAS, City and TNHC RUSSELL RANCH LLC, a Delaware limited liability company ("**TNHC**") entered into that certain Acquisition And Shortfall Agreement (City of Folsom Community Facilities District No. 20) (Russell Ranch CFD Improvements) dated June 4, 2018 (the "**Acquisition Agreement**") pursuant to which TNHC agreed to construct certain Acquisition Improvements (as defined therein) and upon final acceptance thereof by the City Engineer, the City agreed to acquire completed Acquisitions Improvements, all pursuant to the terms and conditions contained therein.

WHEREAS, Developer acquired certain real property located in the Folsom Plan Area from TNHC, which real property is described in Exhibit A attached hereto (the "**Developer Property**").

WHEREAS, in conjunction with Developer's acquisition of the Developer Property, TNHC partially assigned its rights, title and interest in and to the Acquisition Agreement to Developer relative to the Developer Property.

WHEREAS, City and Developer desire to amend the Acquisition Agreement, all as set forth hereinbelow.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, City and Developer hereby agree as follows:

1. **Recitals; Defined Terms**. The foregoing recitals are true and are incorporated herein by this reference as though set forth in full. Unless otherwise expressly defined herein, all initially-capitalized terms used herein shall have the meanings ascribed to them in the Acquisition Agreement.

2. **Additional Acquisition Improvements**. The Parties desire to amend the Acquisition Agreement to include the following additional Acquisition Improvements: Sewer Lift Station, Sanitary Sewer System, Potable Water System, Non-Potable Water System; and Storm Drain System (collectively, the "**Additional Acquisition Improvements**"). Attached hereto as Exhibit B is a more detailed description of the Additional Acquisition Improvements and attached hereto as Exhibit C is a description of certain authorized discrete and usable portions of the Additional Acquisition Improvements that may be acquired from Developer pursuant to Section 53313.51 of the Act. For purposes of clarification, all of the Additional Acquisition Improvements shall be deemed to be Acquisition Improvements for purposes of the Acquisition Agreement as amended hereby.

3. **Conflict.** This Amendment is and shall be construed as a part of the Acquisition Agreement. In case of any inconsistency between this Amendment and the Acquisition Agreement, the provisions containing such inconsistency shall first be reconciled with one another to the maximum extent possible and, then to the extent of any remaining inconsistency, the terms of this Amendment shall be controlling.

4. **Ratification.** All terms and provisions of the Acquisition Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect.

5. **Counterparts; Authority; Electronic Signatures.** City and Developer hereby agree that this Amendment may be executed in multiple counterparts which, when signed by all City and Developer, shall constitute a binding agreement. City and Developer further represent and warrant that each natural person who is executing this Amendment on its behalf has the full power and authority to execute this Amendment and to bind it to the terms hereof. An electronic or digital signature of this Amendment shall be valid and effective to bind the City and Developer so signing.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date indicated above.

CITY:

DEVELOPER:

CITY OF FOLSOM, a Municipal corporation

LENNAR HOMES OF CALIFORNIA, LLC,
a California limited liability company

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Exhibit A

Description of Developer Property

[See attached]

Exhibit B

Description of Additional Acquisition Improvements and Estimated Amounts

[See attached]

Exhibit C

**Description of Eligible Portions of Additional Acquisition Improvements,
Including Related Design Costs**

[See attached]

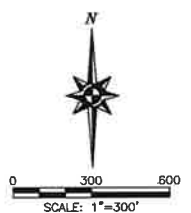
EXHIBIT A AMENDMENT TO THE ACQUISITION AGREEMENT

LINE TABLE

| # | BEARING | LENGTH |
|----|-------------|-----------|
| L1 | N03°57'33"W | 228.82(1) |
| L2 | N73°15'15"W | 57.96(1) |
| L3 | N56°03'43"E | 88.68(1) |

CURVE TABLE

| # | RADIUS | DELTA | LENGTH |
|----|--------|-----------|-----------|
| C1 | 900' | 21°43'46" | 341.33(1) |
| C2 | 375' | 50°41'03" | 331.73(1) |



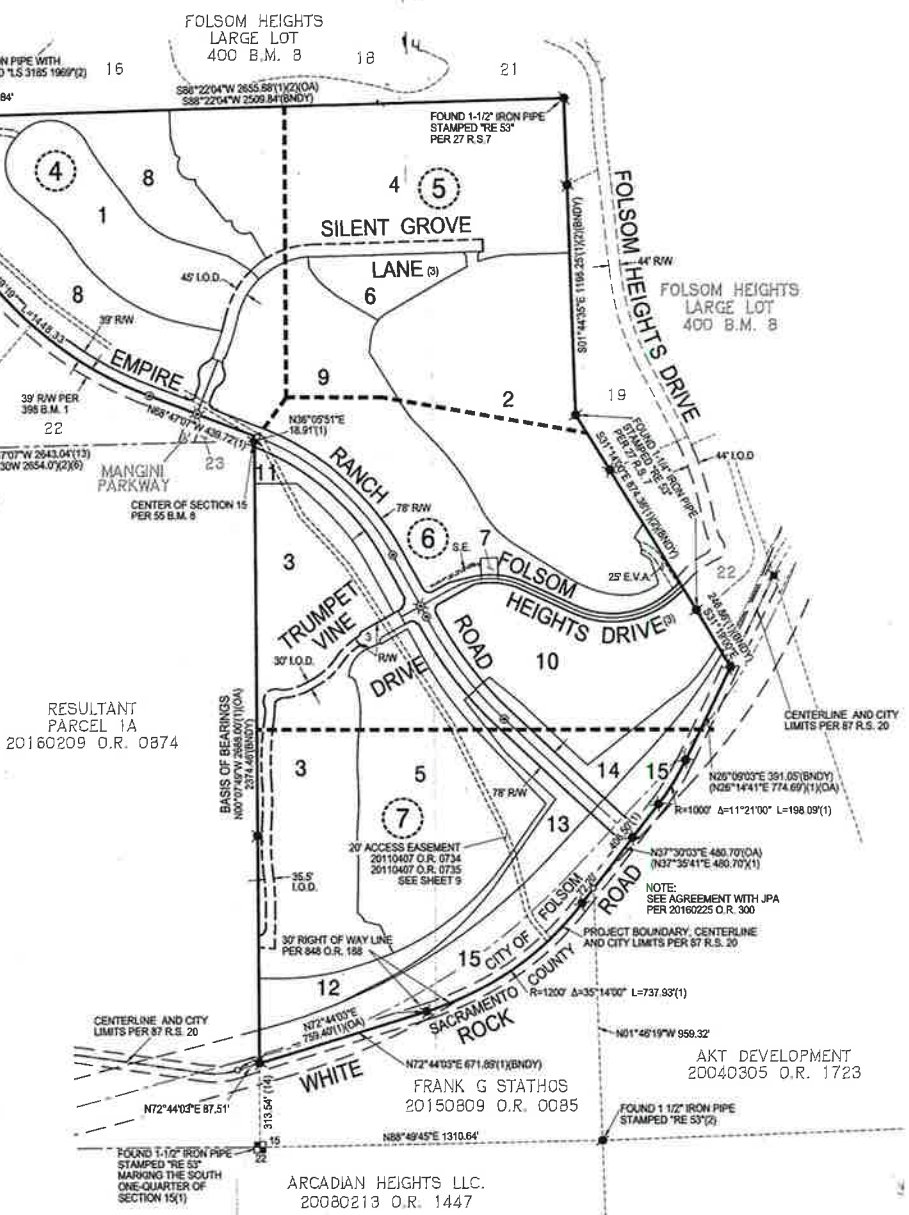
FINAL MAP (PN 17-288) RUSSELL RANCH PHASE 2 LARGE LOT

MERGER AND RESUBDIVISION OF LOTS 24 THROUGH 32, INCLUSIVE AS SHOWN ON THE MAP ENTITLED "FINAL MAP (PN-16-122) RUSSELL RANCH LARGE LOT, FILED FOR RECORD SEPTEMBER 21, 2017 IN BOOK 398 OF MAPS AT PAGE 1, SACRAMENTO COUNTY RECORDS BEING A PORTION OF SECTION 15, T.8 N., R.8 E., M.D.B.M.

CITY OF FOLSOM • SACRAMENTO COUNTY • CALIFORNIA

Mackay & Somps
ENGINEERS PLANNERS SURVEYORS
1502 Landale Road, Suite 100, Roseville, CA 95661 (916) 775-1189

OCTOBER 2018
SHEET 3 OF 9



- LEGEND**
- FOUND ONE-QUARTER SECTION CORNER AS NOTED
 - FOUND MONUMENT AS NOTED
 - FOUND STANDARD CITY OF FOLSOM MONUMENT WELL STAMPED "L.S. 7944"(1)(2)
 - FOUND 1 1/4" O.D. IRON PIPE WITH PLASTIC PLUG STAMPED "L.S. 7944"(1)(2)
 - FOUND 3/4" O.D. IRON PIPE WITH PLASTIC PLUG STAMPED "L.S. 7944"(1)
 - FOUND 1 1/4" O.D. IRON PIPE WITH METAL CAP STAMPED "L.S. 7944", "COUNTY LINE L.S. 7944" IN MONUMENT WELL(2)
 - SET STANDARD CITY OF FOLSOM MONUMENT WELL STAMPED "L.S. 5760"
 - SET 5/8" REBAR WITH PLASTIC CAP STAMPED "L.S. 5760"
 - SET 3/4" O.D. IRON PIPE WITH PLASTIC PLUG STAMPED "L.S. 5760"
 - DIMENSION POINT, SEARCHED NOTHING FOUND OR SET
 - RECORD DATA PER REFERENCE
 - AC± ACRES
 - BNDY BOUNDARY
 - CL CENTERLINE
 - E.V.A. EMERGENCY VEHICLE ACCESS EASEMENT
 - EX EXISTING
 - I.O.D. IRREVOCABLE OFFER OF DEDICATION
 - L.E. LANDSCAPE EASEMENT
 - LL LOT LINE
 - OA OVERALL
 - O.D. OUTSIDE DIAMETER
 - O.R. OFFICIAL RECORDS OF SACRAMENTO COUNTY
 - P.A.E. PEDESTRIAN ACCESS EASEMENT
 - P.U.E. PUBLIC UTILITY EASEMENT
 - (R) RADIAL BEARING
 - R.S. RECORD OF SURVEY
 - RW RIGHT-OF-WAY
 - S.E. SEWER EASEMENT
 - S.F. SQUARE FEET
 - S.P.T.C.J.P.A. SACRAMENTO-PLACERVILLE TRANSPORTATION CORRIDOR JOINT POWERS AUTHORITY
 - (1) SHEET INDEX
 - BOUNDARY
 - CITY LIMITS
 - CENTERLINE
 - I.O.D.
 - EX RW AND I.O.D.
 - PROPOSED RIGHT OF WAY
 - PROPOSED LOT LINE
 - EASEMENT LINE
 - SECTION LINE
 - ADJOINING PROPERTY LINE
 - FENCE
 - MATCHLINE
 - DETAIL AREA

BASIS OF BEARINGS
THE WEST LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 15, TOWNSHIP 8 NORTH, RANGE 8 EAST, MOUNT DIABLO MERIDIAN AS SHOWN AND SO DESIGNATED ON THAT CERTAIN LARGE LOT FINAL MAP FILED FOR RECORD ON SEPTEMBER 21, 2017 IN BOOK 398 OF MAPS, AT PAGE 1, SACRAMENTO COUNTY RECORDS AND HAVING A BEARING OF NORTH 00°07'49" WEST.

- REFERENCES:**
- (1) 388 B.M. 1
 - (2) 400 B.M. 8
 - (3) 20181015 O.R. 0286 (CERTIFICATE OF CORRECTION)

ARCADIAN HEIGHTS LLC.
20080213 O.R. 1447

SEE SHEET 2 FOR NOTES
SHEET 3 OF 9

EXHIBIT B AMENDMENT TO THE ACQUISITION AGREEMENT

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND ESTIMATED AMOUNTS

| SUMMARY OF ACQUISITION IMPROVEMENTS | ESTIMATED AMOUNTS |
|--|--------------------------|
| 1. Russell Ranch Phase 2 Improvements | \$11,663,265.80 |
| 2. Soft Cost | \$2,093,591.87 |
| Total Estimated Amounts | \$13,756,857.67 |

EXHIBIT C AMENDMENT TO THE ACQUISITION AGREEMENT

**DESCRIPTION OF ELIGIBLE PORTIONS OF ACQUISITION IMPROVEMENTS,
INCLUDING DESIGN, CONSTRUCTION STAKING, PLAN REVIEW,
CONSTRUCTION INSPECTION MATERIALS TESTING**

| Russell Ranch Phase 2 Improvements | | |
|--|------------------------------------|----------------------------------|
| Empire Ranch Road | | |
| <u>Items</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
| Site Preparation | \$103,625.00 | 23-Aug |
| Sanitary Sewer System | \$673,584.00 | 23-Aug |
| Storm Drain System | \$1,619,090.00 | 23-Aug |
| Potable Water Distribution System | \$817,590.00 | 23-Aug |
| Non-Potable Water Distribution System | \$310,408.00 | 23-Aug |
| Streetwork | \$2,883,757.15 | 23-Aug |
| Sanitary Sewer Lift Station | | |
| <u>Items</u> | | |
| General | \$145,000.00 | 23-Aug |
| Civil | \$957,900.00 | 23-Aug |
| Electrical | \$515,000.00 | 23-Aug |
| Mechanical | \$340,000.00 | 23-Aug |
| Landscape Improvements | | |
| <u>Items</u> | | |
| Medians | \$1,211,085.05 | 24-May |
| Parkways | \$2,086,226.60 | 24-May |
| Subtotal | \$11,663,265.80 | |
| Soft Cost | | |
| Improvement Plan Design/Construction Staking | \$699,795.95 | 23-Aug |
| Plan Review, Construction Inspection & Materials Testing | \$1,049,693.92 | 24-May |
| Wetland Mitigation | \$50,150.00 | 21-Apr |
| Swainson's Hawk Mitigation | \$293,952.00 | 21-Apr |
| Subtotal | \$2,093,591.87 | |

ATTACHMENT 3

CFD 20 Acquisition & Shortfall Agreement

**COMMUNITY FACILITIES DISTRICT NO. 20
ACQUISITION AND SHORTFALL AGREEMENT**

**BY AND BETWEEN
THE CITY OF FOLSOM
AND
TNHC RUSSELL RANCH, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

Dated as of June 4, 2018

Folsom File No. 174-21 18-034
Res. 10116 05/08/2018



36072

ACQUISITION AND SHORTFALL AGREEMENT

**City of Folsom Community Facilities District No. 20
(Russell Ranch CFD Improvements)**

Recitals

- A. The parties to this Acquisition and Shortfall Agreement (the "Agreement") are the CITY OF FOLSOM, (the "City"), and TNHC RUSSELL RANCH LLC, a Delaware limited liability company ("Developer").
- B. The effective date of this Agreement is June 4, 2018 ("Effective Date").
- C. The Developer intends to construct certain road, water, sewer and other public capital improvements, as more particularly described in Exhibit A attached hereto (collectively, the "Acquisition Improvements") to serve the development of real property owned by Developer within the Folsom Plan Area and within the boundaries of the District described below. The public capital improvements are to be owned and operated by the City, and the financing is to be accomplished, in part, with funding to be provided by the District under and pursuant to the Mello-Roos Community Facilities Act of 1982 – California Government Code Sections 53311 and following (the "Act").
- D. On November 14, 2017, the City adopted Resolution No. 10035 to form City of Folsom Community Facilities District No. 20 (Russell Ranch) (the "District" or "CFD20") within the Folsom Plan Area to finance, among other authorized facilities, the Acquisition Improvements and, on the same date, a landowner election was conducted in which all of the votes were cast unanimously in favor of forming the District.
- E. The District intends to levy special taxes and cause the Authority to issue CFD20 Bonds to fund, among other things, a portion of the costs of the Acquisition Improvements. The proceeds of the District special taxes and CFD20 Bonds, together with interest earned thereon, are referred to herein as the "Available CFD20 Proceeds." The Available CFD20 Proceeds shall include the amount of (i) special taxes, if any, collected during the first twenty (20) years of the term of the District, beginning with Fiscal Year 2018-2019, available to fund the direct payment for the acquisition and/or construction of Acquisition Improvements and not related to or required to fund debt service or Administrative Expenses, as defined in and determined in accordance with the Rate and Method of Apportionment for the District (the "Available Pay-Go Proceeds"), and (ii) the net acquisition proceeds generated by all CFD20 Bond sale(s) issued by the Authority and secured by District special taxes.
- F. Attached hereto as Exhibit A is a description of the Acquisition Improvements and attached hereto as Exhibit B is a description of certain authorized discrete and usable portions of the Acquisition Improvements that may be acquired from Developer pursuant to Section 53313.51 of the Act. It is understood that the Available CFD20 Proceeds may not be sufficient to reimburse the Developer for all of the costs and expenses of the Acquisition Improvements contemplated hereunder, or otherwise finance said improvements. Accordingly,

PL

Developer understands and acknowledges that any shortfall in the Available Amount toward the construction and completion of the Acquisition Improvements is the Developer's sole responsibility, and that the Acquisition Price will be paid solely from the Available CFD20 Proceeds, or from any proceeds that may become available for such payment through the SPIF Program (as defined herein) for an Acquisition Improvement included in the SPIF Program.

G. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement and final acceptance by the City Engineer in writing, the City will acquire the completed Acquisition Improvements.

H. Any and all monetary obligations of the City arising out of this Agreement are the special and limited obligations of the City payable only from the Available CFD20 Proceeds, and no other funds whatsoever of the District, the Authority, or the City shall be obligated therefor under any circumstances under this Agreement.

I. Attached to this Agreement are Exhibit A (the Acquisition Improvements), Exhibit B (Eligible Portions of Acquisition Improvements, including related Design Costs), Exhibit C (form of Requisition), and Exhibit D (Insurance Requirements), all of which are incorporated into this Agreement for all purposes.

Agreement

ARTICLE I

DEFINITIONS; COMMUNITY FACILITIES DISTRICT FORMATION AND FINANCING PLAN

Section 1.01. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

"Acceptable Title" means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the City Engineer, upon consultation with the City Attorney, not to interfere with the intended use and therefore are not required to be cleared from the title.

"Acquisition and Construction Fund" means the "Community Facilities District No. 20 Acquisition and Construction Fund" established by the District for the purpose of paying the Acquisition Prices of the Acquisition Improvements.

"Acquisition Improvements" means the Acquisition Improvements described in Exhibit A hereto.

"Acquisition Price" means the total amount eligible to be paid to the Developer upon acquisition of the Acquisition Improvements as provided in Section 2.03, including any additional Available CFD20 Proceeds collected thereafter that are eligible to be paid to Developer, but not to exceed the Actual Cost of the Acquisition Improvement, together with the CCI adjustment thereon until paid in full as provided herein.

“Actual Cost” means the total cost of the Acquisition Improvements, or Eligible Portions thereof, as documented by the Developer to the satisfaction of the City and as certified by the City Engineer in an Actual Cost Certificate including, without limitation, (a) the Developer’s cost of constructing the Acquisition Improvements including grading, labor, material and equipment costs, (b) the Developer’s cost of designing and engineering the Acquisition Improvements, preparing the plans and specifications and bid documents for the Acquisition Improvements, and the costs of inspection, materials testing and construction staking for the Acquisition Improvements, (c) the Developer’s cost of any performance, payment and maintenance bonds and insurance, including title insurance, required hereby for the Acquisition Improvements, (d) the Developer’s cost of any real property or interest therein that is either necessary for the construction of the Acquisition Improvements (e.g., temporary construction easements, haul roads, etc.), or is required to be conveyed with such Acquisition Improvement in order to convey Acceptable Title thereto to the City or its designee, (e) the Developer’s cost of environmental evaluation or mitigation required for the Acquisition Improvements, (f) the amount of any fees actually paid by the Developer to the City and any other governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for the Acquisition Improvements, (g) the Developer’s cost for construction and project management, administration and supervision services for the Acquisition Improvements, (h) the Developer’s cost for professional services related to the Acquisition Improvements, including engineering, accounting, legal, financial, appraisal and similar professional services, and (i) the costs of construction financing incurred by the Developer with respect to the Acquisition Improvements.

“Actual Cost Certificate” means a certificate prepared by the Developer detailing the Actual Cost of the Acquisition Improvements, or Eligible Portions thereof, to be acquired hereunder, as may be revised by the City Engineer pursuant to Section 2.03.

“Agreement” means this Acquisition Agreement, dated as of [June 4], 2018.

“Authority” means the Folsom Ranch Financing Authority.

“Available CFD20 Proceeds” shall have the meaning assigned to the term in Recital E.

“Available Pay-Go Proceeds” shall have the meaning assigned to the term in Recital E.

“CCI” means the construction cost index reported by the Engineering News Record used by the City to adjust construction costs, currently based on the average of the change in the San Francisco Construction Cost Index and the change in the 20-city Construction Cost Index for the 12-month period ending in May, or comparable index of annual construction costs for public capital improvements used by the City.

“CFD Administrator” means the administrator of the District appointed by the City.

“CFD20 Bonds” means bonds or other indebtedness issued by the Authority that are to be repaid with District Special Taxes.

“City” means City of Folsom.

“City Engineer” means the City Engineer of the City or his/her designee who will be responsible for administering the acquisition of the Acquisition Improvements hereunder.

“Code” means the Government Code of the State of California.

“Developer” means TNHC Russell Ranch, LLC, a Delaware limited liability company, its successors and assigns.

“Director” means the Director of the City’s Community Development Department or his/her designee.

“Disbursement Request Form” means a requisition for payment of funds from the Acquisition and Construction Fund for an Acquisition Improvement, or an Eligible Portion thereof, in substantially the form contained in Exhibit C hereto.

“District” shall have the meaning assigned to the term in Recital D.

“Eligible Portions” means the eligible, discrete and usable portions of the Acquisition Improvements available for acquisition and payment of Installment Payments listed and described in Exhibit B hereto.

“Installment Payment” means an amount approved by the City Engineer as partial payment toward the Actual Cost of an Eligible Portion as shown in Exhibit B-Description of Eligible Portions of Acquisition Improvements.

“Project” means the Developer’s development of the property in the District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within the District.

“Special Taxes” means annual special taxes, and prepayments thereof, authorized by and to be levied by the District.

“Title Documents” means, for the Acquisition Improvements acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements), or an irrevocable offer of dedication of such real property with interests therein necessary to the operation, maintenance, rehabilitation and improvement by the City of the Acquisition Improvements (including, if necessary, easements for ingress and egress) and a bill of sale or similar instrument evidencing transfer of title to the Acquisition Improvements (other than said real property interests) to the City, where applicable.

Section 1.02. Establishment of Community Facilities District. The Community Facilities District was established by the City on November 14, 2017, and through the successful landowner election held that same day, the District is authorized to levy the Special Taxes and to issue the CFD20 Bonds to finance the Acquisition Prices for the Acquisition Improvements. Developer and the City agree to reasonably cooperate with one another and with the District in the completion of the financing through the issuance by the Authority of the CFD20 Bonds in one or more series and/or the collection of Special Taxes to generate Available Pay-Go Proceeds.

Section 1.03. Deposit and Use of Available CFD20 Proceeds.

(a) Developer Pay-Go Proceeds. Available Pay-Go Proceeds collected by the District shall be deposited in the Acquisition and Construction Fund established by the District, and may be disbursed to pay the Acquisition Price and Installment Payments of Acquisition Improvements in accordance with Article II of this Agreement. All funds in the Acquisition and Construction Fund shall be considered a portion of the Available CFD20 Proceeds.

(b) CFD20 Bond Series. Upon the delivery of each issue or issues of CFD20 Bonds, the net proceeds thereof shall be deposited into the Acquisition and Construction Fund for the purpose of holding all funds for the Acquisition Improvements. All earnings on amounts in the Acquisition and Construction Fund shall remain in the Acquisition and Construction Fund for use as provided herein. Money in the Acquisition and Construction Fund shall be available to respond to delivery of a Disbursement Request Form and to be paid to the Developer or its designee to pay the Acquisition Price and Installment Payments of the Acquisition Improvements, or portions thereof, as specified in Article II hereof.

(c) Priority Use of Available CFD20 Proceeds. The Available CFD20 Proceeds will be used primarily to fund the costs of the Acquisition Improvements, and then to fund the costs of any other developer improvements advanced and/or constructed by a developer within the Plan Area that are authorized for acquisition by the District. The Available CFD20 Proceeds shall be used first to fund any of the Acquisition Improvements, in any order, as and when each Acquisition Improvement or Eligible Portion is completed and payment of the Acquisition Price or Installment Payment can be paid to Developer as provided herein. Upon completion of all of the Acquisition Improvements hereunder and payment of the Acquisition Prices therefor, any remaining funds in the Acquisition and Construction Fund (less any amount determined by the District as necessary to reserve for claims against the account) shall be (i) applied or reserved for application to pay the costs of any other authorized developer improvements and, to the extent not so used, (ii) shall be applied by the District to call Bonds or to reduce Special Taxes as the District shall determine.

Section 1.04. No Effect of CFD Funding on SPIF Payments. If and to the extent any of the Acquisition Improvements are also included for financing within the Specific Plan Infrastructure Fee Program (the "SPIF Program"), any payments hereunder from Available CFD20 Proceeds to Developer for such Acquisition Improvements shall not affect or limit Developer's ability to obtain and apply fee credits against and/or fee reimbursements from the SPIF Fee Program in consideration of its construction of the Acquisition Improvements that are included for financing in the SPIF Program. Developer's right to any such fee credits and/or fee reimbursements from the SPIF Program would be subject to and contingent upon Developer's entering into and complying with the requirements of a separate SPIF Fee Reimbursement Agreement to be entered into between the City and Developer for the Acquisition Agreements that are included for financing in the SPIF Program.

Section 1.05. No District or City Liability; City Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the District or the City or any actual or alleged omission, negligence, or failure to act by the District or the City with respect to the performance of its obligations hereunder subject the District or the City to any liability therefor,

whether monetary or otherwise (except only as to pay any amounts available and payable hereunder from Available CFD20 Proceeds). Further, nothing in this Agreement shall be construed as affecting the Developer's or the City's duty to perform their respective obligations under any other agreements between the parties hereto, or the City's enforcement of applicable laws, ordinances, rules, policies and regulations pertaining to public improvement standards and/or specifications, as well as land use and subdivision requirements related to the Project, all of which are and shall remain independent of the Developer's and the City's rights and obligations under this Agreement.

ARTICLE II

DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Section 2.01. Letting and Administering Design Contracts. The Developer has awarded and administered, or will award and administer, or through the City has advanced funds for the engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the City or directly to the design consultant) incurred prior to the Effective Date, as identified on **Exhibit B** attached hereto, shall be reimbursed at the time of the first Bond sale, and, thereafter, all additional, eligible design engineering and related costs shall be reimbursed at the time of acquisition of the Acquisition Improvements. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of the acquisition of Acquisition Improvements.

Section 2.02. Letting and Administration of Construction Contracts; Indemnification. Developer agrees to comply with City requirements with respect to contracting for the construction of the Acquisition Improvements. The Developer agrees that all the contracts shall call for compliance with all provisions of the prevailing wage law for "public works" as required by the Labor Code of the State of California and shall require all work to be performed by licensed general contractors. The Developer's indemnification obligation set forth in Section 3.01 of this Agreement shall also apply to any alleged failure to comply with the requirements of this Section, and/or applicable State laws regarding public contracting and prevailing wage laws applicable to public works.

(a) Plans and Specifications. The Developer represents and covenants that it has obtained or will obtain approval of the plans and specifications for the Acquisition Improvements from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained, prior to construction. The Developer further covenants that the Acquisition Improvements will be constructed in full compliance with such approved plans and specifications and any change orders thereto, as approved in the same manner, and the adopted City Standard Construction Specifications and Improvement Standards. The Developer shall submit copies of all plans and specifications to the Director or his/her designee.

(b) CEQA. The Developer covenants that it has complied or will comply with the California Environmental Quality Act in conjunction with the construction of the Acquisition Improvements and their conveyance pursuant to the terms set forth herein.

(c) Inspection. The Developer covenants that the City, and other public entities or public utilities to whom any of the Acquisition Improvements will be conveyed, will be permitted to inspect the Acquisition Improvements using the same standards which would be applied to a public works project.

(d) Insurance. With respect to the construction of the Acquisition Improvements, the Developer shall furnish to City a certificate or certificates of insurance, with an insurance carrier acceptable to City and in a form satisfactory to the City Attorney, evidencing insurance coverage consistent with Exhibit D attached hereto.

(e) Performance and Payment Bonds. Except as otherwise provided herein, the Developer covenants to comply with all applicable performance, labor and materials and completion bond requirements of the City with respect to the construction of the Acquisition Improvements. To the extent bonds are required, Developer further covenants and agrees to execute and deliver or otherwise cause to be provided to City, prior to construction and in forms acceptable to the City Attorney, a faithful Performance Bond in the amount of 100% of the estimated cost of the Acquisition Improvements and a Labor and Materials Bond in the amount of 100% of the estimated cost of the Acquisition Improvements, from a bonding company with an A.M. Best rating of at least "A-" or its equivalent. Such bonds shall only be released upon full completion of the Acquisition Improvements, the City's written acceptance of the Acquisition Improvements, and payment of all persons furnishing labor and materials.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the City each of the Acquisition Improvements to be constructed by Developer (including any rights-of-way or other easements necessary for the Acquisition Improvements, to the extent not already owned by the City), when each of the Acquisition Improvements is completed to the satisfaction of the City and accepted by the City Engineer in writing for an amount not to exceed the lesser of (i) the Available CFD 20 Proceeds and (ii) the Actual Cost of the Acquisition Improvement(s), increased from and after the completion of the Acquisition Improvements until paid in full based on the annual increase, if any, in the CCI from such completion to date of payment (the "Acquisition Price"). Notwithstanding any provision to the contrary, the Developer understands that the Available CFD20 Proceeds for the acquisition of the Acquisition Improvements may not be sufficient to reimburse the Developer for all of the costs and expenses constructing the Acquisition Improvements, or otherwise finance said improvements. Accordingly, Developer acknowledges and agrees that any shortfall in the amount of Available CFD20 Proceeds for the construction and completion of the Acquisition Improvements is the Developer's sole responsibility, and that the Acquisition Price to be paid pursuant to this Agreement will be paid solely from the Available CFD20 Proceeds, or from any proceeds that may become available for such payment through the SPIF Program for an Acquisition Improvement included in the SPIF Program.

Exhibit A, attached hereto and incorporated herein, contains a list of the Acquisition Improvements. Portions of the Acquisition Improvements eligible for Installment Payments

prior to completion of the entire Acquisition Improvements are described as eligible, discrete and usable portions in Exhibit B (each, an "Eligible Portion"). At the time of completion of each Acquisition Improvement, or Eligible Portion thereof, the Developer shall deliver to the City Engineer a written request for acquisition, accompanied by an Actual Cost Certificate, and by executed Title Documents for the transfer of the Acquisition Improvement where necessary. In the event that the City Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and eligible work, the City Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If the further documentation is still not adequate, the City Engineer may update the Actual Cost Certificate to revise or delete any disallowed items and the determination shall be subject to appeal to the Director, whose determination shall be final.

Certain soft costs for the Acquisition Improvements, such as civil engineering, may have been incurred pursuant to single contracts that include work relating also to the private portions of the Project or to multiple Acquisition Improvements. In those instances, the total costs under such contracts will be allocated to each Acquisition Improvement as approved by the City Engineer. Where a specific contract has been awarded for design or engineering work relating solely to an Acquisition Improvement, one hundred percent (100%) of the costs under the contract will be allocated to that Acquisition Improvement. Soft costs will be allocated to each Acquisition Improvement as approved by the City Engineer. The costs of environmental mitigation required to mitigate the impacts of the public and private portions of the Project will be allocated to each Acquisition Improvement as approved by the City Engineer. Pursuant to Section 2.01, all eligible expenditures of soft costs in connection with the Acquisition Improvements (whether as an advance to the City or directly to the design consultant) incurred prior to the Effective Date, as identified in Exhibit B attached hereto, shall be reimbursed at the time of first Bond sale, and, thereafter, all additional, eligible soft costs shall be reimbursed at the time of acquisition of the Acquisition Improvements.

Section 2.04. Conditions Precedent to Payment of Acquisition Price. Payment to the Developer or its designee of the Acquisition Price for each Acquisition Improvement shall in every case be conditioned first upon the determination of the City Engineer that the Acquisition Improvement satisfies all City construction standards and specifications, rules, policies, regulations and ordinances and shall be further conditioned upon satisfaction of the following additional conditions precedent:

(a) Lien Releases. The Developer shall have provided the City with lien releases or other similar documentation satisfactory to the City Engineer as evidence that none of the property (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvement, to the extent not already owned by the City) comprising the Acquisition Improvement, and the property which is subject to the special taxes of the Community Facilities District, is subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

(b) Payment of Taxes. The Developer shall be current in the payment of all due and payable general property taxes, and all special taxes of the Community Facilities

District, on property owned by the Developer or under option to the Developer within the Community Facilities District.

(c) Certification No Loan Default. The Developer shall certify that it is not in default with respect to any loan secured by any interest in the Project.

(d) Title Documents. The Developer shall have provided the City with Title Documents needed to provide the City with Acceptable Title to the site, right-of-way, or easement upon which the subject Acquisition Improvements are situated. All such Title Documents shall be in a form acceptable to the City Attorney and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the City Attorney insuring the City as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the City and the Developer. Each title insurance policy required hereunder shall be in the amount equal to the Acquisition Price. The amount paid to the Developer or its designee upon satisfaction of the foregoing conditions precedent shall be the Acquisition Price less all Installment Payments paid previously with respect to the Acquisition Improvement.

(e) Retention for Punch List Work. In the case of a completed Acquisition Improvement suitable for public use, but for which certain punch list work remains to be completed prior to formal acceptance by the City, the City shall retain from the payment of any Acquisition Price for such Acquisition Improvement the amount of one hundred and fifty percent (150%) of the value of punch list work not completed. Upon payment and acceptance of the Acquisition Price, less the retention for any punch list work, for each completed Acquisition Improvement or portion thereof, Developer shall have no further claim for payment from the City with respect to the retentions until completion of the punch list work. The City shall hold the retention amount on all Acquisition Improvements acquired until the punch list work is completed and accepted by the City. Provided, however, in any event, the City will not pay for the acquisition of any completed Acquisition Agreement 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 and the remaining conditions precedent to payment under this Section 2.04 are satisfied.

(f) Warranty Bond. The Developer shall provide to City a warranty bond equal to 10% of the Actual Cost of the Acquisition Improvement. Commencement of the one-year warranty period shall start at the time of City's formal acceptance of the Acquisition Improvements in writing.

Section 2.05. Payment for Eligible Portions. The Developer may submit an Actual Cost Certificate to the City Engineer with respect to any Eligible Portion. Payment to the Developer or its designee from the Acquisition and Construction Fund and/or SPIF Set-Aside Fund of an Installment Payment with respect to such Eligible Portion shall in every case be conditioned first upon the determination of the City Engineer, that the Eligible Portion has been completed in accordance with all applicable plans and City construction standards and specifications, rules, policies, regulations and ordinances and is otherwise complete and, where appropriate, is ready for acceptance by the City, and shall be further conditioned upon satisfaction of the following additional conditions precedent:

(a) The Developer shall have provided the City with lien releases or other similar documentation satisfactory to the City Engineer as evidence that the property (including any rights-of-way or other easements necessary for the operation and maintenance of the Eligible Portion, to the extent not already owned by the City) comprising the Eligible Portion is not subject to any prospective mechanics lien claim respecting the Eligible Portion.

(b) The Developer shall be current in the payment of all due and payable general property taxes, and all special taxes of the Community Facilities District, on property owned by the Developer or under option to the Developer within the Community Facilities District.

(c) The Developer shall have provided the City with Title Documents needed to provide the City with Acceptable Title to the site, right-of-way, or easement upon which the subject Eligible Portion is situated. All such Title Documents shall be in a form acceptable to the City Attorney and shall be sufficient, upon completion of the Acquisition Improvements of which the Eligible Portion is a part, to convey Acceptable Title to the Eligible Portion. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the City Attorney insuring the City as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the City and the Developer. Each title insurance policy required hereunder shall be in the amount equal to the Installment Payment for the Eligible Portion.

(d) Payment and performance bonds, from a bonding company with an A.M. Best rating of at least "A-" or its equivalent, applying to plans, standards and specifications for the Acquisition Improvements approved by the City Engineer, shall be in place to secure completion of the Acquisition Improvements of which the Eligible Portion is a part. As an alternative thereto, Developer may ask the City to retain and reserve the amount of funds in the Acquisition and Construction Fund equal to the estimated cost to complete such Acquisition Improvements in the manner described in Section 2.02(e) above.

(e) The amount paid to the Developer or its designee upon satisfaction of the foregoing conditions precedent shall be the "Installment Payment" with respect to the Eligible Portion.

Section 2.06. Disbursement Request Form. Upon a determination by the City Engineer to pay the Acquisition Price of an Acquisition Improvement pursuant to Section 2.04 or to pay an Installment Payment for an Eligible Portion thereof pursuant to Section 2.05, the City Engineer shall cause a Disbursement Request Form substantially in the form attached hereto as Exhibit C to be submitted to the CFD Administrator for payment from the Acquisition and Construction Fund, up to the Acquisition Price or Installment Payment amount, and the CFD Administrator shall authorize such payment directly to the Developer or its designee of the authorized amount.

In the event that the Actual Cost of the Acquisition Improvements or the Installment Payment for an Eligible Portion is in excess of the amounts then available in the Acquisition and Construction Fund, subject to any retention of funds as security for the work pursuant to Section 2.02(e) and/or for punch list work pursuant to Section 2.04(e), the CFD Administrator and/or the City shall withdraw all funds then available in the Acquisition and Construction Fund and shall

transfer those amounts to the Developer or its designee. The unpaid portion of the Actual Cost, as adjusted by the CCI, shall be paid from funds that may subsequently be deposited in and/or become available for payment from the Acquisition and Construction Fund. Developer understands that the Available CFD 20 Proceeds for the acquisition of the Acquisition Improvements may not be sufficient to reimburse the Developer for all of the costs and expenses constructing the Acquisition Improvements, or otherwise finance said improvements. Accordingly, Developer acknowledges and agrees that any shortfall in the Available CFD 20 Proceeds toward the construction and completion of the Acquisition Improvements is the Developer's sole responsibility, and that the Acquisition Price will be paid solely from the Available CFD 20 Proceeds, or from any proceeds that may become available for such payment through the SPIF Program for an Acquisition Improvement included in the SPIF Program.

Section 2.07. Limitation on Obligations. Notwithstanding any provision to the contrary, in no event shall the District, the Authority or the City be required to pay the Developer or its designee more than the amounts held in the Acquisition and Construction Fund for the Acquisition Improvements under this Agreement.

Section 2.08. Warranties; Maintenance. Developer warrants the Acquisition Improvements as to materials and workmanship and should any failure due to faulty design or materials of the Acquisition Improvements or any parts thereof occur within a period of one (1) year after formal acceptance of the completed Acquisition Improvements by the City in writing, Developer shall promptly cause the needed repairs to be made at its sole cost and expense, without any expense or cost to City and without further reimbursement from the City. Developer shall provide to City, at the time of submittal of each payment request, a warranty bond equal to 10% of the value of each Acquisition Improvement.

City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the aforesaid repairs within twenty (20) calendar days after it is given written notice of such failure. In case of emergency where delay would cause serious hazard to the public, the necessary repairs may be made by City without prior notice to Developer. In all cases of failure of the Acquisition Improvements within the warranty period where the City has taken action in accordance with this paragraph, Developer shall reimburse City for any and all costs or expenses, direct and indirect, incurred by the City within thirty (30) calendar days of receiving invoice from the City. If the Developer fails to timely pay such reimbursement, the City may recover such costs or expenses from any and all Available CFD20 Proceeds in the Acquisition and Construction Fund, in addition to any and all remedies at law or in equity.

Any warranties, guarantees or other evidence of continuing obligations of third persons with respect to any Acquisition Improvement to be acquired by the City shall be delivered to the Director as part of the conveyance of the Acquisition Improvement. No later than the time for such conveyance, the Developer shall verify and confirm existence of a funding mechanism acceptable to City for the ongoing maintenance of the Acquisition Improvements in accordance with applicable City standards, policies and ordinances and for such periods as are required by applicable City standards, policies and ordinances.

ARTICLE III

MISCELLANEOUS

Section 3.01. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the City, the Authority, the District, and their respective officers, directors, employees and agents (collectively, the "Indemnitees"), from and against all actions, damages, claims, losses or expenses of every type and description including but not limited to personal injury, or bodily injury including death, as well as from claims for property damage which may arise from the operations of the Developer or its contractors, subcontractors, agents, or employees, to which the Indemnitees may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its contractors, subcontractors, agents or employees arising out of any contract for the design, engineering and construction of the Acquisition Improvements entered into by or for the Developer, or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the District's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the District financing (Developer hereby acknowledges that it has been furnished a copy of the official statement for the District and has not objected thereto). Nothing in this Section 3.01 shall limit in any manner the City's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 3.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 3.01 shall be understood or construed to mean that the Developer agrees to indemnify the Indemnitees for any wrongful acts, willful misconduct, active negligence or omissions to act of the Indemnitees. It is understood that the duty of Developer to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of any insurance certificates or endorsements does not relieve Developer from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Developer acknowledges and agrees to the provisions of this Section and that it is a material element of consideration. The foregoing indemnity obligation of the Developer shall survive the termination or expiration of this Agreement.

Section 3.02. Audit. The City shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement pursuant to this Agreement) in constructing the Acquisition Improvements.

Section 3.03. Cooperation. The City and the Developer agree to cooperate with respect to the completion of the financing of the Acquisition Improvements by the District through the levy of the Special Taxes and issuance of Bonds. The City and the Developer agree to meet in

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good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

Section 3.04. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that the consent, approval or acceptance not be unreasonably withheld or delayed, unless the provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 3.05. Third Party Beneficiaries. It is expressly agreed that there are no third party beneficiaries of this Agreement, including without limitation any owners of Bonds, any of the City's, District's or Developer's contractors for the Acquisition Improvements and any of the City's, District's or the Developer's agents and employees.

Section 3.06. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the City from any condition of development or requirement imposed by any other agreement between the City and the Developer, and, in the event of a conflicting provision, the other agreement shall prevail unless the conflicting provision is specifically waived or modified in writing by the City and the Developer.

Section 3.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed or e-mailed to:

| | |
|--|--|
| <p><u>If to the City:</u></p> <p>Chief Financial Officer City of Folsom 50 Natoma Street Folsom, CA 95630 E-mail: jfrancis@folsom.ca.us</p> <p>With a copy to:</p> <p>City Attorney City of Folsom 50 Natoma Street Folsom, CA 95630 E-mail: swang@folsom.ca.us</p> | <p><u>If to the Developer:</u></p> <p>TNHC Russell Ranch LLC c/o The New Home Company 2220 Douglas Blvd., Suite 240 Roseville, CA 95661 Attention: Mark Stacy E-mail: mstacy@nwhm.com</p> <p>With a copy to:</p> <p>Hefner Law 2150 River Plaza Drive, Ste. 450 Sacramento, CA 95833 Attention: Timothy D. Taron E-mail: ttaron@hsmlaw.com</p> |
|--|--|

Either party may change its address by giving notice in writing to the other party.

Section 3.08. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 3.09. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. Any action brought relating to this Agreement shall be held exclusively in a state court in the County of Sacramento.

Section 3.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

Section 3.11. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 3.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 3.13. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the City, which consent shall not be unreasonably withheld.

Section 3.14. Remedies in General. It is acknowledged by the parties that the City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, and therefore the Developer hereby waives any and all claims for damages against the City and its officers, agents and employees for breach of this Agreement. This waiver of damages by Developer shall not preclude any action by Developer to specifically enforce the obligations of the City hereunder to review and approve for acceptance and acquisition the Acquisition Improvements constructed by Developer in accordance with the terms hereof and to process applications for payment with the CFD Administrator for payment to Developer from the Acquisition and Construction Fund of the approved Acquisition Price for each of the Acquisition Improvements completed by Developer.

The parties further acknowledge that damages are not a remedy under this Agreement, and thus, while in general each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, the City shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer. The Developer may, without any claim for damages of any kind, in addition to other rights or remedies, institute an action to cure, correct, specifically enforce or remedy any default in the processing of the payments to the Developer specified in this Agreement. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

DEVELOPER:

**TNHC RUSSELL RANCH LLC,
a Delaware limited liability company**

5/29/2018
Date

PC Mark Stacy
Signature

Mark Stacy
Print Name

Authorized Representative
Title

CITY OF FOLSOM, A Municipal Corporation:

6/4/18
Date

Evert W. Palmer
Evert W. Palmer, City Manager

ATTEST:

FUNDING AVAILABLE:

Christa Freemantle 6/5/18
Christa Freemantle, City Clerk

James W. Francis
James W. Francis, Chief Financial Officer

ORIGINAL APPROVED AS TO CONTENT:

ORIGINAL APPROVED AS TO FORM:

Pam Johns
Pam Johns, Director
Community Development Department

Steven Wang 6/4/18
Steven Wang, City Attorney

CERTIFICATE OF ACKNOWLEDGMENT pursuant to Civil Code, Section 1189, must be provided.

A certificate of acknowledgment in accordance with the provisions of California Civil Code section 1189 must be attached for each person executing this agreement on behalf of Developer. This section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)ss
COUNTY OF SACRAMENTO)

On May 29, 18 before me, Vanessa Griffin, Notary Public, personally appeared Mark Stacy, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature Vanessa Griffin (Seal)



EXHIBIT A TO THE ACQUISITION AGREEMENT

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND ESTIMATED AMOUNTS

| <u>SUMMARY OF ACQUISITION IMPROVEMENTS *</u> | <u>ESTIMATED AMOUNTS</u> |
|--|---------------------------------|
| 1. Soft Costs | \$ 3,881,853 |
| 2. Alder Creek Parkway: E. Bidwell Road to Approximately 300 feet east of roundabout at Alder Creek Parkway/Grand Prairie Road | \$ 19,430,818 |
| 3. Zone 4 and 5 Booster Pump Station | \$ 3,264,000 |
| 4. Zone 5 Tank and Zone 6 Booster Pump Station | \$ 7,480,000 |
| 5. US Highway 50 Crossing Pipeline | \$ 3,100,000 |
| 6. Empire Ranch Road: White Rock Road to Approximately 600 feet north of Rough Horse Way | \$ 4,751,000 |
| 7. Mangini Parkway: Empire Ranch Road to Approximately 100 feet south of Empire Ranch Road | \$ 38,000 |
| 8. Rough Horse Way: Grand Prairie Road to Empire Ranch Road | \$ 91,000 |
| 9. Joint Trench - Placerville Road Utility Corridor 69 kV | \$ 1,082,225 |
| 10. Alder Creek Parkway Landscape Construction | \$ 3,472,292 |
| 11. Grand Prairie Road Landscape Construction | \$ 2,579,349 |
| 12. Zone 5 Tank and Zone 6 BPS Landscape Construction | \$ 670,053 |
| ESTIMATED ACQUISITION TOTAL | \$ 49,840,590 |

** NOTE: For this Agreement, Acquisition Improvements Limited to Authorized Facilities described in Resolution of Formation for CFD20, and Components thereof.*

EXHIBIT B TO THE ACQUISITION AGREEMENT

**DESCRIPTION OF ELIGIBLE PORTIONS
OF ACQUISITION IMPROVEMENTS,
INCLUDING RELATED DESIGN COSTS**

Soft Costs

| <u>Description</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
|------------------------------|------------------------------------|----------------------------------|
| Improvement Plans | \$ 1,000,000 | Jan-18 |
| Plan Check & Inspection Fees | \$ 700,000 | Apr-17 |
| Wetland Mitigation | \$ 478,165 | Jun-17 |
| Swainson's Hawk Mitigation | \$ 1,703,688 | Jun-17 |
| <i>Subtotal</i> | \$ 3,881,853 | |

Alder Creek Parkway

| <u>Description</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
|----------------------------|------------------------------------|----------------------------------|
| Earthwork | \$ 4,584,125 | Sep-17 |
| Walls and Fencing | \$ 609,175 | Jul-18 |
| Roadway Improvements | \$ 4,106,573 | Jul-18 |
| Storm Drain | \$ 2,909,714 | Dec-17 |
| Hydromodification Basin 25 | \$ 986,000 | Jul-18 |
| Sanitary Sewer | \$ 1,692,347 | Dec-17 |
| Water | \$ 2,704,734 | Jan-18 |
| Railroad Crossings | \$ 125,350 | Jul-18 |
| Electrical | \$ 512,800 | Jul-18 |
| Joint Trench | \$ 1,200,000 | Jul-18 |
| <i>Subtotal</i> | \$ 19,430,818 | |

Zone 4 and 5 Booster Pump Station

| <u>Description</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
|-----------------------|------------------------------------|----------------------------------|
| Zone 4/5 Improvements | \$ 2,179,000 | Jun-18 |
| Booster Pump Station | \$ 1,085,000 | Jun-18 |
| Subtotal | \$ 3,264,000 | |

Zone 5 Tank and Zone 6 Booster Pump Station

| <u>Description</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
|-----------------------------|------------------------------------|----------------------------------|
| Zone 5/6 Improvements | \$ 4,400,000 | Jul-18 |
| Zone 5 Tank | \$ 1,650,000 | Jul-18 |
| Zone 6 Booster Pump Station | \$ 1,430,000 | Jul-18 |
| Subtotal | \$ 7,480,000 | |

US Highway 50 Crossing Pipeline

| <u>Description</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
|---|------------------------------------|----------------------------------|
| Highway 50 Waterline Improvements (Except 30" Water Main) | \$ 2,600,000 | Apr-18 |
| 30" Water Main | \$ 250,000 | Jun-18 |
| Joint Trench | \$ 250,000 | Mar-18 |
| Subtotal | \$ 3,100,000 | |

Additional On- and Off-Site Backbone Improvements

| <u>Description</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
|---|------------------------------------|----------------------------------|
| Empire Ranch Road: White Rock Rd. to Approx. 600' north of Rough Horse Way | \$ 4,751,000 | Jun-19 |
| Mangini Parkway: Empire Ranch Rd. to Approx. 100' south of Empire Ranch Rd. | \$ 38,000 | Jun-19 |
| Rough Horse Way: Grand Prairie Road to Empire Ranch Road | \$ 91,000 | Jun-19 |
| Joint Trench - Placerville Road Utility Corridor 69 kV | \$ 1,082,225 | Feb-18 |
| Subtotal | \$ 5,962,225 | |

Open Space and Landscape Improvements

| <u>Description</u> | <u>Estimated Acquisition Value</u> | <u>Estimated Completion Date</u> |
|--|------------------------------------|----------------------------------|
| Alder Creek Parkway Landscape Construction | \$ 3,304,756 | Mar-19 |
| Grand Prairie Road Landscape Construction | \$ 2,529,556 | Mar-19 |
| Zone 5 Tank and Zone 6 BPS Landscape Construction | \$ 670,053 | Dec-18 |
| Respite (Alder Creek Parkway & Grand Prairie Road) | \$ 217,329 | Mar-19 |
| <i>Subtotal</i> | \$ 6,721,694 | |
| ESTIMATED TOTAL | | \$ 49,840,590 |

EXHIBIT C TO THE ACQUISITION AGREEMENT

**DISBURSEMENT REQUEST FORM
(Acquisition Improvement or Eligible Portion)**

To: Folsom Ranch Financing Authority CFD Administrator (Community Facilities District No. 20)
Attention: _____
E-mail: _____
Phone: _____

Re: Community Facilities District No. 20 Disbursement

The undersigned, a duly authorized officer of the Developer, hereby requests a withdrawal from the City of Folsom Community Facilities District No. 20 Acquisition and Construction Fund, as follows:

Request Date: [Insert Date of Request]
Withdrawal Amount: [Insert Acquisition Price/Installment Payment]
Acquisition Improvements: [Insert Description of Acquisition Improvement(s)/Eligible Portion(s) from Exhibits B]
Payment Instructions: [Insert Wire Instructions or Payment Address for Construction Lender, or Developer or other Developer designee provided by the Developer after termination of direct payments to Construction Lender per Section 2.07]

The undersigned hereby certifies as follows:

The Withdrawal is being made in accordance with a permitted use of the monies pursuant to the Acquisition Agreement and the Withdrawal is not being made for the purpose of reinvestment.

None of the items for which payment is requested have been reimbursed previously from the Acquisition and Construction Fund.

If the Withdrawal Amount is greater than the funds held in the Acquisition and Construction Fund, the CFD Administrator is authorized to pay the amount of such funds (excluding any amounts being retained therein as directed by the City in lieu of Performance and Payment Bonds and/or for punch list work) and to pay remaining amount(s) as funds are subsequently deposited in and/or become available for payment from the Acquisition and Construction Fund, should that occur.

| | |
|---|---|
| Developer: TNHC Russell Ranch LLC _____ Authorized Representative | Approved By: City of Folsom _____ City Engineer |
|---|---|

EXHIBIT D TO THE ACQUISITION AGREEMENT

INSURANCE REQUIREMENTS

NOTE: The word "Consultant" in this Exhibit refers to either "Consultant", "Developer" or "Contractor" as the term is used in the Agreement/Contract to which this Exhibit is attached.

A. During the term of this Agreement, Consultant shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:
Each occurrence: One Million Dollars (\$1,000,000)

Products & Completed Operations: One Million Dollars (\$1,000,000)

Personal & Advertising Injury: One Million Dollars (\$1,000,000)
- e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
- g. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

2. Automobile Liability:

- a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).

- c. The limits of liability per accident shall not be less than:

Combined Single Limit

One Million Dollars (\$1,000,000)

- d. If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.

3. Workers' Compensation

- a. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employer's Liability coverage.
- b. Employer's Liability Coverage with a limit not less than \$1,000,000 per accident for bodily injury and disease.
- c. Consultant shall sign and file with the City department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.

4. Insurance Required in the Supplementary Conditions: Consultant shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.

5. Professional Liability Insurance: If required, errors and omissions, malpractice or professional liability insurance with coverage of not less than \$1,000,000 per occurrence.

6. Other Insurance Provisions:

- a. The Consultant's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
- i. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant in a form acceptable to the City Attorney.
 - ii. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage shall be provided to the City.
 - iii. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
- b. For any claims related to the project, the Consultant's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of the City and its officers, officials, employees, agents, or volunteers, and any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

- c. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
 - d. The Consultant's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
 - e. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.
7. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**
 8. The Consultant shall furnish the City with Certificates of Insurance and endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. The Consultant shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.
 9. The Consultant shall report, by telephone to the Project Manager within 24 hours, and also report in writing to the City within 48 hours, after Consultant or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of the City or others, arising out of any work done by or on behalf of the Consultant as part of the contract.
 10. Such report shall contain:
 - a. the date and time of the occurrence,
 - b. the names and addresses of all persons involved, and
 - c. a description of the accident or occurrence and the nature and extent of the injury or damage.
 11. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
 12. If the Consultant fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.
 13. Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.

14. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
15. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
16. In the event Consultant carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and the City's insurance or self-insurance coverage shall be excess to the Consultant's Excess Liability Coverage.

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to facilitate double-sided printing.*



CITY OF
FOLSOM
DISTINCTIVE BY NATURE