

**AGREEMENT TO CONSTRUCT AND ACQUIRE PUBLIC
FACILITIES FOR THE CITY OF STOCKTON ARCH ROAD EAST
COMMUNITY FACILITIES DISTRICT NO. 99-02**

THIS AGREEMENT, dated as of December 1, 2018 (the "Agreement"), is by and between the CITY OF STOCKTON, CALIFORNIA, a municipal corporation and charter city organized and existing under the laws of the State of California (the "City"), the ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT NO. 99-02, CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA (the "District"), and NORCAL LANDCO LLC, a _____ limited liability company (the "Developer").

RECITALS:

A. Pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code, as amended (the "Act"), the City has formed and established the District as a legally constituted governmental entity to provide funding for the costs of the construction and/or acquisition of certain public facilities more particularly described in Resolution No. 99-0508 adopted by the City Council on November 2, 1999, including those facilities set forth in Exhibit A attached hereto (the "Facilities").

B. The Developer is an owner of land within the District.

C. The City and the District have determined that the acquisition of the Facilities pursuant to this Agreement will provide a public purpose by permitting the earlier installation of needed public facilities than could be achieved without such acquisition.

D. Under the Act, the City is authorized to issue bonds for the CFD (the "Bonds"), to be repaid from special taxes levied on property located in the CFD.

E. The Developer shall cause to be constructed and installed, in accordance with City's regulations and any applicable development agreement, the Facilities to be financed by the Bonds.

F. The City expects that it will issue a series of the Bonds on or about December 12, 2018 in the principal amount of \$_____ (the "2018 Bonds"), approximately \$_____ of which will be deposited to an improvement fund to pay costs of the Facilities.

COVENANTS:

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. Each of the parties hereto represents and warrants, each to the other, that the above recitals are true and correct.

2. Sale of 2018 Bonds. The City shall continue to completion all necessary proceedings pursuant to the Act for the sale and delivery of the 2018 Bonds; provided that each step in the proceedings and the principal amount and timing of sale of the 2018 Bonds shall in all respects be subject to the approval of the City Council or its designee, and nothing contained herein shall

be construed as requiring the City to issue any of the Bonds for the District, or subject the City or the District to pecuniary liability therefor, or to relieve the Developer from its duty to perform its obligations under other agreements, land use regulations or subdivision requirements relating to the Facilities, which obligations are and shall remain independent of the Developer's rights and obligations under this Agreement.

3. Use of 2018 Bond Proceeds.

(a) 2018 Bond Proceeds. The proceeds of the 2018 Bonds will be deposited, held, invested and disbursed as provided in the Fiscal Agent Agreement pursuant to which the 2018 Bonds are issued (the "Fiscal Agent Agreement"). A portion of the proceeds of the 2018 Bonds will be set aside under the Fiscal Agent Agreement in a separate improvement fund (the "Project Fund"). Moneys in the Project Fund will be withdrawn therefrom, in accordance with the provisions of the Fiscal Agent Agreement and this Agreement, to pay for all or a portion of the costs of the acquisition of the Facilities from the Developer, and incidental expenses, all as determined by the City and as herein and in the Fiscal Agent Agreement provided.

(b) Facilities to be Acquired. Pursuant to the provisions hereof, the City agrees to accept the Facilities upon their completion (other than those Facilities, if any, to be conveyed to other public entities or regulated public utilities pursuant hereto), provided that they are constructed in accordance with this Agreement. As to those Facilities to be conveyed to such other public entities or utilities, although payment for same will be made by the City from the Project Fund, such Facilities shall be conveyed to and accepted by such other public entities or utilities in accordance with their policies and procedures. Before Facilities can be accepted all necessary rights-of-way and utility easements must be acquired and conveyed to the City.

The obligation by the City, on behalf of the City and such other public entities and utilities, to pay for the acquisition of the Facilities, and incidental expenses, is limited to moneys in the Project Fund. It is recognized that the amount of moneys in the Project Fund available to pay for the acquisition of the Facilities, and incidental expenses, may be less than the total cost thereof.

4. Reimbursement to Developer. Upon completion of the sale and delivery of the 2018 Bonds, the City shall reimburse, without interest, the Developer or its written designee, solely from amounts in the Project Fund and then only to the extent available for such purpose and permitted under the Act, the amount of any costs paid from any Developer advances hereunder. If for any reason the 2018 Bonds are not issued, neither the District nor the City shall have any obligation to reimburse the Developer for any costs and expenses advanced or paid from the Developer's funds.

Any short-fall between the total cost of the Facilities, including expenses incidental thereto, and the amount available in the Project Fund, resulting in an insufficient amount of moneys available to fully reimburse the Developer for its costs to construct the Facilities and pay incidental expenses, shall be deemed a contribution by the Developer toward the cost of the Facilities and the incidental expenses.

The Developer agrees to construct, or cause to be constructed, all of the Facilities, and to convey all of the facilities, along with all interests in real property necessary for the operation, maintenance and ownership thereof, to the City or appropriate other public entity or utility. The Developer agrees to complete the construction of all of the Facilities regardless whether the cost of such construction exceeds the amount of moneys in the Project Fund available therefor. In no event shall any shortfall described herein become a debt of the City or of the District or any of their officers or employees.

5. Acquisition and Construction of and Payment for Facilities.

(a) Plans and Specifications. The Developer represents that it has or will obtain approval by all appropriate governmental agencies and all City departments of the plans and specification for the Facilities and that all of the Facilities have been or will be constructed by the Developer in full compliance with all current standards deemed by the City Engineer to be applicable to the construction of the Facilities.

(b) Competitive Bidding. The Developer covenants that all contracts to be awarded pursuant to this Agreement shall be awarded to the contractor who is the lowest responsible bidder on that particular contract, after notice inviting sealed bids is given as required for public works projects by law.

(c) Prevailing Wages. The Developer covenants that, with respect to the construction of the Facilities, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages. Or, in the alternative, the Developer will execute a hold harmless and indemnity agreement assuring the City and the District of no risk associated with any litigation, claim, administrative action or other challenge to the non-payment of prevailing wages to workers, including costs of defense by attorneys of the City's choosing, and secured by a letter of credit or other security sufficient to the satisfaction of the City Attorney.

(d) Insurance. With respect to the construction of the Facilities, the Developer shall furnish to City a certificate or certificates of insurance, with an insurance carrier acceptable to City in a form satisfactory to City, evidencing insurance consistent with the provisions hereof. Each certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after the City shall receive notification of such cancellation or reduction by registered mail.

The minimum insurance coverage shall be as follows:

The required coverages and verification of coverage set forth in the "General Provisions" of the City's Standard Specifications are included herein by this reference as though set forth in full. This insurance shall directly protect the City as well as the Developer and its agents. The insurer shall assume the defense of the City, its officers, employees and agents from suits, actions, damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the construction or installation of the Facilities. The insurance policy shall expressly state that the above terms are in effect.

Each policy of insurance shall be placed with insurers with a Best's rating of no less than A: VII, and specify that:

(i) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as if those separate policies had been issued to each insured, and

(ii) It acts as primary insurance and that no insurances held by the Developer or the City shall be called upon to cover either in full or in part, any loss covered under the policy.

If Developer fails to maintain such insurance, the City may, among its other options, take out insurance to cover damages of the above mentioned classes for which the City might be held liable on account of Developer failing to pay such damages, and recover the amount of the

premiums for such insurance from the Developer or retain such amount from any moneys due the Developer under this Agreement. Failure of the City to obtain insurance shall in no way relieve the Developer from any of its responsibilities under this Agreement. The provisions of this paragraph shall be in addition to, and not in lieu of, indemnification insurance requirements imposed under any governmental approval or permit, or imposed by any financing mechanism participated in by the Developer in connection with its obligations under this Agreement.

Developer shall also furnish or cause to be furnished evidence satisfactory to the City that any contractor with whom it has contracted for the work carries Worker's Compensation Insurance as set forth in the "General Provisions."

(e) Purchase Price. The amount to be paid by the City for the Facilities (hereafter the "Purchase Price"), shall be determined by the City Engineer and shall not exceed the cost thereof, including the reasonable cost of appurtenant facilities and of preparing plans and specifications as well as the construction contracts and all costs of construction reasonably determined by the City Engineer to be eligible under the Act to be part of the Purchase Price, such as fees and costs incurred in obtaining permits, licenses, rights-of-way or easements, the costs of change orders, engineering, legal, fiscal and inspection fees, project management, construction administration, technical studies and land acquisition costs constituting a part of the Facilities. The Purchase Price may include the Developer's interest costs for any portion of the Facilities as to which the Developer made expenditures prior to the availability of the Bond proceeds.

The Developer shall provide any documentation substantiating the cost of the Facilities reasonably requested by the City Engineer. There shall be a presumption of reasonableness as to costs incurred under a construction contract entered into by the Developer as a result of a call for bids, provided that no extraordinary limitations or requirements (such as short time frame) are imposed by the Developer of the performance of such contract.

(f) Inspection and Acceptance. The Facilities shall be promptly accepted and the Purchase Price promptly paid from amounts in the Project Fund if completed substantially in accordance with the approved plans and specifications for such Facilities. The Facilities shall be subject at all reasonable times prior to their acquisition to inspection by the City Engineer, which inspection shall be accomplished in a timely manner. Prior to acceptance of any Facilities by the City, the Developer shall provide as-built drawings or other similar plans and specifications of such Facilities in form reasonably acceptable to the City Engineer, along with evidence satisfactory to the City Engineer that all costs of the Facilities have been fully paid by the Developer to the party or parties entitled to be paid for such costs. All warranties, guarantees or other evidence of contingent obligations of third persons with respect to such Facilities shall be delivered to the City Engineer prior to acceptance thereof.

(g) Warranty Bond. The Developer shall provide to City security of at least ten percent (10%) of the cost of the Facilities to guarantee and warrant the work for one (1) year following the date of such acceptance of the work. The surety on said bond shall be authorized to transact business in the State of California, and the form thereof shall be satisfactory to the City Attorney. The security guaranteeing that the completed work remains satisfactory during the required 1-year warranty period shall be released upon correction by the Developer of any defects in the work existing at the end of the warranty period.

(h) Payments to Developer. Rights-of-way/easements must be conveyed by the Developer to the City before payment is made. The Developer may request in writing a payment of the Purchase Price of any Facilities provided for herein. Such requests shall be

accompanied by vouchers supported by invoices and copies of checks in payment of the costs thereof. Such payments shall be made only in the amount determined reasonable by the City Engineer with respect to the Facilities to be acquired, as specified in a cost certificate completed by the City Engineer. Any such Facilities to be acquired by the City must be completed in accordance with the approved plans and specifications. Any Facility to be accepted by the City must be in such condition that it is ready for use by the City or the public as determined by the City Engineer. If requested by the City Engineer, the Developer shall prepare and execute a Notice of Completion acceptable to the City Engineer and record such notice in the office of the Recorder of San Joaquin County, California, and cause its contractor to provide lien releases in form acceptable to the City Engineer for all the Facilities. Prior to final payment hereunder, the Developer shall submit for audit canceled checks for all prior payments.

The City Engineer, in his sole discretion, shall determine whether, and to what degree, any item of the Facilities can be acquired from the Developer in segment smaller than the entire Facilities. The purchase price of each specific segment to be acquired shall be determined by the City Engineer in accordance with Section 5(e) above; provided, however, the aggregate purchase price for all segments related to such Facilities shall not exceed the value of such segment, and aggregate purchase price for all such Facilities shall not exceed the amounts shown in Exhibit A for the total construction cost and construction contingency.

If any of the Facilities to be acquired hereunder were or are financed, in whole or in part, from the proceeds of any loan secured by a mortgage or deed of trust upon any of the Developer's lands within the District, and in the absence of contrary written instructions by any mortgagee or beneficiary of such mortgage or deed of trust, the Purchase Price shall be paid to the Developer and to such mortgagee or beneficiary, as their interest may appear.

(i) City Fees. All City fees (i.e., plan check fee, inspection fee, administrative fees, etc.) shall be paid by the Developer at such time as required by the City Engineer. The Developer is eligible to be reimbursed from amounts in the Project Fund for such fees.

(j) Ownership and Transfer of Facilities. The provision or conveyance of the Facilities to the City shall take place as follows:

(i) Land (Fee or Easement). The Developer shall transfer to the City the appropriate rights, title and interest in and to any land to be acquired. The Developer agrees to execute and deliver to City those documents required to complete the transfer of acceptable title (as defined herein) to the land. Acceptable title means title to the land delivered free and clear of all liens, encumbrances, assessments, easements or leases, whether any such item is recorded or unrecorded, and taxes, except those matters which are determined by the City Engineer in his reasonable discretion not to interfere with the intended use of the land and therefore are not required to be cleared from the title. Completion of transfer shall be evidenced by the recordation of an acceptance of the interest(s) in the land by the City Council or its designee.

(ii) Facilities Constructed on Land Owned by Developer. If Facilities are located on land owned by the Developer, then the Developer shall retain the title to such land and the Facilities constructed thereon until the land and Facilities are acquired by City pursuant to this Agreement. Until title to the land and Facilities are acquired by City, the Developer shall maintain the land and Facilities in good and safe condition. Transfer of title to the land and the Facilities thereon shall be in accordance with clause (i) above.

(iii) Facilities Constructed on Land Owned by City in Fee or Easement. If Facilities are located on land on which the City holds fee title or easement rights, the

Developer is hereby granted a license to enter that land for purposes related to the construction and maintenance (prior to acquisition by the City hereunder) of such Facilities. Upon completion of construction of any such Facilities, the City Engineer shall inspect the Facilities and if approved by the City Engineer, the City shall give written notice of its acceptance of the Facilities.

(iv) Personal Property. If the Developer provides any personal property in the Facilities to be acquired hereunder, transfer by the Developer to the City shall be accomplished by a Bill of Sale.

6. Indemnification and Hold Harmless. The Developer shall assume the defense of, indemnify and save harmless the City, the District and their officers, directors, employees and agents, and each and every one of them, from and against all third-party actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, including payment of attorneys' fees and costs, by reason of, or arising out of, this Agreement, the Developer's design, the engineering and construction of the Facilities, if any, and any claims of persons employed by the Developer to construct the Facilities. 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 or its contractors, nor shall the existence of any policy of insurance in any way limit the Developer's indemnity obligation hereunder.

7. Audit. The City Engineer shall have the right, during normal business hours and upon the giving of ten (10) days written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in constructing any of the Facilities.

8. Relationship to Public Works. The parties hereto agree that this Agreement is for the acquisition of Facilities by the City from amounts in the Project Fund and is not, nor is it intended to be, a public works contract. In performing this Agreement, the Developer is an independent contractor and not the agent of the City or the District. Neither the City nor the District shall have the responsibility for payment to any contractor or supplier of the Developer. Notwithstanding the foregoing, the Developer understands that it may be subject to certain public contract requirements as provided by law.

9. Attorney's Fees. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorney's fees.

10. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or 72 hours following deposit of the same in any United States Post Office in California, registered or certified mail, postage prepaid, addressed as follows:

Developer:

Norcal Landco LLC
4343 Vonkarman Avenue, Suite 200
Newport Beach, CA 92660
Attention: _____

City or District: City of Stockton
 425 North El Dorado Street
 Stockton, CA 95202-1997
 Attn.: City Engineer
 Public Works Department

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

11. Bonds - Tax Exemption. It is contemplated that the interest on the 2018 Bonds will be excluded from gross incomes of the Bond owners for federal income tax purposes. Notwithstanding anything in this Agreement to the contrary, the City shall not be required to take any action hereunder that, in the opinion of bond counsel to the City, would result in the 2018 Bonds being classified by the United States Department of the Treasury as "arbitrage bonds" or that otherwise would result in the interest on the 2018 Bonds being included in the gross incomes of the Bond owners for federal income tax purposes. Moreover, the parties recognize that a change in or regulatory interpretation of the federal tax laws could, in the opinion of bond counsel, require that revisions hereto may be necessary or appropriate in order that the 2018 Bonds not be classified as "arbitrage bonds" or otherwise result in the interest on the 2018 Bonds being included in the gross incomes of the Bond owners for federal income tax purposes.

In the event the City receives such an opinion, this Agreement shall be modified to such an extent as is required to preserve the tax-exempt status of the interest on the 2018 Bonds.

12. 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 reasonable possible.

13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

14. Limited Liability. Any and all obligations of the City arising out of or related to this Agreement are the special and limited obligations of the City payable only from amounts in the Project Fund or from other funds of the District to the extent such may become legally available. In no event shall the City be obligated to advance any of its own funds hereunder. No Councilmember, staff member or agent of the City shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

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

16. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

17. Expiration. This Agreement shall, unless extended by the City at its sole discretion, terminate after the expiration of 36 months from the date of issuance of the 2018 Bonds.

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

CITY OF STOCKTON, for itself and on behalf
of the ARCH ROAD EAST COMMUNITY
FACILITIES DISTRICT NO. 99-02, CITY OF
STOCKTON, SAN JOAQUIN COUNTY,
CALIFORNIA

By: _____
City Manager

NORCAL LANDCO LLC, a _____
limited liability company

By: _____
Its: _____

19066.09:J15365

EXHIBIT A
ARCH ROAD EAST
COMMUNITY FACILITIES DISTRICT 99-02
2018 BOND SERIES FACILITIES

SUMMARY OF FACILITIES

<u>Description</u>	<u>Budget Allocation</u>
Construction of a pump station of approximately 330328 gross square feet	\$5,054,316.00
Conveyance of land for a detention basin of approximately 179,485 gross square feet	\$ 465,882.91

DETAILED BUDGET

NE Basin Modification & Pump Station						
No.	Description	Gross sf	Cost/sf	Pump Station & Detention Basin Improvements	Subtotal	Remarks
02	Pump Station & Detention Basin Improvements	179,485 gsf	\$23.61	\$4,236,987	\$4,236,987	Gross Site Area
Total Building & Site Work		330,328 gsf	\$12.83	\$4,236,987	\$4,236,987	
	General Conditions	8.50 mo		\$364,522	\$364,522	
	Plan Check Contingency	3.00 %		\$138,045	\$138,045	
	Contractor's Contingency	2.00 %		\$94,791	\$94,791	
	Insurances	1.00 ls		\$48,343	\$48,343	Stipulated Sum
	Plan Check Corrections	0.00 %		\$0	\$0	NIC
	Escalation	0.00 %		\$0	\$0	NIC
	Gross Receipt Tax	0.00 %		\$0	\$0	NIC
	Administration Fee	0.50 %		\$24,413	\$24,413	
	Contractor's Fee	3.00 %		\$147,213	\$147,213	
Total Adds		330,328 gsf	\$2.47	\$817,328	\$817,328	
Total Estimated Construction Costs		330,328 gsf	\$15.30	\$5,054,316	\$5,054,316	
Cost/sf				\$28.16	\$15.30	
Cost/Building Total SF				\$15.30	\$15.30	

Qualifications:

- 1 Work is qualified as regular hours work.
- 2 Existing utilities assumed in operable condition.
- 3 Price is based on current commodity & materials pricing
- 4 Pricing based off of soils report by Wallace Kuhl, dated October 8, 2007
- 5 Pricing is based on drawings prepared by Kier & Wright "Storm Drain Pump Station dated 6-4-08", and "NE Basin Modifications dated 3-1-18"
- 6 Pricing is based on Prevailing Wage Rates

Exclusions:

- 1 Building Permit Fees & Plan Check Fees
- 2 Removing or Relocating of (E) High Voltage Power Lines and/or Power Poles
- 3 Material Escalations
- 4 Testing and Inspection Fees
- 5 Inspection for or removal of asbestos or hazardous materials (if any) from existing buildings or underground items.
- 6 Removal of any unforeseen conditions, obstructions or handling of oversized materials.
- 7 Archeological/Biological Monitoring
- 8 Allocation for rain damage
- 9 Temporary Fire Access Road
- 10 Moisture testing & treatment
- 11 Motorizing of Wrought Iron Gates
- 12 Future Road Pavement

NE Basin Modification & Pump Station Trade Summary						
No.	Description	Gross sf	Cost/sf	Pump Station & Detention Basin Improvements	Subtotal	Remarks
0133	Surveying	330,328	gsf	\$0.09	\$30,600	\$30,600
0141	General Requirements	330,328	gsf	\$0.02	\$7,500	\$7,500
0221	Earthwork	330,328	gsf	\$1.48	\$489,759	\$489,759
0227	Erosion Control	330,328	gsf	\$0.05	\$16,855	\$16,855
0251	Asphaltic Concrete Paving	330,328	gsf	\$0.34	\$111,729	\$111,729
0253	Site Concrete	330,328	gsf	\$0.24	\$79,207	\$79,207
0259	Parking Striping & Bumpers	330,328	gsf	\$0.01	\$4,600	\$4,600
0266	Site Utilities (Storm Drain/Sewer/Water)	330,328	gsf	\$6.41	\$2,117,455	\$2,117,455
0283	Fence	330,328	gsf	\$0.65	\$215,032	\$215,032
0291	Irrigation/Landscaping	330,328	gsf	\$0.34	\$112,631	\$112,631
0421	Masonry	330,328	gsf	\$0.10	\$33,120	\$33,120
1611	Electrical	330,328	gsf	\$3.08	\$1,018,500	\$1,018,500
Total		330,328	gsf	\$12.83	\$4,236,987	\$4,236,987

Allowance