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COUNCIL COMMUNICATION

TO: THE CITY COUNCIL FROM: THE CITY ATTORNEY'S OFFICE	DATE: August 23, 2002	7423
SUBJECT: Assignment Agreement Regarding Option to Purchase Warnick Property		

(M)

RECOMMENDATION:

Approve the attached Assignment Agreement between the City and Westpark Associates and Signature Properties ("WA/SP") and authorize the City Manager to execute the Agreement on behalf of the City.

BACKGROUND:

Beginning in 1991, the City has collected a Watershed Drainage Mitigation Fee from new development within the area of the Pleasant Grove Creek watershed. The purpose of the fee is to fund the acquisition of property sufficient for the construction of a floodwater retention basin. The retention basin, sized to handle an estimated 1800 acre feet of floodwater, would provide protection to properties in Sutter County in times of heavy rainfall. The City has collected approximately \$10 million dollars in Watershed Mitigation Fees to date.

In August 2001, City Council authorized acquisition of an option to purchase the Reason Farms property, an approximately 1,335 acre parcel straddling Pleasant Grove Creek in the unincorporated area of Placer County just northwest of the new Pleasant Grove Wastewater Treatment Plant, for an estimated price of \$7,348,000, less certain option credits. As shown on the Pleasant Grove Retention Basin map (Attachment A), the proposed design of the retention basin requires a substantial portion of the Warnick property in addition to the Reason Farms property.

In March 2002, HC Partners, LLC, acquired an option to purchase approximately 418.9 acres adjacent to the western boundary of the Reason Farms property (the Warnick property). HCP Partners, LLC, subsequently assigned its option to Signature Properties, Inc. and Westpark Associates. Under the terms of the option agreement, the purchase price of the property is \$4,000 per acre, for a total estimated purchase price of \$1,676,600, subject to confirmation of acreage.

To acquire the option, the city would have to reimburse WA/SP for its deposit of \$50,000 in option consideration. Additional \$50,000 deposits would be due on September 6 annually in 2003 and 2004, if escrow has not closed. Those deposits would apply to the purchase price. The option would remain open for two additional years upon annual payments of \$75,000, which would not apply to the purchase price. Reservation of a life estate in a designated five-acre

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AGENDA ITEM
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portion of the property would allow Mabel Plunkett, one of the current owners, to continue living in her current residence.

WA/SP has offered to make its option rights in the property available to the City so that the City can acquire the property. Preliminary investigations reveal that the Warnick property is well suited for use as a floodwater retention basin. It could also be used for a variety of complementary public and quasi-public uses such as wetlands mitigation, passive recreation and agriculture. A Phase One Environmental Assessment on the property is nearly complete and the consultant reports no unexpected conditions. However, she is recommending a Phase Two assessment to determine the extent of soil contamination due to incidental spillage in the area of an above-ground fuel tank.

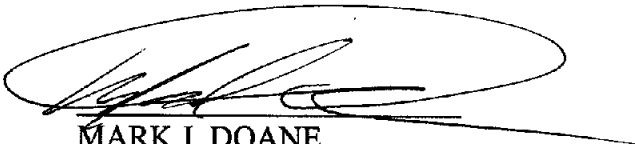
An Assignment Agreement has been prepared for execution by the City and WA/SP (Attachment B). Under the proposed Agreement, the City would gain WA/SP's option rights to purchase the Warnick property.

Entering into the Assignment Agreement will allow the City to lock in its right to purchase the Warnick property while enabling it to complete the detailed studies (including appraisals, geotechnical and environmental studies) necessary to determine whether the property is suitable to acquire for flood mitigation and other uses.

CONCLUSION:

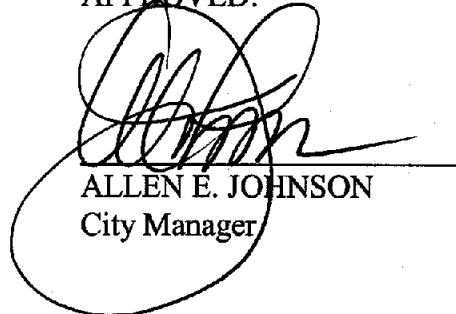
Staff recommends that the City Council approve the attached Assignment Agreement and authorize the City Manager to execute it on behalf of the City.

Respectfully submitted,



MARK J. DOANE
City Attorney

APPROVED:



ALLEN E. JOHNSON
City Manager

RESOLUTION NO.02-390

APPROVING AN AGREEMENT BETWEEN THE CITY OF ROSEVILLE,
WESTPARK ASSOCIATES AND SIGNATURE PROPERTIES AND AUTHORIZING THE
CITY MANAGER TO EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE

WHEREAS, an assignment agreement regarding an option to purchase approximately 418.9 acres of land (the Warnick property) for the proposed Pleasant Grove Retention Basin and other complementary uses, between the City of Roseville, Westpark Associates and Signature Properties, has been reviewed by the Council; and

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

PASSED AND ADOPTED by the Council of the City of Roseville this 4th day of September, 2002, by the following vote on roll call:

AYES COUNCILMEMBERS: Earl Rush, Richard Roccucci, Gina Garbolino, Rocky Rockholm, Claudia Gamar

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: None


MAYOR

ATTEST:

 ASSISTANT
City Clerk

ASSIGNMENT AGREEMENT

This Assignment Agreement (the "Agreement") is made and entered into as of this 4th day of September, 2002 by and between the City of Roseville ("Roseville") and Westpark Associates and Signature Properties ("WA/SP") with reference to the following:

RECITALS:

A. WHEREAS, Mabel Plunkett, Betty Warnick and Dean Warnick (collectively, "Optionor") and HC Partners, LLC ("Optionee") entered into that certain Warnick/HC Partners Option Agreement, dated March 22, 2002 (the "Option Agreement"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, with regard to those certain parcels of real property consisting of approximately 418.9 acres of land, more or less, situated in the unincorporated area of Placer County (the "Property"), as more particularly described in the Option Agreement; and

B. WHEREAS, Optionee assigned to WA/SP all of its right, title and interest in and to said Option Agreement by that certain Assignment of Option Agreement made and entered into as of April 24, 2002 (the "Assignment Agreement"), a copy of which is attached hereto and incorporated herein by this reference as Exhibit B; and

C. WHEREAS, Roseville desires to obtain the right to purchase the Property for drainage, floodwater retention and such other beneficial public uses as may be designated by Roseville (the "Primary Uses"); and

D. WHEREAS, Roseville and WA/SP agree that during the term of this agreement they will negotiate a mechanism for the potential use of portions of the Property by WA/SP for habitat preservation/restoration, open space, species mitigation, and such other uses agreed to by the parties to the extent that such uses do not conflict with the Primary Uses intended for the Property (the "Ancillary Uses"). Such negotiations shall not require Roseville to substantially modify its proposed use of the Property, as is presently depicted in part on the Pleasant Grove Retention Basin map, a copy of which is attached as Exhibit A.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Option to Purchase. WA/SP hereby assigns to Roseville and Roseville accepts assignment from WA/SP of the exclusive option to purchase the Property.
2. Purchase Price. The Purchase Price for the Property will be no more than the Purchase Price to be paid to the Assignor under the Assignment Agreement and the Optionor under the Option Agreement. Currently, the Purchase Price that has been negotiated is \$4,000 per acre and the total area is estimated to be 418.9 acres. The final Purchase Price shall be subject to adjustment according to survey of the Property prior to close of escrow, and is

currently estimated at \$1,675,600. WA/SP and Roseville will cooperate in any further negotiation of this Purchase Price with Optionor and Assignor

3. Retention/Conservation Easement. The parties agree that the Primary Uses of the Property shall be for floodwater retention purposes with regard to regional drainage issues, and such other beneficial public uses as designated by Roseville. The parties further agree that title to the Property may be acquired by Roseville directly, or if so determined and agreed by Roseville and WA/SP during the term of this agreement, by WA/SP directly, and/or by a conservancy trust holding beneficial title to the Property.

4. Conservancy Trust. In the event that the parties elect to acquire title to the Property through a conservancy trust, Roseville and WA/SP will jointly select the parties to participate in this trust. Prior to making initial appointments to the board of such conservancy trust, the parties will review the appointments with Placer County and will seek the County's input.

5. Mitigation Land. During the term of this agreement, the parties will work together in good faith to define what mitigation land would be available for potential use by WA/SP in association with any Specific Plan entitlement which WA/SP may obtain regarding the 3,000 acres, more or less, adjacent to and west of Roseville's current boundaries (the "Entitlement Property"); provided, however, that Roseville shall not be required to substantially modify its proposed use of the Property. All costs of mitigation for the benefit of WA/SP shall be borne by WA/SP.

6. Water Usage. The parties will work together in good faith to negotiate any potential use of the Property and its water supply or entitlements for an emergency back-up water supply system to provide service to the Entitlement Property and other properties supplied by Roseville's water supply system.

7. Potential Roadway Alignment. During the term of this agreement, the parties will work together in good faith to negotiate any potential roadway alignments which may go through all, or a portion of, the Property.

8. Consideration for Agreement. Within ten (10) days of this Agreement, Roseville shall reimburse WA/SP for its deposits made in escrow pursuant to the Option Agreement, but not more than FIFTY THOUSAND DOLLARS (\$50,000.00). Roseville shall also pay all of the ongoing option payments directly to the Optionor under the Option Agreement. These payments are all more particularly described in sections 4 and 6 of the Option Agreement. Any consideration paid herein by Roseville will be credited against the final purchase price of the Property, in accordance with the terms of the Option Agreement. WA/SP has the right, pursuant to the Option Agreement and the Assignment Agreement, to cure its defaults thereunder, particularly any default in the payment of any Option Consideration. WA/SP hereby assigns those rights to City, and has secured the written approval of such assignment from Optionor.

9. Acquisition Costs. Roseville will pay the Purchase Price for the acquisition of the Property and WA/SP will contribute such funds to the acquisition in connection with any uses of the Property which it may acquire from Roseville as may be agreed upon by WA/SP and

Roseville. WA/SP and Roseville will agree upon what credits and/or reimbursements will be allocated to WA/SP for funds expended by WA/SP in connection with the Option Agreement in addition to deposits reimbursed to WA/SP by Roseville pursuant to this Agreement.

10. Closing/Condition Precedent. The parties agree that the following shall be conditions prior to Roseville incurring a binding obligation to acquire the property or to close escrow: (a) there is a final certified Environmental Impact Report ("EIR") for the Property permitting the Primary and Ancillary Uses described herein, with Roseville serving as the lead agency, and (b) Roseville has obtained all necessary approvals of its governing board.

11. CEQA and Engineering Costs. The EIR for the Primary and Ancillary Uses of the Property will be prepared and certified independently of the EIR for the West Roseville Specific Plan. Roseville and WA/SP shall bear their fair share of the costs of the preparation of this separate EIR, based upon the extent of the EIR's treatment of Primary Uses versus Ancillary Uses. Roseville shall bear all engineering costs, including, but not limited to, retention studies, drainage studies, and the cost of any wetlands delineation and the costs incurred in obtaining requisite agency permits required in connection with Roseville's potential use of the Property.

12. Cooperation. The parties agree that they will cooperate with one another with regard to pursuing the Primary and Ancillary Uses described herein. The parties shall keep each other fully informed of all undertakings and actions arising in connection with this Agreement and the implementation of any of its terms.

13. Further Agreement. These are the essential terms of the current agreement between Roseville and WA/SP. The parties agree that they will negotiate in good faith to resolve all of the issues identified in this Agreement with regard to the acquisition, use, and potential disposition of all or portions of the Property.

14. Recording. Upon the execution of this agreement, and the payment of any amount due to WA/SP under Section 8 of this Agreement, WA/SP and Roseville shall execute and acknowledge a Memorandum of this Agreement and Roseville shall be entitled to record it in the Official Records of Placer County.

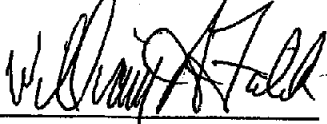
15. No Further Assignment. The parties agree that there shall be no assignment of this Agreement or any of the rights and obligations hereunder without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld or delayed.

16. Publicity. Neither party shall issue a press release or make any public statement with respect to the Property without the prior approval of the other party, which approval shall not be unreasonably withheld or delayed.

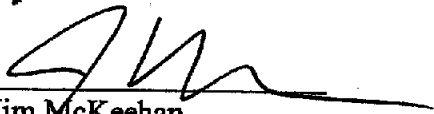
17. Relationship of the Parties. Roseville and WA/SP are not and shall not be deemed to be partners, nor shall they be deemed to be acting as a joint venture, by virtue of this Agreement. Moreover, neither party shall act as or be deemed to be an agent, representative, trustee or fiduciary of the other party.

In witness whereof, the parties hereto have entered into this Agreement as of this 4th day of September, 2002:

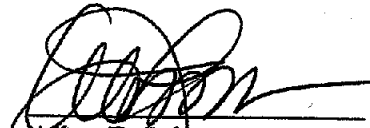
WESTPARK ASSOCIATES

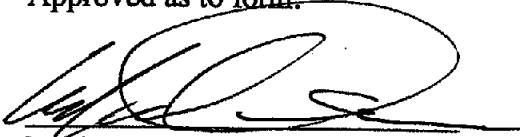
By: 
William A. Falik
Its: Managing Partner

SIGNATURE PROPERTIES, INC.

By: 
Jim McKeehan
Its: Executive Vice President

CITY OF ROSEVILLE

By: 
Allen E. Johnson
Its: City Manager

Approved as to form:

Mark J. Doane, City Attorney

The undersigned owners of the Property hereby consent to the assignment of the Option Agreement by Westpark Associates and Signature Properties to the City of Roseville and to the recordation of a memorandum of this agreement.

Mabel Plunkett

Betty Warnick

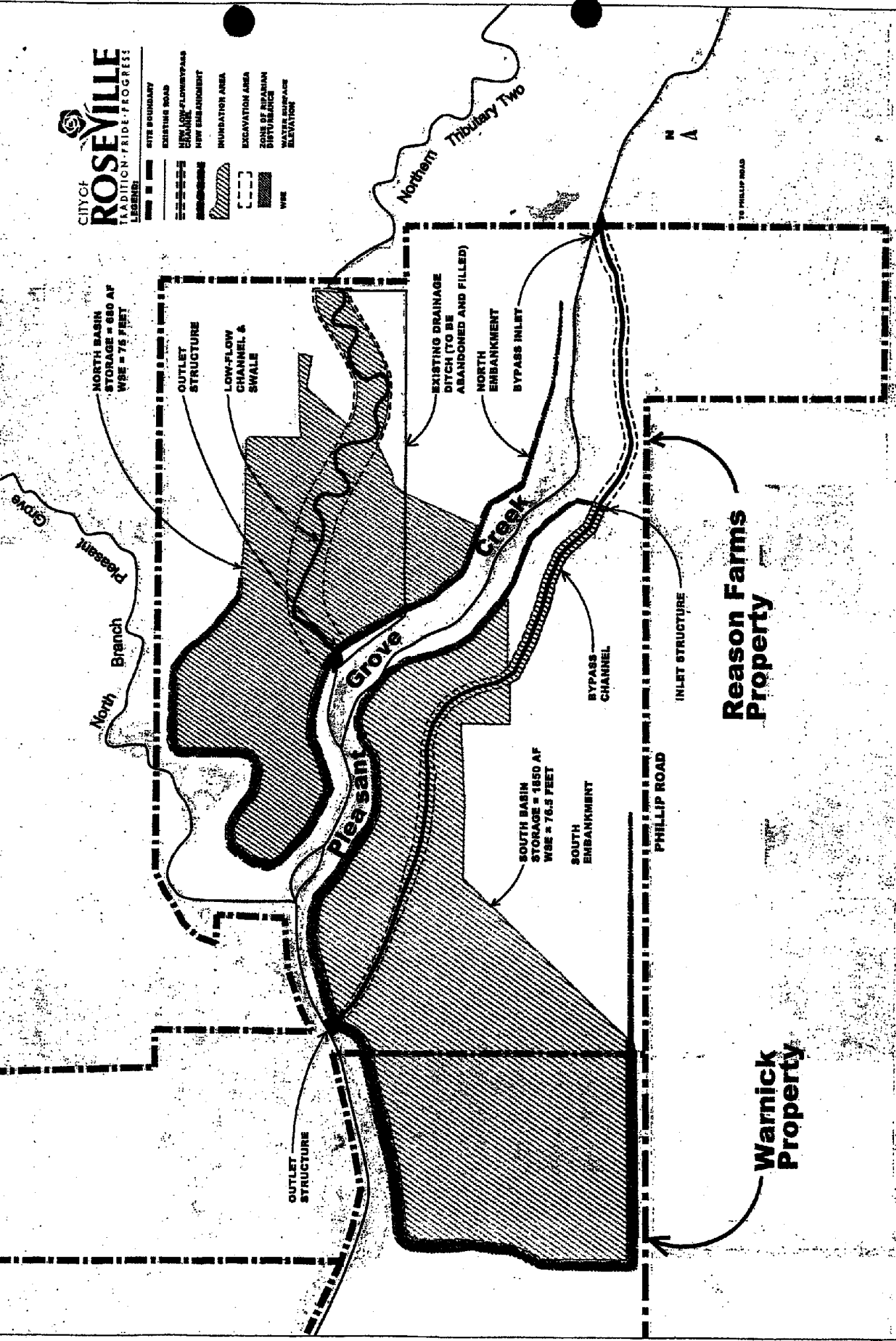
Dean Warnick

PLEASANT GROVE RETENTION BASIN

CITY OF ROSEVILLE
 TRADITION - PRIDE - PROGRESS

LEGEND:

- SITE BOUNDARY
- EXISTING ROAD
- NEW LOW FLOW BYPASS CHANNEL
- NEW EMBANKMENT
- IMPROVEMENT AREA
- EXCAVATION AREA
- ZONE OF RIPARIAN DISTURBANCE
- WATER SURFACE ELEVATION
- WDE



NORTH BASIN
 STORAGE = 680 AF
 WISE = 76 FEET

OUTLET
 STRUCTURE

LOW-FLOW
 CHANNEL &
 SWALE

EXISTING DRAINAGE
 DITCH (TO BE
 ABANDONED AND FILLED)

NORTH
 EMBANKMENT

BYPASS INLET

SOUTH BASIN
 STORAGE = 1850 AF
 WISE = 76.3 FEET

SOUTH
 EMBANKMENT

BYPASS
 CHANNEL

INLET STRUCTURE

PHILLIP ROAD

Reason Farms
 Property

Warnick
 Property

Northern Tributary Two

N
 A

TO PHILLIP ROAD

