

ACQUISITION AGREEMENT

among

CITY OF MURRIETA

and

CITY OF MURRIETA

COMMUNITY FACILITIES DISTRICT NO. 2025-3 (DISCOVERY VILLAGE),

and

DISCOVERY VILLAGE LLC

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ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT (the “Acquisition Agreement”), dated as of _____, 2025, is by and among the CITY OF MURRIETA, a municipal corporation and a political subdivision of the State of California (the “City”), the CITY OF MURRIETA COMMUNITY FACILITIES DISTRICT NO. 2025-3 (DISCOVERY VILLAGE) (the “CFD”), and DISCOVERY VILLAGE LLC, a Delaware limited liability company (the “Owner”).

ARTICLE I. DEFINITIONS

Section 1.01 Definitions. Except for terms defined herein, the following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Acquisition Agreement.

“Acceptable Title” means title to land or interest therein, in form acceptable to the Director, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an “Acceptable Title” if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director, (iii) the Director has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Owner commits in writing not to allow any liens to be imposed on such property prior to its acceptance. Notwithstanding the foregoing, if the land is within the boundaries of any existing community facilities district (including the CFD), an assessment district, or other financing district, then the lien of the special taxes or assessments shall be a permitted exception to title so long as the land, while owned by the City or other public agency, is exempt from the special tax or assessments to be levied by the community facilities district, assessment district, or other financing district.

“Acceptance Date” means the date the City Council (or other public entity which is to own a Facility) takes final action to accept dedication of or transfer of title to a Facility.

“Acquisition Agreement” means this Acquisition Agreement, together with any Supplement hereto.

“Act” means the Mello-Roos Community Facilities Act of 1982, Section 53311 et seq. of the California Government Code, as amended.

“Actual Cost” means the substantiated cost of a Facility or a Discrete Component, which costs may include all hard and soft costs associated with the Facility or a Discrete Component, including, but not limited to: (i) the costs for the design, engineering, and construction (including grading) of such Facility or Discrete Component, (ii) the costs incurred by the Owner in preparing the Plans for such Facility or Discrete Component and the related costs of environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies for, and all other costs incurred in connection with obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component,

(iv) professional costs incurred by the Owner or the City associated with such Facility or Discrete Component, such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) costs directly related to the construction and/or acquisition of a Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder).

“Affiliate” means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by the Owner and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Owner, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity. A title or escrow company that is an affiliate of the Owner shall not be considered an Affiliate for purposes of this Acquisition Agreement.

“Authorized Fees” means, collectively, the City Fees and the EMWD Fees.

“Bonds” means the bonds to be issued by the City for the CFD, in one or more series, secured by the levy of special taxes of the CFD.

“Business Day” means a day other than a Saturday, Sunday or a day that Murrieta City Hall is not open for business and serving the public.

“CFD” means the City of Murrieta Community Facilities District No. 2025-3 (Discovery Village), created by the City under the Act.

“City” means the City of Murrieta, a municipal corporation and a political subdivision of the State.

“City Facilities” means the streets, storm drainage, and landscaping improvements to be owned, operated or maintained by the City; and City Fees as set forth in Exhibit “A.”

“City Facilities Account” means the subaccount of the Improvement Fund by that name from which the City Facilities may be funded.

“City Fees” means the City-imposed development impact fees described in Exhibit “A” attached hereto.

“County” means the County of Riverside, California.

“Director” means the City Manager of the City or his or her written designee acting as such under this Acquisition Agreement.

“Disbursement Request Form” means the request form attached to the EMWD JCFA as Exhibit D (for EMWD Fees) or Exhibit E (for EMWD Acquisition Facilities), which shall be used to requisition Funding Sources to pay for EMWD Facilities and EMWD Fees.

“Discrete Component” means a segment or component of a Facility that the Director has agreed can be separately identified, inspected and completed consistent with the provisions of Section 53313.51 of the Act, and be the subject of a Payment Request hereunder. The Discrete Components are shown on Exhibit A hereto with each lettered description of work constituting a Discrete Component of the corresponding Facility.

“EMWD” means Eastern Municipal Water District.

“EMWD Acquisition Facilities” means the sewer and water facilities described in Exhibit “A” which are constructed by Owner and acquired by EMWD.

“EMWD Facilities” means (i) EMWD Acquisition Facilities and (ii) EMWD Fees.

“EMWD Fees” means water connection fees, sewer connection fees, annexation fees, sewer treatment capacity charges, sewer surcharge fees, and all components thereof imposed by EMWD with respect to development of the property within the CFD.

“EMWD JCFA” means the Joint Community Facilities Agreement entered into by and among City, EMWD and Owner, dated as of _____, 2025, as it may be amended.

“Event of Default” is defined in Section 10.01 herein.

“Facility” or “Facilities” means the public facility or facilities described in Exhibit “A” hereto which are eligible to be financed by the CFD consisting of City Facilities and EMWD Facilities. The descriptions of the Facilities in Exhibit “A” are preliminary in some cases. The final Plans may show substitutes or modifications approved by the applicable public agency to the proposed Facilities in order to accomplish the work or serve the new development within the CFD.

“Fiscal Agent” means the agent named to such position as fiscal agent or trustee under the Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under the Fiscal Agent Agreement.

“Fiscal Agent Agreement” means the fiscal agent agreement, indenture of trust or other agreement providing for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended or supplemented from time to time.

“Funding Sources” shall mean, collectively, the proceeds of Bonds, any special taxes collected to directly finance Facilities (as set forth in but subject to the limitations of Section 3.04) and prepayments of special taxes applied to the costs of Facilities (as set forth in Section 3.05), as further described in Section 3 herein.

“Goals and Policies” means the Community Facilities District Goals and Policies, dated October 3, 2023. Any future amendments to the Goals and Policies shall not be applicable to the CFD.

“Improvement Fund” means the Improvement Fund, and the following two subaccounts thereof: City Facilities Account; and the Other Facilities Account.

“Other Facilities Account” means the subaccount of the Improvement Fund by that name from which the EMWD Facilities may be funded.

“Owner” means Discovery Village LLC, a Delaware limited liability company, and its successors and assigns to the extent permitted under Section 12.06 hereof.

“Payment Request” means a document, substantially in the form of Exhibit “C” hereto, to be used by the Owner in requesting payment of a Purchase Price or funding with respect to one or more City Facilities or Discrete Components thereof or any City Fees.

“Plans” means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the City or other entity that will own or operate the Facilities when completed and acquired.

“Price Point Study” means a report that consists of the following: (i) for homes that have been previously sold and closed, the actual sales prices of such homes, (ii) for homes that are in escrow but have not closed, the actual purchase price of the homes, and (iii) for all other homes and for all other lots, the estimated home sale prices prepared by an independent third party consultant chosen by the City.

“Principal Payment Date” shall mean, with respect to Bonds issued in the CFD, the semi-annual payment date in which principal or sinking fund payments on such Bonds are, in any year, payable. For example, if the principal amount of Bonds are payable on September 1, the Principal Payment Date shall be September 1, regardless of whether principal payments are actually due in any particular year.

“Proof of Assignment” shall mean any of the following: (i) a letter from a merchant builder acknowledging that the Owner is entitled to all refunds of deposits; (ii) excerpts from the purchase and sale agreement with the Owner that the merchant builder has agreed that all refunds of deposits belong to the Owner; or (iii) other evidence that the merchant builder has agreed that the Owner is entitled to the return of all deposits.

“Purchase Price” means the amount paid by the City for a Facility and/or any Discrete Components thereof determined in accordance with Article V hereof, being an amount equal to the Actual Cost of such Facility or Discrete Component, but subject to any limitations and reductions provided for in Article V.

“Rate and Method” means the rate and method of apportionment of the special tax for the CFD.

“Substantially Complete(d)” with respect to a Facility or Discrete Component means that such Facility or Discrete Component is substantially complete in accordance with its Plans and is available for use by the public for its intended purpose, notwithstanding any final “punch list” items still required to be completed, unless such items are required for the safe operation of such Facility or Discrete Component, and shall be based upon approval of the City inspector, which shall not be unreasonably withheld.

“Supplement” means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, or the list of Facilities to be financed by the Funding Sources.

ARTICLE II. RECITALS

Section 2.01 The CFD. The City Council of the City is the legislative body of the CFD established under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the CFD, which include the Facilities listed in Exhibit “A” hereto.

Section 2.02 The Development. The real property in the CFD is described in Exhibit “B” hereto (the “Property”). The Owner proposes to develop the Property (by itself, through sales to merchant builders, or a combination thereof) as a residential community containing approximately 365 single-family residential dwelling units and other uses (the “Development”).

Section 2.03 The Facilities. The Owner will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land. The Owner acknowledges that the inclusion of Facilities in Exhibit “A” hereto in no way, in itself, obligates the City to issue any Bonds to acquire the Facilities from the Owner or implies that the City has in any way engaged the Owner to construct the Facilities. The City and CFD acknowledge that the inclusion of Facilities in Exhibit “A” hereto in no way, in itself, obligates the Owner to construct any such Facilities under the terms of this Acquisition Agreement.

Section 2.04 The Financing. The Owner and the City wish to finance the acquisition of the Facilities and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and payment for Discrete Components thereof (as it may be amended and supplemented) from the Funding Sources.

Section 2.05 The Bonds. The CFD will be proceeding with the authorization and issuance of the Bonds under the Act and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the acquisition of all or a portion of the Facilities. The execution by the City and the CFD of this Acquisition Agreement in no way obligates the City or the CFD to issue any Bonds, or to acquire any Facilities with proceeds of any Bonds issued, except the Facilities listed in Exhibit “A” hereto which are to be acquired subject to the terms and conditions set forth in this Acquisition Agreement.

Section 2.06 No Advantage to City Construction. The City, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the City directly of the City Facilities, and that the provisions of this Acquisition Agreement require that the Facilities to be constructed by the Owner and acquired with the proceeds of the Bonds be constructed as if they had been constructed under the direction and supervision of the applicable Public Agency, as set forth in Section 4.02 below. Notwithstanding anything in this Acquisition Agreement to the contrary, upon the mutual agreement of the City

and the Owner and upon an Event of Default, the City and the Owner may allocate a portion of the Funding Sources to the construction of City Facilities that are constructed by the City.

Section 2.07 Agreements. In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the CFD, and the Owner agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

ARTICLE III. FUNDING

Section 3.01 District Proceedings. The CFD shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of the Bonds; provided, however, that nothing herein shall be construed as requiring the CFD to issue the Bonds or any series thereof. The Owner and the City staff shall meet regarding the amount, timing and other material aspects of each series of the Bonds, but the legal proceedings and the series, principal amounts, rates, terms and conditions and timing of the sale of the Bonds shall be consistent with this Acquisition Agreement and in all respects subject to the approval of the City Council as legislative body of the CFD.

Section 3.02 Bonds. The CFD anticipates issuing one or more series of Bonds for the CFD when building permits have been issued on Property within the CFD that is projected to be responsible for at least 50% of the projected Special Tax levy (the “50% Threshold”). In each case, the Bonds will be sized to be secured by 100% of the assigned special tax rates on all taxable property (at buildout, and, at the CFD’s discretion, excluding any Property therein currently delinquent in payment of special taxes) as set forth in the Rate and Method. If requested by the Owner, the CFD may, however, in its sole discretion, agree to issue Bonds prior to the 50% Threshold being met for the CFD. If the CFD agrees to issue Bonds prior to the 50% Threshold being met, the CFD shall require one or more letters of credit or cash deposits from the Owner or other homebuilders within the CFD to secure the payment of Special Taxes on land owned by the Owner or such other homebuilders as the CFD shall determine until such time as the 50% Threshold is met in the CFD. The letter of credit or cash deposit shall be in an amount equal to two (2) years special taxes to be levied on property owned by the Owner or the homebuilders, as applicable. The issuance of Bonds within the CFD shall comply with the parameters set forth below, except as such parameters are required to be changed to comply with state law:

- Credit enhancement will not be required as condition precedent to the issuance of the Bonds unless the City agrees to issue the Bonds prior to the 50% Threshold being satisfied for the CFD.
- Debt service on the Bonds shall be sized based on the assumption that the maximum special taxes that may be levied on taxable property shall be 110% of the projected debt service on the Bonds in each year plus priority administrative expenses (subject to the application of capitalized interest in accordance with Section 3.03 hereof). While the actual coverage ratio may be in excess of 110%,

the City shall not, as a condition of issuing the Bonds, require a ratio in excess of 110%.

- The assessed or appraised value of the taxable property within CFD shall be at least three times the principal amount of the Bonds and any direct or overlapping community facilities district or assessment district debt. While the actual value-to-lien ratio may be in excess of 3:1, the City shall not, as a condition of issuing the Bonds, require a ratio in excess of 3:1.
- The Reserve Fund shall be funded in an amount equal to the least of the three federal tax safe harbor amounts.
- The proceeds of the Bonds for the CFD may be used to finance any of the Facilities set forth in Exhibit A, including the capital fees listed on Exhibit A.
- The debt service on Bonds in the CFD may escalate in an annual amount equal to any escalation of the special taxes under the Rate and Method as provided in Section 2.01 hereof.
- The City in its sole discretion may require the Owner, or its assigns to prepay a portion of the special taxes on any parcel that has a tax rate in excess of 2% at the time such Bonds are issued, based upon a Price Point Study.

Any time after three years following the issuance of the Bonds, if the balances in the Improvement Fund or any subaccount therein for such the CFD is \$0, the City may close such fund or account. If funds remain on deposit in the Improvement Fund for the CFD five years following the issuance of the Bonds, the City may elect to use such funds to defease Bonds or to pay directly for any authorized facility or facilities.

Section 3.03 Bond Proceeds. The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement and this Acquisition Agreement. A portion of the proceeds of the Bonds will be set aside under the Fiscal Agent Agreement in the Improvement Fund and upon the direction of the Owner used to finance City Facilities and EMWD Facilities. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment, without priority, of all or a portion of the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), and payment or reimbursement of City Fees and EMWD Fees all as herein provided or as provided in the EMWD JCFA; provided, however, that, if tax-exempt Bonds are issued, City Fees shall be financed only if the City shall certify in connection with such financing of City Fees that it reasonably expects to spend Bond proceeds attributable to the financing of such City Fees on public capital improvements within three years from the date of issuance of the Bonds.

Unless otherwise requested in writing by the Owner prior to issuance of each series of Bonds, earnings on amounts in a subaccount of the Improvement Fund shall be retained in the respective subaccount of the Improvement Fund until all Facilities have been financed, as evidenced by a certificate provided by the Owner, or Owner provides a certificate to the CFD

indicating that the funds on deposit in the Improvement Fund are sufficient to finance the remaining Facilities for which the Owner expects to submit a payment request. For a period not to exceed three (3) years after issuance of the Bonds, earnings on amounts in the reserve fund(s) for the Bonds in excess of the applicable reserve requirement shall, prior to receipt of either certificate described in the preceding sentence, be deposited in the Improvement Fund, and after receipt of such certificate, shall be deposited in the fund established by the Fiscal Agent Agreement for payment of debt service on the Bonds.

The City agrees to include capitalized interest for eighteen (18) months in each series of Bonds, unless the Owner requests capitalized interest for a shorter period prior to issuance of each series of Bonds.

The Owner agrees that the City alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Owner has no right whatsoever to direct investments under the Fiscal Agent Agreement.

Neither the City nor the CFD shall have any responsibility whatsoever to the Owner with respect to any investment of funds made by the Fiscal Agent under the Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Improvement Fund to pay the Purchase Price of Facilities and Discrete Components hereunder. The Owner further acknowledges that the obligation of any owner of real property in the CFD, including the Owner to the extent it owns any real property in the CFD, to pay special taxes levied in the CFD is not in any way dependent on: (i) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof, or (ii) the alleged or actual misconduct of the City or CFD in the performance of its obligations under this Acquisition Agreement, the Fiscal Agent Agreement, any Owner agreement or amendment thereto or any other agreement to which the Owner and the CFD and/or the City are signatories.

Section 3.04 No “Pay Go” Taxes Following the Issuance of Bonds. Following the issuance of Bonds, the CFD shall not levy taxes within the CFD directly to pay for the costs of acquiring Facilities. Prior to the issuance of any Bonds, the CFD shall levy special taxes on all parcels of Developed Property (as defined in the Rate and Method) at the assigned special tax rates and use such funds to pay for the costs of administering the CFD and for the costs of acquiring Facilities.

Section 3.05 Prepayments. To the extent authorized under the Rate and Method, any prepayments of special tax obligations that the Rate and Method requires to be used to pay for Facilities, whether before or after the issuance of the Bonds, shall be placed in a special fund to be held by the City (the “Prepayment Fund”). Moneys in the Prepayment Fund shall be a source for the payment of the costs of the acquisition of the Facilities and the Discrete Components thereof and the payment of Authorized Fees and shall be applied in the same manner as the proceeds of Bonds; provided that the amounts in the Prepayment Fund shall be used to redeem Bonds to the extent required to maintain debt service coverage from Special Taxes at least equal to 110% of debt service on the Bonds plus administrative expenses. Notwithstanding anything in this Section 3.05 to the contrary, the Owner and the City agree that if only one series of Bonds is

issued in the amount required by Section 3.02, then the City shall no longer collect any Future Facilities Costs (as defined in the Rate and Method) in connection with a prepayment of Special Taxes after such Bonds are issued.

Section 3.06 Limitation. The City shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof or the Authorized Fees except from amounts on deposit in the Prepayment Fund, and the Improvement Fund in any combination. The City makes no warranty, express or implied, that amounts on deposit in the Prepayment Fund, and the Improvement Fund will be sufficient for payment of the Purchase Price of the Facilities or any Discrete Components thereof or the Authorized Fees. The Owner acknowledges that any lack of availability of amounts in the Prepayment Fund, and the Improvement Fund to pay the Purchase Price of Facilities or any Discrete Components thereof and the Authorized Fees shall in no way diminish any obligation of the Owner with respect to the construction of or contributions for public facilities or the payment of fees required by the conditions of approval for the project.

ARTICLE IV. CONSTRUCTION OF CITY FACILITIES

Section 4.01 Plans. To the extent that it has not already done so, the Owner shall cause Plans to be prepared for the City Facilities to be constructed by Owner and funded with the Funding Sources. Upon completion of the Plans for each City Facility to the satisfaction of the City in accordance with applicable ordinances and regulations of the City, the City shall immediately notify Owner that the Plans are completed and acceptable to the City. Copies of all Plans shall be provided by the Owner to the Director upon request therefor, and, in any event, as-built drawings and a written assignment of the Plans for any City Facility shall be provided to the City prior to its acceptance of the City Facility.

Section 4.02 Construction. Subject to all of the provisions of this Agreement, the City agrees to acquire from the Owner those Facilities listed in Exhibit A which are constructed by the Owner and tendered for acquisition in accordance with the provisions of this Agreement. The Owner agrees that any Facility being constructed by, or under the direction of, the Owner and to be acquired by the City shall be constructed in substantial compliance with the approved Plans and in compliance with the requirements of Government Code Section 53313.5, which requires those improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of the City. The Owner shall require its contractor or contractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of the CFD and not less than the general prevailing rate of per diem wages for holiday and overtime work, as provided in Section 1771 *et seq.* of the California Labor Code, to all workers employed by each such contractor in the construction of the Facilities. As to each Facility, the Owner shall obtain from its contractor or contractors and furnish to the City payroll records for a minimum of one payroll period as to all such workers employed by the contractor or contractors demonstrating compliance with the requirements of Section 1771 *et seq.* of the California Labor Code. In addition to any other warranty or indemnification set forth in this Agreement, the Owner specifically warrants that it and its contractors, subcontractors, successor and assigns shall comply with the provisions of California Labor Code Section 1771 *et seq.* or any similar applicable state or federal laws relating to payment of the prevailing wage as set forth above. The Owner shall indemnify, defend and hold

harmless the City and the CFD in any action brought by any person, entity or state or federal governmental agency for any failure to pay the prevailing wage or to comply with the applicable law governing payment of the prevailing wage.

This Acquisition Agreement is for the acquisition by the City of the City Facilities to be constructed by Owner and funded with the Funding Sources and payment for City Facilities and Discrete Components and EMWD Facilities (in accordance with the EMWD JCFA) thereof from such Funding Sources and is not intended to be a public works contract. The City and the Owner agree that the Owner shall award all contracts for the construction of the City Facilities to be constructed by Owner, acquired by the City and funded with the Funding Sources and the Discrete Components thereof and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of such City Facilities. Notwithstanding the foregoing, the Owner shall award all contracts for construction of the City Facilities to be acquired by City with the Funding Sources by means of a bid process whereby at least three independent bids are obtained, and the contract is awarded to the lowest responsible bidder. The Director shall be entitled to discuss the bidding process with the Owner at any time and from time to time, and to require reasonable changes thereto for future contracts if, in the judgment of the Director, said process is not resulting in competitive bids for the City Facilities. Notwithstanding the foregoing, Owner may proceed with fewer than three bids if the City reasonably determines that three bids were not reasonably available at the time of the bid.

Section 4.03 Independent Contractor. In performing this Acquisition Agreement, the Owner is an independent contractor and not the agent or employee of the City or the CFD. Neither the City nor the CFD shall be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Owner.

Section 4.04 Performance and Payment Bonds. The Owner agrees to comply with all applicable performance and payment bonding requirements of the City (and other applicable public entities and/or public utilities) and the California Public Contracts Code with respect to the construction of the City Facilities to be constructed by Owner, acquired by City and funded with the Funding Sources.

Section 4.05 Contracts and Change Orders. The Owner shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as “change orders”) required for the construction of the City Facilities to be constructed by Owner, acquired by City and funded with the Funding Sources, and all such contracts and supplemental agreements shall be submitted to the Director. Prior approval of supplemental agreements by the Director shall only be required for such change orders which in any way materially alter the quality or character of the subject City Facilities, or which involve an amount equal to the greater of ten percent (10%) of the amount of the bid for the Discrete Component involved or \$50,000 for supplemental agreements entered into subsequent to the date of this Acquisition Agreement. The City expects that such contracts and supplemental agreements needing prior approval by the Director will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any that can be taken to obtain later approval) within fifteen (15) Business Days of receipt by the Director thereof.

Section 4.06 Time for Completion. The Owner agrees that this Acquisition Agreement is for the benefit of the City and the Owner and, therefore, the Owner represents that it expects that the City Facilities to be constructed by Owner, acquired by City and funded with proceeds of a series of Bonds will be completed and the payment request for such City Facilities submitted within thirty-six (36) calendar months from the date of the closing of such series of Bonds. Any failure to complete such City Facilities within said time period shall not, however, in itself, constitute a breach by the Owner of the terms of this Acquisition Agreement.

The Owner agrees to use its good faith efforts to complete all City Facilities to be constructed by Owner, acquired by City and funded with proceeds of a series of Bonds within thirty-six (36) calendar months from the date of closing of such series of Bonds.

ARTICLE V. ACQUISITION AND PAYMENT

Section 5.01 Inspection. The City's inspector shall conduct its inspection within fifteen (15) Business Days following notice from the Owner to the City that the construction of each City Facility or Discrete Component thereof to be acquired with the Funding Sources is complete. Upon the City inspector's determination that construction of the City Facility or Discrete Component thereof has been completed in accordance with the Plans, the City shall immediately notify Owner in writing that the construction of such City Facility or Discrete Component thereof has been satisfactorily completed. No payment hereunder shall be made by the City to the Owner for a City Facility or Discrete Component thereof until the City Facility or Discrete Component thereof has been inspected and found to be completed in accordance with the approved Plans by the City or other applicable public entity or utility. The City shall make or cause to be made periodic site inspections of the City Facilities to be constructed by Owner and acquired by City with the Funding Sources; provided that in no event shall the City incur any liability for any delay in the inspection of any City Facilities or Discrete Components. For City Facilities to be constructed by Owner, acquired by other public entities or utilities and funded with proceeds of the Bonds, the Owner shall be responsible for obtaining such inspections and providing written evidence thereof to the CFD. The reasonable costs incurred by the City in inspecting and approving the City Facilities to be constructed by Owner, acquired by City and funded with the Funding Sources and all related permit and other similar fees of the City applicable to construction of such City Facilities shall be paid by Owner or, at the election of the City, from the Funding Sources.

Section 5.02 Acquisition of City Facilities. Upon completion of a City Facility to be constructed by Owner, and funded with the Funding Sources, Owner hereby agrees to sell the City Facility to the City (or other applicable public agency that will own such City Facility), and the City hereby agrees to use the Funding Sources to pay the Purchase Prices thereof to the Owner, subject to the terms and conditions hereof. The City shall not be obligated to purchase any City Facility until the City Facility is completed and the Acceptance Date for such City Facility has occurred; provided that the City has agreed hereunder to make payments to the Owner for Discrete Components of City Facilities. The Owner acknowledges that the Discrete Components have been identified for payment purposes only, and that the City (or other applicable public agency that will own a City Facility) shall not accept a City Facility of which a Discrete Component is a part until the entire City Facility has been completed. The City

acknowledges that the Discrete Components do not have to be accepted by the City (or other applicable public agency that will own a City Facility) as a condition precedent to the payment of the Purchase Price therefor, but the City shall not be obligated to make such payment until the Discrete Component has been Substantially Completed. In any event, the City shall not be obligated to pay the Purchase Price for any City Facility or Discrete Component except from the Funding Sources.

Section 5.03 Payment Requests. In order to receive the Purchase Price for a City Facility or Discrete Component thereof, inspection thereof under Section 5.01 shall have been made and the Owner shall deliver to the Director: (i) a Payment Request in the form of Exhibit “C” hereto for such City Facility or Discrete Component thereof, together with all supporting documentation evidencing the Actual Costs of the City Facility or Discrete Component thereof; (ii) if payment is requested for a completed City Facility, (a) if the property on which the City Facility is located is not owned by the City at the time of the request, a copy of the recorded documents conveying to the City Acceptable Title to the real property on, in or over which such City Facility is located, as described in Section 6.01 hereof, (b) a copy of the recorded notice of completion of such City Facility (if applicable), (c) to the extent paid for with the proceeds of the Bonds, an assignment to the CFD of any reimbursements that may be payable with respect to the City Facility, such as public or private utility reimbursements, and (d) an assignment of the warranties and guaranties for such City Facility, as described in Section 6.05 hereof, in a form acceptable to the City; and (iii) if reimbursement is requested for City Fees advanced by a third party builder, proof acceptable to the City of the assignment of such reimbursement to the Owner.

Section 5.04 Processing Payment Requests. Upon receipt of a Payment Request (including all accompanying supporting documentation evidencing the Actual Costs), the Director shall conduct a review in order to confirm that such request is complete, that such City Facility or Discrete Component thereof and identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component or City Facility specified in such Payment Request. The Director shall also conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Owner agrees to cooperate with the Director in conducting each such review and to provide the Director with such additional information and documentation as is reasonably necessary for the Director to conclude each such review. For any City Facilities to be acquired by a utility, the Owner shall provide evidence acceptable to the Director that such City Facilities are acceptable to such utility. Within fifteen (15) Business Days of receipt of any Payment Request, the Director shall review the request for completeness and notify the Owner whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Director shall provide a written approval or denial (specifying the reason for any denial) of the request within 30 calendar days of its submittal. If a Payment Request seeking reimbursement for more than one City Facility or Discrete Component is denied, the Director shall state whether the Payment Request is nevertheless approved and complete for any one or more City Facilities or Discrete Components and any such City Facilities or Discrete Components shall be processed for payment under Section 5.05 notwithstanding such partial denial.

Section 5.05 Payment. Upon approval of the Payment Request by the Director, the Director shall sign the Payment Request and forward the same to the City finance department of the City. Upon receipt of the reviewed and fully signed Payment Request, the City finance department shall, within fifteen (15) Business Days of receipt of the approved Payment Request, cause the same to be paid by the Fiscal Agent under the applicable provisions of the Fiscal Agent Agreement, to the extent of the Funding Sources. Any approved Payment Request not paid due to an insufficiency of Funding Sources, shall be paid promptly following the deposit of additional Funding Sources.

The Purchase Price paid hereunder for any City Facility or Discrete Component (in any number of installments as Funding Sources become available) shall constitute payment in full for such City Facility or Discrete Component, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such City Facility or Discrete Component, as specified in the Plans.

Section 5.06 Restrictions on Payments. Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Owner under Sections 5.02 and 5.05 hereof:

A. Amounts of Payments. Subject to the following paragraphs of this Section 5.06, payments for each Discrete Component or City Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or City Facility. Nothing herein shall require the City in any event (i) to pay more than the Actual Cost of a City Facility or Discrete Component or (ii) to make any payment beyond the Funding Sources (at the time of initial payment or later upon subsequent deposits to the Improvement Fund). The parties hereto acknowledge and agree that all payments to the Owner for the Purchase Prices of City Facilities or Discrete Components are intended to be reimbursements to the Owner for monies already expended or for immediate payment by the Owner (or directly by the City) to third parties in respect of such City Facilities and/or Discrete Components.

B. Joint or Third Party Payments. The City may make any payment jointly to the Owner and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Owner so requests the same in writing or as the City otherwise determines such joint or third party payment is necessary to obtain lien releases.

C. Withholding Payments. The City shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component or a Facility if the Owner or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or special taxes levied in the CFD. In the event of any such delinquency, the City shall only make payments under this Section 5.06, should any be made at the City's sole discretion, directly to contractors or other third parties employed in connection with the construction of the City Facilities or to any assignee of the Owner's interests in this Acquisition Agreement (and not to the Owner or any Affiliate), until such time as the Owner provides the Director with evidence that all such delinquent taxes and assessments have been paid.

The City shall be entitled to withhold any payment hereunder for a City Facility or Discrete Component thereof that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Owner for the City Facility or Discrete Component thereof that is the subject of a Payment Request, or conditional lien releases have been provided by the Owner for such City Facility or Discrete Component thereof, or until all certificates required by Section 5.03 have been obtained. The City, in its discretion, may waive this limitation upon the provision by the Owner of sureties, undertakings, securities and/or bonds of the Owner or appropriate contractors or subcontractors and deemed satisfactory by the Director to assure payment of such claims.

The City shall be entitled to withhold payment for any City Facility (or the final Discrete Component of any such City Facility) hereunder to be constructed by Owner, acquired by City and reimbursed with the Funding Sources until: (i) the Director determines that the City Facility is ready for its intended use, (ii) the Acceptance Date for the City Facility has occurred and the requirements of Section 6.01, if applicable to such City Facility, have been satisfied, and (iii) a Notice of Completion executed by the Owner, in a form acceptable to the Director, has been recorded for the City Facility and general lien releases conditioned solely upon payment from the Funding Sources to be used to acquire such City Facility (or final Discrete Component) have been submitted to the Director for the City Facility. The City hereby agrees that the Owner shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify it for any losses sustained by the City because of any liens that may exist at the time of acceptance of such a City Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director. If the Director determines that a City Facility is not ready for intended use under (i) above, the Director shall so notify the Owner as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Owner from contesting in good faith the validity or amount of any mechanics or materialman lien nor limit the remedies available to the Owner with respect thereto so long as such delay in performance shall not subject the City Facilities or any Discrete Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Owner shall only be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director.

D. Retention. The City may withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each City Facility or Discrete Component to be paid hereunder. Any such retention will be released to the Owner upon final completion and acceptance of the related City Facility and the expiration of a maintenance period consistent with applicable City policy thereafter (a one year maintenance period for any landscaping, and upon receipt of a faithful performance bond acceptable to the Director to remain in effect for one year as to other City Facilities).

Notwithstanding the foregoing, the Owner shall be entitled to payment of any such retention upon the completion and acceptance of a Facility or Discrete Component, if a maintenance or warranty bond is posted in lieu thereof in accordance with Section 6.05 hereof. Payment of any retention shall also be contingent upon the availability of monies in the

Improvement Fund therefore. No retention shall apply if the Owner proves to the Director's satisfaction that the Owner's contracts for the City Facilities (or Discrete Components) provide for the same retention as herein provided, so that the Purchase Price paid for the City Facility or Discrete Component is at all times net of the required retention.

E. Frequency. Unless otherwise agreed to by the Director, no more than one Payment Request shall be submitted by the Owner in any calendar month, but the Payment Request may include more than one Facility or Discrete Component or Authorized Fee.

Section 5.07 Allocation of Costs. If Owner incurs costs that (1) apply to more than one Facility or Discrete Component (e.g., soft costs) or (2) apply to both Facilities or Discrete Components and improvements other than the Facilities or Discrete Components (e.g., grading), Owner shall allocate, or cause the contractor to reasonably allocate, such costs between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Owner Allocation"). The City shall notify Owner of its good-faith reasonable disapproval of any Owner Allocation within fifteen (15) Business Days of submittal of the payment request. If the City has disapproved the Owner Allocation, then the City and Owner shall promptly allocate such costs, on a reasonable basis, between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Agreed-Upon Allocation"). Based on the Owner Allocation or the Agreed-Upon Allocation, if applicable, the City shall include the costs allocated to a specific Facility or Discrete Component as part of the Actual Costs of such Facility or Discrete Component when such Facility or Discrete Component is subject to a payment request.

Section 5.08 Expectations of the Parties. The City understands and agrees that (i) the Owner will be constructing City Facilities (and Discrete Components) prior to the availability of the Funding Sources that will be used to pay for such City Facilities (and Discrete Components), (ii) the City may be inspecting such City Facilities (or Discrete Components) and processing and completing Payment Requests for the payment on such City Facilities (or Discrete Components) with knowledge that there may be insufficient Funding Sources available at such time, (iii) the City Facilities (or Discrete Components) may be conveyed to and accepted by the City when there are insufficient Funding Sources to pay the Purchase Prices of such City Facilities (or Discrete Components), and (iv) in any such case, the payment of any approved Payment Requests for the Purchase Prices of such City Facilities (or Discrete Components) will be deferred until there are sufficient Funding Sources available to pay the Purchase Prices of such City Facilities (or Discrete Components), at which time the City will make such payments in accordance with this Acquisition Agreement. At all times, the Owner will be constructing such City Facilities (or Discrete Components) with the expectation that the Purchase Prices for such City Facilities (or Discrete Components) will be paid from the Funding Sources. The conveyance of City Facilities (or Discrete Components) to the City prior to receipt of the Purchase Prices for such City Facilities (or Discrete Components) shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such City Facilities (or Discrete Components). The Owner acknowledges that the Funding Sources may not be sufficient to reimburse the Owner for all of its costs incurred to complete or pay for the Facilities.

Section 5.09 Defective or Nonconforming Work. If any of the work done or materials furnished for a City Facility or Discrete Component are found by the Director to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such City Facility or Discrete Component hereunder, the City may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director, or (ii) and such finding is made after payment of the Purchase Price of such City Facility or Discrete Component, the City and the Owner shall act in accordance with the City's standard specification for public works construction.

Section 5.10 Modification of Discrete Components. Upon written request of the Owner, the Director shall consider modification of the description of any Facility or Discrete Component or the addition or substitution of Facilities and Discrete Components. Any such modification shall be subject to the written approval of the Director, which will not be unreasonably delayed.

ARTICLE VI. OWNERSHIP AND TRANSFER OF CITY FACILITIES

Section 6.01 Facilities to be Owned by the City - Conveyance of Land and Easements to City. Owner shall provide Acceptable Title to all property on, in or over which each City Facility to be constructed by Owner, acquired by the City and funded out of the Funding Sources will be located, which Acceptable Title shall be deeded over to the City by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such City Facility located therein, thereon or thereover, and to permit the Owner to perform its obligations as set forth in this Acquisition Agreement. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a City Facility and shall be evidenced by recordation of the acceptance thereof by the City Council or the designee thereof.

Section 6.02 Facilities to be Owned by the City - Title Evidence. The Owner shall furnish to the City a preliminary title report for land with respect to City Facilities to be constructed by Owner, acquired by the City and funded out of the Funding Sources and not previously dedicated or otherwise conveyed to the City, for review and approval at least fifteen (15) Business Days prior to the transfer of Acceptable Title to such City Facility to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to such City Facility or pay the Purchase Price for such City Facility (or the last Discrete Component thereof) until the Owner has cured such objections to title to the satisfaction of the City. As a further precondition to the payment of the Purchase Price for a City Facility, the Owner shall provide a policy of title insurance on such land, in an amount determined by the Director, which is equal to or, with the consent of the Owner, greater than the Purchase Price for a City Facility and in the form normally required by the City in connection with the dedication of land for subdivision improvements.

Section 6.03 Facilities Constructed on Private Lands. If any City Facilities to be constructed by Owner, acquired by the City and funded out of the Funding Sources are located on privately-owned land, the owner thereof shall retain title to the land and the completed City Facilities until acquisition of the City Facilities under Article V hereof. Pending the completion of such transfer, the Owner shall not be entitled to receive any payment for any such City Facility or the last Discrete Component thereof. The Owner shall, however, be entitled to receive payment for Discrete Components of City Facilities (other than the last Discrete Component) upon making an irrevocable offer of dedication of such land, or appropriate interest therein, in form and substance acceptable to the Director. Notwithstanding the foregoing, before payment for any Discrete Component of such a City Facility, the Owner shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Sections 6.01 and 6.02 hereof. If the land is within the boundaries of any existing community facilities district (including the CFD), an assessment district, or other financing district, then the lien of the special taxes or assessments shall be a permitted exception to title so long as the land, while owned by the City or other public agency, is exempt from the special tax or assessments to be levied by the community facilities district, assessment district, or other financing district.

Section 6.04 Facilities Constructed on City Land. If the City Facilities to be constructed by Owner, acquired by the City and funded out of the Funding Sources are on land owned by the City, the City hereby grants to the Owner a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the City Facilities. The provisions for inspection and acceptance of such City Facilities otherwise provided herein shall apply.

Section 6.05 Maintenance and Warranties. The Owner shall maintain each Discrete Component of a City Facility to be constructed by Owner, acquired by the City and funded out of proceeds of the Funding Sources in good and safe condition until the Acceptance Date of the City Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Owner shall be responsible for performing any required maintenance on any such completed Discrete Component or City Facility. On or before the Acceptance Date of a City Facility to be constructed by Owner, acquired by City and funded with the Funding Sources, the Owner shall assign to the City all of the Owner's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such City Facility. After the Acceptance Date, and subject to the City's rules and regulations in effect at the time of this Acquisition Agreement, the acquiring public agency shall be solely responsible for maintenance of the City Facility. With respect to each City Facility constructed by Owner, acquired by City and funded with the Funding Sources, the Owner shall warrant each such City Facility to be free from construction defects (and shall correct or cause to be corrected any such defects) for a period of one year from the Acceptance Date thereof, and shall provide a maintenance bond reasonably acceptable in form and substance to the Director for such period and such purpose to insure that such defects, which appear within said period will be repaired, replaced, or corrected by the Owner, at its own cost and expense, to the satisfaction of the Director. The Owner shall continue to repair, replace or correct any such defects within thirty (30) calendar days after written notice thereof by the City to the Owner, and shall complete such repairs, replacement or correction as soon as practicable. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the City Facilities to be constructed by Owner, acquired by City and funded with the Funding Sources shall be delivered

to the Director as part of the transfer of title. For purposes of this Acquisition Agreement, following conveyance of a City Facility to the City, the terms “maintain” and “maintenance” mean the repair, replacement, or correction of any defects in the City Facility, and shall not mean the day-to-day upkeep or correction of normal wear and tear of the City Facility (such as watering or weeding for landscape improvements, painting, graffiti removal, etc.).

ARTICLE VII. PAYMENT OF CITY FEES

Section 7.01 Request for Payment of City Fees. The Owner may request payment of City Fees from the Funding Sources by executing and submitting to the CFD a payment request. Upon receipt of such payment request, the CFD shall pay, or cause to be paid, to the City the City Fees requested in such payment request, subject to the following conditions:

A. The City Fees shall be payable only to the extent of available Funding Sources; provided that, if tax-exempt Bonds are issued, City Fees shall be financed only if the City shall certify in connection with such financing of City Fees that it reasonably expects to spend Bond proceeds attributable to the financing of such City Fees on public capital improvements within three years from the date of issuance of the Bonds. Notwithstanding the foregoing, the Owner understands that the City Fees are an obligation of the Owner or its assignees for the public impacts created by the Owner’s or its assignees development of the real property within the CFD. Whether or not funds become available from the Funding Sources to pay City Fees, the owner of the property at the time such City Fees are due is obligated to pay the City Fees. Any City Fees paid from the Funding Sources that are in excess of the Deposits will result in a credit being provided to the Property for such City Fees (such that the prepaid City Fees are no longer payable by the property owners).

B. The City Fees shall be payable only to the extent that the City has not provided Development Impact Fee credits for such City Fees pursuant to the Development Agreement. For example, if the City Fee is \$3,000 per unit, and the Owner constructs facilities equivalent to \$2,000 per unit and the City provides a credit of \$2,000 against the City Fee, then only \$1,000 per unit may be financed by the Funding Sources.

Section 7.02 Payment of City Fees in Advance of Availability of Funding Sources. The Owner or a merchant builder may be required pursuant to the conditions of development or the fee ordinance to pay the City Fees prior to the availability of the Funding Sources to pay such City Fees. In the event such City Fees are paid prior to the availability of the Funding Sources, the amounts paid to the City shall be deemed to be deposits (each a “Deposit”) that are subject to refund by the City to Owner (and the Owner only, regardless of the entity that paid the Deposits), upon submission by Owner of Proof of Assignment, in the manner set forth in Section 7.04. The City shall place each Deposit in a capital facilities account(s).

Section 7.03 Return of Deposits. If the Owner or a merchant builder has made any Deposits to the City, then following deposit of Funding Sources with the City for the corresponding City Fees, the City shall return to the Owner (and the Owner only, regardless of the entity that paid the Deposit), upon submission by Owner of Proof of Assignment, from the capital account in which the Deposits were deposited the Deposits not previously returned,

without interest or other earnings thereon. The City shall be so obligated to return such Deposits only to the extent that an equivalent amount of the Deposits to be returned is deposited with the City from the Funding Sources. The Deposits may be returned from time to time as additional Funding Sources become available.

Section 7.04 Deposits Allocated First. Funding Sources used to pay City Fees shall be allocated first for return of all Deposits prior to being allocated to the payment of City Fees not previously deposited by the Owner or a merchant builder. For example, if the Owner has paid \$10,000 in Deposits, and Funding Sources become available in the amount of \$15,000, the City shall apply the first \$10,000 of the Funding Sources to the payment of the City Fees that were paid by the Deposits (and, thereafter, return the Deposits to the Owner) and use the remaining \$5,000 of the Funding Sources to the payment of City Fees identified in the payment requisition.

Section 7.05 Application of Deposits. Any Deposits that have not been returned to the Owner at the time it is determined that there will be no further Funding Sources available (now or in the future) shall be retained by the City and may be used for the purposes for which the City Fee was required, and the unrefunded Deposits shall constitute full and final payment for such City Fees, without any increase of any kind.

Section 7.06 Expectations. The Owner or merchant builder may pay City Fees (as Deposits) prior to the availability of Funding Sources to pay such City Fees. Any City Fees paid (as Deposits) by the Owner or a merchant builder shall be made with the understanding that such Deposits will be returned from the Funding Sources if, and when, such Funding Sources become available. The payment of Deposits prior to the availability of the Funding Sources shall not be construed as a dedication or gift of the City Fees, or a waiver of the return of the Deposits, it being the intention that the City Fees be paid by the Funding Sources to the extent of the Funding Sources.

Section 7.07 Return of Funds Following DIF Fee Credits. If the City provides fee credits against a Development Impact Fee as the result of the Owner constructing Facilities, any deposits made by the Owner or any other party to secure the payment of the subject Development Impact Fee shall be returned in accordance with the City's procedures for returning deposits following a DIF Fee credit. To the extent that there remains any deposit of the Development Impact Fees that are otherwise City Fees for which credit was not provided, such amounts shall be considered Deposits within the meaning set forth in Section 7.02 and shall be returned to the Owner upon the funding of such differential from Funding Sources, as set forth in this Article VII. Nothing in this Article VII shall adversely affect the financing of Facilities for which a DIF credit is provided. For example, if the City Fee is \$3,000 per unit, and the Owner constructs Facilities equivalent to \$2,000 per unit and the City provides a credit of \$2,000 against the City Fee, both the \$1,000 remaining portion of the City Fee as well as the costs of the Facilities from which the credit was derived may be financed by the Funding Sources under this Agreement. The \$2,000 portion of the City Fee shall not be financed by the Funding Sources and any deposits returned pursuant to the City's policies as a result of the DIF Fee credit shall not be considered a Deposit within the meaning of Section 7.02.

ARTICLE VIII. INSURANCE

Section 8.01 Insurance Requirements. The Owner shall, at all times prior to the final Acceptance Date of all City Facilities to be constructed by Owner, acquired by City and funded out of the Funding Sources, maintain and deliver to the City evidence of and keep in full force and effect, or cause the general contractor for such City Facilities to maintain and deliver to the City evidence of and keep in full force and effect, not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to the Director: (i) Workers, Compensation and Employer's Liability - Workers' Compensation coverage as required by law; Employer's Liability - limits of at least \$100,000.00 per occurrence; (ii) Comprehensive General Liability - Combined Single Limit - \$1,000,000.00; and (iii) Automobile Liability - Combined Single Limit - \$1,000,000.00. The automobile and general comprehensive liability policies shall be accompanied by an umbrella policy with a combined limit of \$5,000,000.00. All of the Owner's insurance policies shall contain an endorsement providing that written notice shall be given to the City at least 30 calendar days prior to termination, cancellation, or reduction of coverage in the policy.

The Bodily Injury and Property Damage Liability policies shall contain the following:

A. An endorsement extending coverage to the City and its agents as an insured, in the same manner as the named insured as respects liabilities arising out of the performance of any work related to the City Facilities to be constructed by Owner, acquired by City and funded out of the Funding Sources. Such insurance shall be primary insurance as respects the interest of the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the insurance required hereunder.

B. Severability of Interest clause.

C. Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Owner under this Acquisition Agreement.

Before awarding a contract for the construction of the City Facilities to be acquired with the Funding Sources, the Owner shall deliver to the Director certificates of insurance and endorsements as to such insurance, in a form acceptable to the City and the City Attorney, and Owner shall upon each renewal of such insurance policy provide the City with new certificates of insurance with respect thereto.

The Owner shall require and verify the same insurance on the part of its contractors and subcontractors.

The foregoing requirements as to the types, limits and City approval of insurance coverage to be maintained by the Owner are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Owner under this Acquisition Agreement.

Any policy or policies of insurance that the Owner or its contractors or subcontractors elect to carry as insurance (i) against loss or damage to their construction equipment and tools or

other personal property used in fulfillment of this Acquisition Agreement or a contract related to the City Facilities to be constructed by Owner and funded out of the Funding Sources shall include a provision waiving the insurer's right of subrogation against the City, and (ii) in fulfillment of this Acquisition Agreement involving a dual obligee bond may contain a clause to the effect that: "provided that Principal and Surety shall not be liable to the Obligees or any of them unless the Obligees or any of them have performed the obligations to the Principal in accordance with the terms of said contract; and provided, further, that Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated."

Section 8.02 Standards Applicable. The Owner may effect such coverage under blanket insurance policies, provided, however, that (i) such policies are written on a per occurrence basis, (ii) such policies comply in all other respects with the provisions of Section 8.01, and (iii) the protection afforded the City under any such policy shall be no less than that which would be available under a separate policy relating only to this Acquisition Agreement. All policies of insurance shall be with companies licensed or approved by the State of California Insurance Commissioner and rated (i) A12 or better with respect to primary levels of coverage, and (ii) B+12 or better with respect to excess levels of coverage, in the most recent edition of Best's Insurance Guide and shall be issued and delivered in accordance with State law and regulations.

ARTICLE IX. INDEMNIFICATION

Section 9.01 Indemnification and Hold Harmless. The Owner hereby assumes the defense of, and indemnifies and saves harmless the City, the CFD and each of their respective officers, directors, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from the design, engineering and construction of any of the City Facilities, or arising out of a failure of the Owner to provide notice of the special tax to be levied by the CFD pursuant to Section 53341.5 of the Act (but only if the Owner is required to provide such notice), or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Owner, its officers, directors, employees or agents to the City, the CFD, the CFD's underwriter and its counsel, appraiser, special tax consultant, market absorption consultant or bond counsel regarding the Owner, its proposed developments, its property ownership, and any contractual arrangement it may enter into in a disclosure document describing the CFD and the risks relating to the Bonds; provided that the actions, damages, claims, losses and expenses covered by this Section 9.01 which relate to the City Facilities being acquired shall be those arising out of the personal injury or property damage which occurred during the period up to the acceptance of the City Facilities by the City, whether or not an action or claim is filed by the date of acceptance of the City Facilities; and provided, further, that nothing in this Section 9.01 shall limit in any manner the indemnified party's rights against any of the Owner's architects, engineers, contractors or other consultants. The Owner shall furnish to the CFD a certificate or certificates of insurance substantiating that it has obtained for the entire period of the construction of the City Facilities a policy of comprehensive general liability insurance with coverage broad enough to include the Owner's contractual obligations under this section and having a combined single limit of liability meeting the requirements set forth in Article VIII.

Said certificate of insurance shall include an endorsement naming the parties entitled to indemnity under this Section 9.01 as additional named insureds.

Except as set forth in this Section 9.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Owner for payment of damages resulting from the operations of the Owner, its agents, employees or contractors. Nothing in this Section 9.01 shall be understood or construed to mean that the Owner agrees to indemnify the City or the CFD, or any of their respective officers, directors, employees or agents, for any negligent or wrongful acts or omissions to act of the City or the CFD, or any of their respective officers, directors, employees or agents.

Section 9.02 Disclosure of Special Tax. Provided the Owner is selling property within the CFD to individual homeowners, the Owner covenants and agrees that it will provide all forms of disclosure of the special tax to be levied by the CFD as required by existing law and by any future laws. In particular, provided the Owner is selling property within the CFD to individual homeowners, the Owner covenants and agrees from and after the date hereof to provide the special tax disclosure notice required by Section 53341.5 of the Act and to retain in its files copies of all notices signed by purchasers in accordance with Section 53341.5. If the Owner is selling property within the CFD to homebuilders, it shall require such homebuilders to provide such disclosures to home purchasers in its purchase and sale agreement. The City shall have the right to inspect and obtain copies of all of the Owner's records regarding special tax disclosure. The Owner represents that it has included in its contracts with purchasers of land within the CFD, and further agrees to include in its contracts with purchasers of land within the CFD entered into from and after the date hereof, a requirement that such purchasers (i) provide to the City all forms of disclosure of the special tax required by law, including the Section 53341.5 notice, (ii) retain signed copies of the Section 53341.5 notice following the sale of any parcel of land within the CFD to another, and (iii) provide the City on request an opportunity to review and obtain copies of all records relating to disclosure of the special tax. Such contractual provision shall further provide that the City and the CFD are third party beneficiaries of such disclosure requirements and that the purchaser of land will indemnify the City, the CFD and their respective officers and employees for any failure of such purchaser to disclose the special tax as required by law.

ARTICLE X. EVENT OF DEFAULT; TERMINATION

Section 10.01 Event of Default. If the City has provided the Owner with written notice that the work to construct the City Facilities is not being timely performed in a satisfactory manner (and providing a description of the defect or failure to timely perform) and the Owner has not commenced actions to cure any such defects identified in such notice within 60 calendar days after the giving of such notice and does not diligently pursue to completion the cure of any such defects as determined by the Director, the City may declare that an "Event of Default" has occurred. The Event of Default may be cured by the Owner by commencing within the 60 calendar day period following receipt of notice of default and diligently pursuing to completion the cure of such defect identified in the notice.

During the occurrence and continuation of an Event of Default, the City shall have the right but not the obligation to require the Owner to make an irrevocable offer of dedication to the City of the land owned by the Owner for the City Facility identified in the notice and to assume responsibility for the work to be performed thereunder. In the event the City elects to assume the responsibility for any work on a previously awarded contract as described in the preceding sentence, the following will occur:

A. the Owner will make an irrevocable offer of dedication to the City of the land owned by the Owner for such City Facility identified in the notice;

B. to the extent permitted by law and the applicable contract, the Owner will assign all of the contracts for the work performed to date on the City Facility identified in the notice to the City, if requested to do so by the Director;

C. the City will use its best efforts to complete the City Facility within a reasonable time frame; and

D. upon completion of the City Facility, to the extent there are Funding Sources available following payment to the City for the costs of completing such City Facility, the Owner will be reimbursed for the lesser of the cost or value of the previously unreimbursed satisfactory work performed or paid for by the Owner. The cost of such work will be determined by taking the unreimbursed amounts expended by the Owner under the contract(s) taken over by the City and deducting any incremental cost incurred by the City to complete the work under the contracts in question. Incremental cost shall be costs in excess of the sum of the original contract cost plus change orders approved by the City.

Section 10.02 Owner Termination. This Acquisition Agreement shall terminate and be of no further force as of July 1, 2035, unless extended by agreement of all the parties. If the Acquisition Agreement is terminated as provided herein, neither City nor Owner shall have any further responsibility or liability pursuant to this Acquisition Agreement, except for Owner's responsibility and liability as set forth in Article IX, which shall continue upon termination of this Acquisition Agreement. Upon the termination of this Agreement, the City shall direct the use of any remaining Bond or Special Tax proceeds to complete any remaining authorized facilities, redeem Bonds or use in any way permitted by the Act.

ARTICLE XI. EMWD FACILITIES

Section 11.01 EMWD Acquisition Facilities.

A. EMWD Acquisition Facilities shall be acquired from the Funding Sources, and such EMWD Acquisition Facilities shall be bid and constructed in accordance with the EMWD JCFA. EMWD Acquisition Facilities shall be funded from the Funding Sources, to the extent available, pursuant to the Disbursement Request Form set forth as Exhibit E in the EMWD JCFA. Upon receipt of a fully-executed Disbursement Request Form, the City shall pay the amount so requested from the available Funding Sources. With respect to any EMWD Acquisition Facility and EMWD Construction Facility constructed by Owner, acquired by EMWD and funded out of the Funding Sources, the Owner shall comply with EMWD's rules

and regulations regarding title and conveyance of the subject EMWD Acquisition Facility and EMWD Construction Facility. The provision of a signed Disbursement Request Form from EMWD shall be evidence of such compliance.

B. EMWD Acquisition Facilities may be financed by the Funding Sources, including Bonds, pursuant to the JCFA. There is no requirement that the City Facilities or City Fees be paid first before financing EMWD Acquisition Facilities. The amount and timing of the financing of the EMWD Acquisition Facilities shall be in the discretion of the Owner.

C. The City understands and agrees that (i) the Owner will be constructing EMWD Facilities prior to the availability of the Funding Sources that will be used to pay for such EMWD Facilities, (ii) EMWD will be inspecting such EMWD Facilities and processing and completing Disbursement Request Forms for the payment on such EMWD Facilities with knowledge that there may be insufficient Funding Sources available at such time, (iii) the EMWD Facilities may be conveyed to and accepted by EMWD when there are insufficient Funding Sources to pay the Purchase Prices of such EMWD Facilities, and (iv) in any such case, the payment of any approved Disbursement Request Forms for the Purchase Prices of such EMWD Facilities will be deferred until there are sufficient Funding Sources available to pay the Purchase Prices of such EMWD Facilities, at which time the City will make such payments in accordance with this Acquisition Agreement. At all times, the Owner will be constructing such EMWD Facilities with the expectation that the Purchase Prices for such EMWD Facilities will be paid from the Funding Sources. The conveyance of EMWD Facilities to EMWD prior to receipt of the Purchase Prices for such EMWD Facilities shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such EMWD Facilities.

Section 11.02 EMWD Fees.

A. EMWD Fees shall be paid from the Funding Sources. EMWD Fees paid in advance of the availability of Funding Sources shall be deemed deposits and shall be reimbursed to the Owner in accordance with the EMWD JCFA following the funding of such EMWD Fees from the Funding Sources. EMWD Fees shall be funded from the Funding Sources, to the extent available, pursuant to the Disbursement Request Form set forth as Exhibit D in the EMWD JCFA. Upon receipt of a fully-executed Disbursement Request Form, the City shall pay the amount so requested from the available Funding Sources. With respect to any EMWD Fees funded out of the Funding Sources, the Owner shall comply with the provisions of the EMWD JCFA. The provision of a signed Disbursement Request Form from EMWD shall be evidence of such compliance.

B. EMWD Fees may be financed by the Funding Sources, including Bonds, pursuant to the JCFA. There is no requirement that the City Facilities or City Fees or EMWD Fees be paid first before financing EMWD Fees. The amount and timing of the financing of the EMWD Fees shall be in the discretion of the Owner.

C. The Owner or merchant builder may pay EMWD Fees (as deposits) prior to the availability of Funding Sources to pay such EMWD Fees. Any EMWD Fees paid (as deposits) by the Owner or a merchant builder shall be made with the understanding that such

deposits will be returned from the Funding Sources if, and when, such Funding Sources become available. The payment of deposits prior to the availability of the Funding Sources shall not be construed as a dedication or gift of the EMWD Fees, or a waiver of the return of the deposits, it being the intention that the EMWD Fees be paid by the Funding Sources to the extent of the Funding Sources. Prior to the reimbursement of any EMWD Fees to the Owner which were paid by third party merchant builders, the Owner shall provide to the City proof of assignment to the Owner of such reimbursement.

ARTICLE XII. MISCELLANEOUS

Section 12.01 Limited Liability of City. The Owner agrees that any and all obligations of the City arising out of or related to this Acquisition Agreement are special and limited obligations of the City and the City's obligations to make any payments hereunder are restricted entirely to the moneys, if any, from the Funding Sources. No member of the City Council, or City staff member, employee or agent shall incur any liability hereunder to the Owner or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 12.02 Audit. The Director and/or the Finance Director or other finance officer of the City shall have the right, during normal business hours and upon the giving of two (2) Business Days prior written notice to the Owner, to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner in the construction of the City Facilities to be funded with the Funding Sources, and any bids taken or received for the construction thereof or materials therefor.

Section 12.03 Attorney's Fees. In the event that any action or suit is instituted by either party against the other arising out of this Acquisition 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 attorneys' fees.

Section 12.04 Notices. Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to any party hereto shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (with telecopy or facsimile confirmation obtained), or seventy-two hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

City:	City of Murrieta 1 Town Square Murrieta, CA 92562 Attention: City Manager
Owner:	Discovery Village LLC c/o Argent Management 2646 Dupont Dr., Suite 60 #520 Irvine, CA 92612 Attention: Travis Devan

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

Section 12.05 Severability. If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

Section 12.06 Successors and Assigns. This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The Owner may not assign its rights or obligations hereunder except with the prior written approval of the City Manager, or his designee, which approval shall not be unreasonably withheld, provided such assignment is in whole. Notwithstanding the preceding sentence, the Owner may assign its rights and obligations hereunder as security to lenders for the purpose of obtaining loans to finance development within the CFD, but no such assignment shall release the Owner from its obligations hereunder to the City and the CFD, which the Owner shall remain obligated to perform itself. The Owner shall provide written notice to the City of any assignment of this Agreement as security for lenders.

Section 12.07 Other Agreements. The obligations of the Owner hereunder shall be those of a party hereto and not as an owner of property in the CFD. Nothing herein shall be construed as affecting the City's or the Owner's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development of the lands in the CFD. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

Section 12.08 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition 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 Acquisition Agreement thereafter.

Section 12.09 Merger. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

Section 12.10 Binding on CFD. The City Council of the City, acting as the legislative body of the CFD, shall perform all parts of this Acquisition Agreement which require performance on the part of the CFD.

Section 12.11 Amendment. This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the City and the Owner.

Section 12.12 Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 12.13 Governing Law. This Acquisition Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State.

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

CITY:

CITY OF MURRIETA
For the City of Murrieta Community Facilities
District No. 2025-3 (Discovery Village)

By: _____
City Manager

OWNER:

DISCOVERY VILLAGE LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

Exhibit “A”

**PUBLIC FACILITIES AND DISCRETE COMPONENTS ELIGIBLE TO BE FINANCED
BY CITY OF MURRIETA COMMUNITY FACILITIES DISTRICT 2025-3¹**

Facility	Discrete Component
<u>CITY FACILITIES</u>	
1. City Fees	a. Law Enforcement b. Fire Facilities c. Streets and Bridges d. Traffic Signals e. Storm Drainage f. General Facilities g. Park Land Facilities h. Community Center i. Public Library
2. Storm Drainage	None
3. Street Improvements	None
4. Landscaping/Fencing/Signage	None
5. Design & Permit Fees @ 15%	None
<u>EMWD FACILITIES</u>	
6. EMWD Fees	a. Sewer Treatment Plant Capacity Charge b. Water Financial Participation Charge c. Water Supply Development Fee d. (MARS) Area B
7. Sanitary Sewer	None
8. Domestic Water	None
9. Design & Permit Fees	None

¹ The description of the Facilities and Discrete Components set forth in this Exhibit “A” are preliminary in some cases. The final plans and specifications may show substitutes or modifications to the proposed Facilities and Discrete Components approved by the applicable public agency. In no event shall any Facility or Discrete Component thereof be

eligible for acquisition and/or reimbursement to the extent that such Facility or Discrete Component thereof was previously reimbursed to the Owner out of Funding Sources. Unless agreed to otherwise by the Owner and the City, dry utility cost reimbursements shall not exceed 5% of the proceeds of any series of Bonds.

Exhibit “B”

DESCRIPTION OF PROPERTY

PARCELS 1 AND 2 AND LOTS 4, 5, 6, 7, AND 8, OF THE CITY OF MURRIETA TRACT MAP NO. 38228 RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ON THE 13TH DAY OF DECEMBER, 2024, IN BOOK 499 OF MAPS, AT PAGES 71-78, AS DOCUMENT NO. 2024-0379976.

RIVERSIDE COUNTY ASSESSOR’S PARCEL NUMBER: 392-290-049(P)

Exhibit “C”

FORM OF PAYMENT REQUEST

City of Murrieta Community Facilities District No. 2025-3 (Discovery Village)

The City of Murrieta (the City”) and Discovery Village LLC (“Owner”) are parties to the Acquisition Agreement, dated as of _____, 2025 (the “Acquisition Agreement”). Capitalized undefined terms use herein shall have the meanings ascribed thereto in the Acquisition Agreement. Pursuant to the Acquisition Agreement, Owner hereby requests confirmation that the City Facilities (or Discrete Components) described in Attachment A attached hereto (the “City Facilities or Discrete Components”) is [Complete] [Substantially Complete] and hereby further requests approval of the Purchase Price of the City Facilities or Discrete Components. In connection with this Payment Request, Owner hereby represents and warrants to the City as follows:

(a) The person executing this Payment Request on behalf of Owner is qualified to execute this Payment Request on behalf of Owner and knowledgeable as to the matters set forth herein.

(b) Owner has submitted or submits herewith to the Director as-built drawings or similar plans and specifications for the City Facilities or Discrete Components for which payment is requested, and such drawings or plans and specifications, as applicable, are true, correct and complete; provided, however, that if certification is being requested that such City Facilities or Discrete Components is Substantially Complete, such drawings or plans and specifications need not be submitted to the Director until certification is being requested that such City Facilities or Discrete Components is complete.

(c) Each of the City Facilities or Discrete Components described in Attachment A has been constructed in accordance with the Plans therefor, and in accordance with all applicable City standards and the requirements of the Acquisition Agreement, and the as-built drawings or similar Plans and specifications referenced in paragraph (b) above.

(d) The true and correct Actual Cost of each City Facilities or Discrete Components is set forth in Attachment A.

(e) Owner has submitted or submits herewith to the City Engineer invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City Engineer to verify the Actual Cost of each City Facility or Discrete Component for which payment is requested.

Owner hereby declares that the above representations and warranties are true and correct.

Owner hereby requests that the Purchase Price be paid to the Person or Persons, in the amounts, set forth in Attachment B hereto.

Date:

DISCOVERY VILLAGE LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

APPROVED FOR PAYMENT

Date:

CITY OF MURRIETA

By: _____

Name: _____

Title: _____

ATTACHMENT A

City Facilities or Discrete Components	Actual Cost	Purchase Price
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Total Purchase Price to be Paid:

ATTACHMENT B

PURCHASE PRICE PAYMENT INSTRUCTIONS