

File ID: 2026-00849

6/9/2026

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**Enter into a Joint Community Facilities Agreement with the California Municipal Finance Authority and Approving Form Acquisition Agreement for Bond Opportunities for Land Development Program**

File ID: 2026-00849

**Location:** Citywide

**Recommendation:** Adopt a **Resolution** authorizing the City Manager or designee to enter into a Joint Community Facilities Agreement (JCFA) with the California Municipal Finance Authority (CMFA) and approving a form Acquisition Agreement for use with the CMFA's Bond Opportunities for Land Development Program (BOLD Program) for community facilities districts.

**Contact:** Brent Mueller, Senior Development Project Manager, (916) 808-5715, bmueller@cityofsacramento.org; Eric Frederick, Special Districts Manager, (916) 808-5129, efrederick@cityofsacramento.org; Department of Finance

**Presenter:** None

**Attachments:**

- 1-Description/Analysis
- 2-Resolution
- 3-Exhibit A: Joint Community Facilities Agreement
- 4-Exhibit B: Form Acquisition Agreement

**Description/Analysis**

**Issue Detail:** On April 8, 2025, Council adopted Resolution No. 2025-0092, authorizing the City to join the BOLD Program so that small development projects could utilize a pooled tax-exempt bond financing program for development impact fees and public infrastructure improvement costs, such as roads, water, sewer, storm drainage, and parks for commercial, industrial, retail, and multi- and single-family residential developments. Joining the BOLD Program was recommended by the development community during a Streamline Sacramento meeting on February 27, 2025.

The Bold Program is an economic-development tool used throughout the State to finance public infrastructure required for new development. The BOLD Program is offered by CMFA, a joint powers agency that works on behalf of its members to facilitate economic development in local communities

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throughout the State. The City is already a member of CMFA.

The BOLD Program offers a means to finance new or continuing construction of infrastructure and public facilities through bonds CMFA issues as an alternative to issuance of land-secured bonds directly by a member public entity. BOLD is designed to help local government municipalities, schools and land developers throughout the State work together to cost effectively finance public infrastructure projects and development fees.

Under the BOLD Program, bonds are issued by a community facilities district (CFD) formed by CMFA under the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 et seq.) (Act). The Act offers financing flexibility and is commonly used by cities, schools and other local agencies throughout the State to generate funds for the payment of public facilities, including development fees for facilities. Pursuant to Section 53316.2 of the Act, a JCFA between CMFA and the City is required if bonds issued by a CFD formed by CMFA are to be used to fund City infrastructure. The JCFA is included as Exhibit A to the attached Resolution.

In addition, if a property owner/developer utilizes the BOLD Program to finance the acquisition of public facilities, an Acquisition Agreement must be entered into between the City and the participating property owner/developer. This Acquisition Agreement provides the terms and conditions under which financing for public capital improvements will be provided and to establish the procedure for disbursement of bond proceeds to pay for completed facilities. A form of the Acquisition Agreement is included as Exhibit B to the attached Resolution. Staff recommends this Acquisition Agreement be approved as to form for use with respect to any improvements to be constructed by a participating developer that requests financing as part of its BOLD Program application and for which the City will acquire such improvements after they are completed.

**Policy Considerations:** The BOLD Program supports the City's goal of improving development related processes with the overarching goal of increasing the supply and decreasing the cost of housing by offering development projects a cost-effective way to finance public infrastructure projects and development fees.

**Economic Impacts:** None.

**Environmental Considerations:** This report concerns the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and therefore does not constitute a "project" per Section 15378(b)(4) of the California Environmental Quality Act (CEQA) Guidelines and is not subject to the provisions of CEQA (CEQA Guidelines, §15060(c)(3).)

Included in the attached Resolution is a form of Acquisition Agreement. Before an Acquisition

Agreement is executed for any specific project, CEQA review shall be completed for improvements included in the agreement. Further, no developer projects or definitive transaction documents regarding construction of such projects shall be deemed to be approved, until after (i) the proposed project is reviewed in accordance with the requirements of CEQA, and (ii) any additional conditions or changes to the project based on the CEQA review have been resolved in a manner acceptable to the City.

**Sustainability:** Not applicable.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** Participation in the BOLD Program gives the City another means to offer financing of impact fees and public infrastructure with competitive interest rates, lower financing costs, and minimal City staff costs. The City currently participates in the Statewide Community Infrastructure Program (SCIP) which offers similar financing options for the construction of public infrastructure and payment of development impact fees to the development community. The JCFA and Acquisition Agreement are needed to facilitate BOLD Program financing.

**Financial Considerations:** There is no impact to the General Fund if the City Council adopts this resolution. All costs and expenses related to the formation, issuance of bonds and ongoing administration for any CFD formed by the BOLD Program are the responsibility of CMFA and there is no liability or fiscal impact on the City. The City can be reimbursed for any staff time expended on the program, and BOLD Program financing will not affect the dollar amount of development impact fees to be collected for each project.

**Local Business Enterprise (LBE):** Not applicable.

## RESOLUTION NO. 2026-

Adopted by the Sacramento City Council

June 9, 2026

### **Enter into a Joint Community Facilities Agreement with the California Municipal Finance Authority and Approving Form Acquisition Agreement for the Bond Opportunities for Land Development Program**

#### **BACKGROUND**

- A. On April 8, 2025, per Resolution No. 2025-0092, the City Council approved the City's inclusion in the California Municipal Finance Authority's (CMFA) Bond Opportunities for Land Development Program (BOLD Program), allowing the CMFA to establish community facilities districts (CFDs) pursuant to the Mello-Roos Community Facilities Act of 1982 (California Government Code Section 53311 et seq.). Accordingly, the CMFA may create CFDs to, among other things, finance public improvements necessary to meet the increased demands placed upon local agencies as a result of development.
- B. Under California Government Code Section 53316.2, the CMFA may form a CFD to, among other things, finance the City Infrastructure in connection with new development in the City and issue bonds, the proceeds of which are eligible to fund City Infrastructure, provided the CMFA and the City enter into a Joint Community Facilities Agreement (JCFA). The JCFA is attached to this resolution as Exhibit A.
- C. Attached to this resolution as Exhibit B is a proposed form Acquisition Agreement (Acquisition Agreement), to be approved as to form for use with respect to any improvements to be constructed by a participating developer for which the developer requests financing as part of its BOLD Program application and for which the City will acquire such improvements after they are completed.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL  
RESOLVES AS FOLLOWS:**

- Section 1     The City Council finds and determines that the background statements A through C are true and correct.
- Section 2     The Joint Community Facilities Agreement attached hereto as Exhibit A is hereby approved, and the City Manager or City Manager’s designee (the “Authorized Officer”) is authorized to execute the JFCA on behalf of the City.
- Section 3     The form of the Acquisition Agreement attached hereto as Exhibit B is hereby approved, and the Authorized Officer is authorized to execute the Acquisition Agreement on behalf of the City in substantially that for, with minor, non-substantive changes to the Acquisition Agreement permitted if approved by the City Attorney’s Office and the CMFA’s bond counsel.
- Section 4     Exhibits A and B are part of this resolution.

**Table of Contents:**

- Exhibit A – Joint Community Facilities Agreement  
Exhibit B – Form Acquisition Agreement

## CMFA BOLD PROGRAM

### JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2026 ("Effective Date"), is made and entered into by and between the California Municipal Finance Authority, a joint exercise of powers authority duly organized and existing under the Constitution and laws of the state of California (the "CMFA"), and the City of Sacramento, a municipal corporation and charter city (the "City," and together with CMFA, the "Parties").

#### *BACKGROUND:*

WHEREAS, CMFA has conducted, or intends to conduct, proceedings under the Mello-Roos Community Facilities Act of 1982 (California Government Code section 53311 et seq.) (the "Act") to form one or more community facilities districts (each, a "CFD") to finance certain public facilities needed for new development ("City Facilities") and/or development impact fees owed for new development ("City Fees") authorized to be financed under the Act as part of its Bond Opportunities for Land Development ("BOLD") program (the City Facilities and City Fees are referred to herein together as the "City Infrastructure"), as further described in Exhibit A hereto;

WHEREAS, under Section 53316.2 of the Act, CMFA may form each CFD to, among other things, finance the City Infrastructure in connection with new development in the City and issue bonds, the proceeds of which are eligible to fund City Infrastructure, provided CMFA and the City enter into a joint community facilities agreement such as this Agreement;

WHEREAS, the City Infrastructure financed for each CFD shall be described in the resolution of formation for the applicable CFD;

WHEREAS, CMFA intends to utilize the proceeds of the sale of special tax bonds (the "Bonds") and special taxes of each CFD to finance some or all of the City Infrastructure, which may include City Fees;

WHEREAS, City is willing to cooperate with CMFA in accomplishing the financing of the City Infrastructure which will pay for facilities authorized to be financed by each CFD, and to confer upon the CMFA full power to provide financing for the City Infrastructure in the event that proceeds of special taxes and/or bonds in each CFD become available and are utilized for such purpose;

WHEREAS, this Agreement is made under the authority of Section 53316.2 of the Act; and

WHEREAS, in consideration for the mutual undertakings of the Parties stated herein, the Parties agree as follows:

#### *AGREEMENT:*

1. Administration of CFD and Issuance of Bonds by CMFA. CMFA shall administer each CFD, including employing and paying all consultants, annually levying the special tax and paying and administering the Bonds, and complying with all state and federal requirements appertaining to the proceedings establishing each CFD and issuing and using the proceeds of

the Bonds, including the requirements of the United States Internal Revenue Code of 1986, as amended (the "Code"). The City shall cooperate in executing and delivering such certifications and agreements as may reasonably be required in order for bond counsel to CMFA to conclude that interest on the Bonds will be excluded from gross income under the Code, if applicable.

2. Agreement to Hold Available Moneys. CMFA shall hold or cause to be held the special taxes and/or Bond proceeds from each CFD (collectively, "Available Amounts").

3. Disbursements of Bond Proceeds. Available Amounts shall be disbursed to the developer of the property in each CFD (the "Developer") upon approval by the City, in substantially the form attached hereto as Exhibit B and executed by the City Manager, City Engineer, or a designee of the foregoing (each, an "Authorized Officer").

CMFA and its designees, including any trustee or fiscal agent holding Available Amounts, may conclusively rely on such requisitions for purposes of making such disbursements.

Notwithstanding anything in this Agreement to the contrary, the Developer shall pay City Fees to the City at the time each is due, which City Fees shall be held by the City until Bond proceeds are available. Once Bond proceeds are available, the Fees previously paid will be eligible for reimbursement, as and to the extent that Bonds proceeds have become available, utilizing the Bond proceeds as the source of reimbursement. Developer shall not be entitled to reimbursement of City Fees from any other sources except the Available Amounts, as and to the extent they become available.

4. Use of City Fees. City shall utilize the City Fees in accordance with the Sacramento City Code requirements for use of such City Fees and in accordance with any applicable state laws. City acknowledges that, subject to approval of disbursements as set forth in Section 3 above, the City Fees may be financed through each CFD, and agrees to allow CMFA, or its designee, to finance the City Fees from time to time paid by the Developer, through the issuance of one or more series of Bonds.

5. Term of this Agreement. This Agreement shall be in full force and effect from this date until its termination by mutual written agreement of the Parties. CMFA agrees to terminate this Agreement upon request of the City and upon delivery to CMFA of an opinion by bond counsel to the effect that the termination of this Agreement will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

6. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. The Parties agree this document may be executed with electronic signatures.

[Signature Page Follows]

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their authorized representatives as of the Effective Date stated above.

CALIFORNIA MUNICIPAL  
FINANCE AUTHORITY

CITY OF SACRAMENTO

By: \_\_\_\_\_  
Name: Edward J. Becker  
Title: Executive Director

By: \_\_\_\_\_  
Name:  
Title:

Approved as to Form:

By: \_\_\_\_\_  
Senior Deputy City Attorney

Attest:

By: \_\_\_\_\_  
Assistant City Clerk

## **EXHIBIT A**

### **DESCRIPTION OF ELIGIBLE CITY FACILITIES AND CITY FEES**

Any public capital improvements, facilities and equipment to be owned and/or operated by the City, including impact fees payable to the City for the construction and/or acquisition of public capital improvements, facilities and equipment to be owned and/or operated by the City eligible to be financed pursuant to the Act.

**EXHIBIT B**

**REIMBURSEMENT AUTHORIZATION FORM**

To:

California Municipal Finance Authority  
2111 Palomar Airport Road, Suite 320  
Carlsbad, California 92011  
Email: \_\_\_\_\_

Re: **BOLD Program - Request for Disbursement of Bond Proceeds**  
Community Facilities District No. 20 - (City of Sacramento -  
\_\_\_\_\_)

The undersigned, a duly authorized officer of the City of Sacramento (the "City") hereby approves a disbursement of proceeds of the above-referenced bonds in the amount and for the purpose set forth below, and certifies that the amounts of development impact fees financed thereby and listed below have been or will be spent by the City for listed public capital improvements as of the date indicated below or within 5 days thereafter:

<u>Subaccount(s)</u>	<u>Amount(s)</u>
Community Facilities District No. 20 - _____ (City of _____ - _____)	\$

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Total: \_\_\_\_\_

Wiring Instructions: \_\_\_\_\_

The undersigned hereby additionally certifies as follows:

1. These funds have been or will be used to acquire and/or construct certain public facilities needed for new development which are to be owned by the City (the "Improvements"), and this disbursement is not being made for the purpose of reinvestment.
2. None of the expenditures for which payment is requested have been reimbursed previously from other sources of funds.

3. The amounts being disbursed pursuant to this request are being used to finance or refinance the Improvements. City will own, and for the entire useful life of such Improvements reasonably expects to own, all of such Improvements. The Improvements consist of the following:

[Describe the improvements]

4. To the extent any of such Improvements are sold to an entity that is not a state or local government, City will seek the advice and approval of bond counsel to CMFA for the BOLD program prior to any such sale. City will not allow any of such Improvements to be used (for example, by lease or other contract) in the trade or business of any nongovernmental persons (other than in their roles as members of the general public). All of such Improvements will be used in the performance of essential governmental functions of City or another state or local government. The average expected useful life of such Improvements is at least \_\_\_\_ years. The representations and covenants contained in this paragraph are intended to support the conclusion that the interest paid on the bonds issued to finance the Improvements is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code").

Dated: \_\_\_\_\_

CITY OF SACRAMENTO

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

## CMFA BOLD PROGRAM

### ACQUISITION FUNDING AGREEMENT

*Relating to:*

**California Municipal Finance Authority**  
**Community Facilities District No. 20 \_\_\_ - \_\_\_**  
**(City of Sacramento – \_\_\_\_\_)**

THIS ACQUISITION AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 20\_\_\_ among \_\_\_\_\_ (the “**Developer**”), the California Municipal Finance Authority, a joint exercise of powers agency organized and existing under the laws of the State of California (the “**Authority**”), and the City of Sacramento, a municipal corporation and charter city (the “**City**”).

### RECITALS

A. On \_\_\_\_\_, 20\_\_\_, the Board of Directors of the Authority adopted Resolution No. \_\_\_ - \_\_\_ (the “**Resolution of Formation**”) forming California Municipal Finance Authority Community Facilities District No. 20\_\_\_ - \_\_\_ (City of \_\_\_\_\_ – \_\_\_\_\_) (the “**CFD**”), under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California (the “**Act**”), and reference is hereby made to the map of the CFD set forth in Exhibit A.

B. The Authority is authorized to levy special taxes upon land within the CFD and issue bonds (the “**Bonds**”) in one or more series to provide financing for infrastructure and other public capital improvements to be owned by the City.

C. In connection with the CFD and Bonds, the Developer applied to the Authority and the City for the financing of certain public capital improvements as further described in the Resolution of Formation (the “**Improvements**”) to be owned and operated by the City. Attached hereto as Exhibit B is a description of certain Improvements to be constructed by or on behalf of the Developer and acquired by the City (the “**Acquisition Improvements**”) and certain Improvements to be owned by the City and funded with fees financed pursuant to this Agreement (the “**Financed Fees**”).

D. The Authority is authorized to levy special taxes and issue Bonds, in one or more series, to fund, among other things, all or a portion of the costs of the Improvements. Collectively, the portion of the proceeds of the special taxes (including prepayments) and Bonds allocable to the cost of the Improvements, together with interest earned thereon, is referred to herein as the “**Available Amount**.”

E. The parties anticipate that pursuant to this Agreement, the Developer may be reimbursed from the Available Amount for costs of the Acquisition Improvements and, subject to the terms and conditions of this Agreement, the City will acquire the completed Acquisition Improvements.

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

G. In consideration of the formation of the CFD and the issuance of the Bonds, and the mutual covenants, undertakings and obligations set forth below, the City, the Authority and the Developer agree as stated below.

H. Attached to this Agreement are Exhibit A (Map of CFD Boundary), Exhibit B (Description of Improvements and Estimated Costs), Exhibit C (Actual Cost Certificate), Exhibit D (Disbursement Request Form), and Exhibit E (Payment Request Form), all of which are incorporated into this Agreement for all purposes.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Incorporation of Recitals and Exhibits. The foregoing Recitals are true and correct and are hereby incorporated into and form a material part of this Agreement.

2. Effect on Other Agreements. Nothing in this Agreement shall be construed as affecting the Developer's or the City's duty to perform their respective obligations under any other agreements (including the Development Documents, defined below), land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the City's rights and obligations under this Agreement.

3. Definitions. As used herein, including the Recitals and all Exhibits, the following capitalized terms shall have the meanings ascribed to them below:

**"Acceptable Title"** means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except (i) those items which are reasonably determined by the City Representative not to interfere with the intended use and therefore are not required to be cleared from the title and (ii) the lien of the CFD or any other community facilities district or assessment district provided that the property owned by the City is exempt from such taxation or assessment.

**"Acquisition and Project Fund"** means the "Acquisition and Project Fund" established and held by the Authority pursuant to the Resolution of Formation and Section 5.2 hereof for the purpose of financing the Improvements.

**"Acquisition Improvement"** means a public capital improvement, including an Eligible Portion thereof as described in Section 5.6 hereof, described in Exhibit B, as may be amended from time to time, to be constructed by or on behalf of the Developer.

**"Acquisition Price"** means the total amount eligible to be paid to the Developer from the Available Amount upon acquisition of an Acquisition Improvement or Eligible Portion thereof, as provided in Sections 5.6 and 5.7, not to exceed the Actual Cost of the Acquisition Improvement,

or in the case of Financed Fees, the actual amount paid by the Developer, or the amount of a development impact fee to be paid on behalf of the Developer from the Available Amount.

“**Act**” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California.

“**Actual Cost**” means the total paid cost of an Acquisition Improvement or Eligible Portion thereof, as documented by the Developer to the satisfaction of the City and as approved by the City Representative in an Actual Cost Certificate including, without limitation, (a) the Developer’s cost of constructing such Acquisition Improvement or Eligible Portion thereof, as determined by the Administrator, labor, material and equipment costs, (b) the Developer’s cost of designing and engineering the Acquisition Improvement, preparing the plans and specifications and bid documents for such Acquisition Improvement, and the costs of inspection, materials testing and construction staking for such Acquisition Improvement, (c) the Developer’s cost of any performance, payment and maintenance bonds and insurance, including title insurance, required hereby for such Acquisition Improvement, (d) the Developer’s cost of environmental evaluation or mitigation required for such Acquisition Improvement to the extent approved by the City, (e) the amount of any fees, such as permit processing fees but expressly excluding fees not eligible for financing by the Bonds, and (f) the Developer’s construction management costs in an amount not to exceed 5% of the eligible hard construction cost, as determined by the City Representative.

“**Actual Cost Certificate**” means a certificate prepared by the Developer in substantially the form shown in Exhibit C detailing the Actual Cost of an Acquisition Improvement or Eligible Portion thereof, to be acquired hereunder, as may be revised by the City Representative pursuant to Section 5.6.

“**Administrator**” means Francisco & Associates, Inc., as the acquisition consultant and auditor for the Authority.

“**Agreement**” means this Acquisition Funding Agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, by and among the City, the Authority, and the Developer.

“**Authority**” means the California Municipal Finance Authority.

“**Authority Trust Agreement**” means a trust agreement, indenture or fiscal agent agreement entered into by the Authority and an Authority Trustee or fiscal agent in connection with the issuance of a series of Bonds on behalf of the CFD.

“**Authority Trustee**” means the financial institution identified as trustee or fiscal agent in an Authority Trust Agreement.

“**Available Amount**” shall have the meaning assigned to the term in Recital D.

“**Board of the Authority**” means the Board of Directors of the California Municipal Finance Authority.

“**Bonds**” means bonds or other indebtedness issued in one or more series by the Authority that are to be repaid with Special Taxes levied in the CFD.

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

“**CFD**” shall have the meaning assigned to the term in Recital A.

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

“**Developer**” means \_\_\_\_\_, and its successors and assigns.

“**Development Documents**” means, as applicable, one or more of the following: (i) any Development Agreement applicable to the land within the CFD; (ii) an improvement agreement between the Developer and the City concerning an Acquisition Improvement; (iii) improvement plans submitted by the Developer to the City concerning an Acquisition Improvement; or (iv) any other agreement with the City or City condition of development concerning an Acquisition Improvement.

“**Disbursement Request Form**” means a requisition for payment of funds from an Acquisition and Project Fund for Improvements or an Eligible Portion thereof in substantially the form contained in Exhibit D.

“**Eligible Portion**” shall have the meaning ascribed to it in Section 5.6 below.

“**Guidelines**” means the City of Sacramento construction requirements for acquisition of public facilities as further described in Exhibit F.

“**Improvements**” means the Acquisition Improvements and the Financed Fees described in Exhibit B.

“**Installment Payment**” means an amount equal to ninety percent (90%) of the Acquisition Price of an Eligible Portion.

“**Project**” means the development of the property in the CFD or offsite improvements serving property in the CFD, including the design and construction of the Acquisition Improvements and the payment of Financed Fees.

“**Special Taxes**” means annual special taxes, and prepayments thereof, authorized by the CFD to be levied by the Board of the Authority.

“**Tax-Exempt Bonds**” means Bonds the interest on which is intended to be exempt from federal income tax under Section 103 of the Internal Revenue Code of 1986, as amended.

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

4. Purpose; Improvements.

4.1. Purpose. The purpose of this Agreement is to provide financing for the Improvements from the Available Amount.

4.2. Acquisition Improvements. Notwithstanding anything to the contrary, the Acquisition Improvements are authorized to be financed by Bonds and Special Taxes, and may be located anywhere inside or outside the CFD.

4.3 Guidelines for Special District Acquisition Projects. State law requires that all Acquisition Improvements not completed prior to the formation of the CFD shall be constructed as if they were constructed under the direction and supervision, or under the authority, of the City. In order to assure compliance with those provisions, except for any contracts related to Acquisition Improvements completed prior to the formation of the CFD, Developer agrees to comply with the requirements set forth in Exhibit F hereto with respect to the bidding and contracting for the construction of the Acquisition Improvements, which are referred to herein as the Guidelines. The Developer agrees that all the contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California. The Developer's indemnification obligation set forth in Section 6.1 of this Agreement shall also apply to any alleged failure to comply with the requirements of this Section, and/or applicable State laws regarding public contracting and prevailing wages.

5. CFD.

5.1. Establishment of CFD. The City previously authorized the Authority to form one or more community facilities districts within the territory of the City, subject to certain conditions being met. Subsequently, Developer requested the Authority to provide financing of the Improvements through the establishment and authorization of the CFD. The CFD has been established by the Authority, and through the successful landowner election held in conformance with the Act, the Board of the Authority is authorized to levy the Special Taxes and to issue the Bonds to finance the Improvements. Developer, the City and the Authority agree to reasonably cooperate with one another in the completion of the financing through the issuance of the Bonds in one or more series.

5.2. Deposit and Use of Available Amount.

5.2.1. Acquisition and Project Fund Held by Authority. Prior to the issuance of the first series of Bonds, Special Taxes collected by the Authority (including from prepayments of Special Taxes) shall be deposited in the Acquisition and Project Fund established by the Authority and may be disbursed to pay the Acquisition Price of Acquisition Improvements, or Eligible Portions thereof, and pay or reimburse Financed Fees in accordance with this Agreement. All funds in the Acquisition and Project Fund shall be considered a portion of the Available Amount, and upon the issuance of the first series of Bonds, the Acquisition and Project Fund shall be transferred to the Authority Trustee to be held in accordance with the Authority Trust Agreement.

5.2.2. Acquisition and Project Fund Held by Trustee. Upon the issuance of the first series of Bonds, the Authority will cause the Authority Trustee to establish and maintain a separate Acquisition and Project Fund for the purpose of holding all funds derived for the financing of the Improvements. Separate subaccounts may be established for each issue of Bonds. All earnings on amounts in an Acquisition and Project Fund shall remain in such Acquisition and Project Fund for use as provided herein and pursuant to the applicable Authority Trust Agreement. Money in

each and every Acquisition and Project Fund shall be available to respond to delivery of a Disbursement Request Form pursuant to Section 5.6 and to be paid to the City or its designee or the Developer or its designee to pay the Acquisition Price of the Acquisition Improvements, or Eligible Portion thereof, and to respond to delivery of a Disbursement Request Form pursuant to Section 5.11 to pay or reimburse Financed Fees, all to the extent the Acquisition Price has not previously been paid from the Available Amount or the Financed Fees have not previously been paid or reimbursed. Upon completion of all of the Improvements and the payment of all costs thereof, any remaining funds in each Acquisition and Project Fund (less any amount determined by the City as necessary to reserve for claims against the account) (i) shall be applied to pay the costs of any additional Acquisition Improvements eligible for acquisition or Financed Fees eligible to be paid with respect to the Project as approved by the Authority and, to the extent not so used, (ii) shall be applied by the Authority to call Bonds or to reduce Special Taxes as the Authority shall determine.

5.3. Letting and Administering Design Contracts. The Developer has awarded and administered, or will award and administer, engineering design contracts for the Acquisition Improvements. All eligible expenditures for design engineering and related costs in connection with the Acquisition Improvements shall be reimbursed upon a request for payment made pursuant to Section 5.6 hereof, as reviewed and approved by the City Representative. Requests for reimbursement for solely design engineering and related costs prior to construction of an Acquisition Improvement shall not exceed 10% of the estimated construction costs of said Acquisition Improvement, as reviewed and approved by the City Representative. Requests received in excess of 10% of the estimated construction costs of said Acquisition Improvement shall include justification and related documentation for review, with determination of costs in excess of 10% to be made by the City Representative based on the extent to which hard improvements have been completed or are reasonably expected to be completed. Reimbursement may also include certain indirect costs of the Developer related to design and construction of the Acquisition Improvements; provided that the City may determine and/or limit the amount to be so reimbursed on the basis of detailed itemizations of costs provided by Developer and the decision of the City shall be final.

Where a specific contract has been awarded for design or engineering work relating solely to an Acquisition Improvement or Acquisition Improvements, one hundred percent (100%) of the costs under the contract will be allocated to that Acquisition Improvement.

Where a specific contract has been awarded for design or engineering work relating to an Acquisition Improvement and private improvements, the eligible percentage allocated to the Acquisition Improvement shall be determined by the Administrator, for review and approval by the City Representative in his/her sole discretion.

Contracts for the construction of each Acquisition Improvement for which a Request for Payment is submitted shall comply with the Guidelines included as Exhibit F.

5.4. Federal Tax Law Compliance for Tax-Exempt Bonds. To the extent Tax-Exempt Bonds are issued, the City will need to assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to not qualify for or lose the tax-exempt status. To that end, the following representations and covenants are applicable.

The City and the Developer represent and warrant to the Authority that they reasonably expect the proceeds of any Tax-Exempt Bonds issued by the Authority will be spent on the acquisition and/or construction of public capital improvements within three years of the date of

issuance of each such series of Tax-Exempt Bonds. The City and the Developer will cooperate with bond counsel to the Authority to supply certification as to the spending expectation as required with respect to the issuance of Tax-Exempt Bonds.

In the event proceeds of Tax-Exempt Bonds are received by the City, such proceeds will be used for the payment of costs of acquisition and construction of the Improvements. No portion of the proceeds of any Tax-Exempt Bonds will be used for reimbursement of expenditures paid by the City prior to the date of issuance of such series of Tax-Exempt Bonds, except for (i) expenditures paid for costs of issuance of the Tax-Exempt Bonds, (ii) preliminary capital expenditures incurred before commencement of acquisition or construction of the Improvements that do not exceed 20% of the portion of the issue price of the Tax-Exempt Bonds, and (iii) capital expenditures that (A) were paid no earlier than 60 days before the date of the adoption of a declaration of intent to reimburse such expenditures from the proceeds of obligations, and (B) are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Improvement is placed in service (but no later than 3 years after the expenditure is paid).

The City will retain its records of all accounting and monitoring it carries out with respect to the expenditure of any Tax-Exempt Bonds for at least 3 years after the Tax-Exempt Bonds mature or are redeemed (whichever is earlier); however, if the Tax-Exempt Bonds are redeemed and refunded, the City will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or redemption of the obligations that refunded the Tax-Exempt Bonds.

5.5. Estimated Cost of Acquisition Improvements. The estimated cost of the Acquisition Improvements is shown in Exhibit B attached hereto. Notwithstanding this estimate, Developer and the City hereby acknowledge and agree that (a) the actual costs to complete the Acquisition Improvements may vary from this estimate, and (b) the Acquisition Price shall never exceed the Actual Cost of any Acquisition Improvement.

5.6. Sale of Acquisition Improvements. The Developer agrees to convey to the City each Acquisition Improvement to be constructed by Developer (including any rights-of-way or other easements necessary for the Acquisition Improvements, to the extent not already publicly owned), when the Acquisition Improvement is completed to the satisfaction of the City. Exhibit B, attached hereto and incorporated herein, contains a list of the Acquisition Improvements. At the time of full completion of each Acquisition Improvement, the Developer shall deliver to the City Representative Title Documents required by the City for the transfer of the Acquisition Improvement where necessary, and record plans (if record plans are not available the Developer shall submit constructed quantities that are verified and stamped by a civil engineer licensed in the State of California).

*Request for Payment.* Following commencement of construction of any Acquisition Improvement, and each 30 days thereafter, or such other dates as are mutually agreeable by the City, the Administrator and Developer, Developer will submit to the Administrator an Actual Cost Certificate for the portion or phase of Acquisition Improvements previously constructed (the "Eligible Portion") and a written request for payment (the "**Request for Payment**") of the Acquisition Price (as determined below) for the Eligible Portion. No "periodic progress" payments shall be made, acquisition shall only occur upon completion of usable Acquisition Improvements, as determined by the City). The Request for Payment shall be made on the form attached hereto as Exhibit C and include such necessary information (including invoices, receipts, worksheets and other evidence of cost as required by the Administrator) in sufficient detail to allow the Administrator and the City to verify the Acquisition Price of such Eligible Portion.

*Determination of Acquisition Price/City Inspection.* Upon submittal of a complete (as reasonably determined by City) Request for Payment, the City shall confirm acceptance of the requested reimbursement amount, which hereinafter is included in the term “**Acquisition Price**”) to be paid for the acquisition from Developer of the Eligible Portion constructed by Developer during said prior period. The Acquisition Price for the Eligible Portion shall include the actual cost of construction (or payment) thereof as determined by the contract prices as set forth in contracts and purchase orders entered into by Developer with its contractors, and suppliers, in accordance with standards and procedures therefore as prescribed and verified by the Administrator.

The City and Administrator shall have thirty (30) days from receipt of a Request for Payment to review and determine the Acquisition Price.

Further, Developer may submit a Request for Payment in advance of bond issuance, however no payment of the Acquisition Price shall be made prior to bond issuance unless funds are available from the collection of Special Taxes.

The Developer shall not submit more than one (1) Request for Payment every 30 days. Upon determination of the Acquisition Price, the Administrator shall promptly notify Developer in writing of such Acquisition Price. In the event that the City Representative or Administrator, during such time period, finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and eligible work, the Administrator shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. Once the Developer delivers the further documentation, the City Representative and Administrator shall have twenty (20) days to review the additional documentation. If the further documentation is still not adequate, the Administrator shall notify the Developer in writing within such twenty-day period and may revise the Actual Cost Certificate to delete any disallowed items and the determination shall be final and conclusive. If only a portion of the Actual Cost requires further documentation, the Administrator shall include the Actual Costs that do not require further documentation in the determination of the Acquisition Price.

Upon determination of the Acquisition Price, the Administrator shall prepare a Disbursement Request Form as shown in Exhibit D for review and approval by the City Representative. The City Representative shall finalize and approve the Disbursement Request Form within ten (10) business days after determination of the Acquisition Price.

*Conditions Precedent to Payment of Acquisition Price/City Inspection.* Payment to the Developer or its designee of the Acquisition Price for an Acquisition Improvement, or for a portion thereof acceptable to the City for reimbursement (a “**Discrete Component**”), from an Acquisition and Project Fund shall in every case be conditioned upon (i) the determination of the Administrator that it has been bid and contracted for in accordance with the Guidelines, (ii) the determination of the Public Works Director that the Acquisition Improvement, or Discrete Component to be paid for, satisfies all City regulations and ordinances and, if payments include a final amount of the Acquisition Price of a particular Acquisition Improvement, the determination that the Acquisition Improvement is in fact completed (i.e., not just a Discrete Component) and such improvement is ready for acceptance by the City, (iii) the Improvement or Discrete Component is substantially complete, and (iv) shall be further conditioned upon satisfaction of the following additional conditions precedent if requested by the Administrator or the City:

(a) The Developer shall have provided the City with the lien releases or other similar documentation satisfactory to the City Representative as evidence that none of the property

(including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvement, to the extent not already publicly owned) comprising the Acquisition Improvement, and the property which is subject to the Special Taxes of the CFD, is subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

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

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

5.7. Payment of Acquisition Price. Within ten (10) business days after receipt of a complete Disbursement Request Form, the Authority, through the Trustee, shall authorize payment for the Eligible Portion of the Acquisition Price then due to Developer to be paid from the Available Amount. If the Payment Request indicates that Developer is withholding from its contractor a retention of a least ten percent (10%) of the contract price for the portion of the constructed Acquisition Improvement, then the full amount of the approved Acquisition Price shall be authorized for payment to Developer; if the Payment Request does not indicate the withholding by Developer of such ten percent (10%) retention, then the amount to be paid to Developer shall be equal to the Acquisition Price, less a retention of ten percent (10%) of the contract price for the Eligible Portion. Upon completion of such Acquisition Improvement in its entirety, including all "Punch List" work, and acceptance of the Acquisition Improvement by the City, the Authority, through the Trustee, shall authorize and shall pay from the Available Amount the balance of the Acquisition Price then due Developer for such Acquisition Improvement, including any 10% progress retention then paid by Developer or any 10% retentions previously retained by Authority with respect thereto.

Payments to Developer shall be payable solely from the Available Amount. The amount to be paid to Developer shall be a reimbursement for actual costs incurred as determined by the Administrator and approved by the City in accordance with this Agreement and shall not exceed the Developer's cost thereof as reasonably determined by the Administrator in consultation with the City to be eligible under the Act to be part of the Acquisition Price of Acquisition Improvement. All portions of the Acquisition Improvement not acquired with the Available Amount shall nonetheless be constructed by the Developer, to the extent required by the project approvals. In the event the Available Amount is insufficient to pay the eligible Acquisition Price, any shortfall shall be the responsibility of the Developer, however Developer may request that all or any portion of such shortfall be reimbursed from additional series of bonds for the District if and when such additional bonds are issued or additional Special Tax proceeds are available, and in such event the deferred amount will be eligible for reimbursement from proceeds of such future bonds or Special Tax proceeds, to the extent funds are available.

5.8. Disbursement Request Form. Upon a determination by the City Representative to pay Financed Fees, the Acquisition Price of an Acquisition Improvement, or to pay an Installment Payment for an Eligible Portion as provided in Sections 5.6 – 5.7 hereof, the City Representative shall, within ten business days after such determination, cause a Disbursement Request Form substantially in the form attached hereto as Exhibit D to be submitted to the Authority Trustee, and the Authority Trustee shall make payment directly to the City or its designee or the Developer or its designee, as appropriate, of the amount pursuant to the applicable Authority Trust Agreement. The Authority, the City and the Developer acknowledge and agree that the Authority Trustee shall make payment strictly in accordance with the Disbursement Request Form and shall not be required to determine whether or not the Acquisition Improvement or Eligible Portion has been completed or what the Acquisition Price may be with respect to the Acquisition Improvement or Eligible Portion. The Authority Trustee shall be entitled to rely on the executed Disbursement Request Form on its face without any further duty of investigation.

5.9. Limitation on Obligations. In no event shall the Authority be required to pay the Developer or its designee more than the Available Amount (available from time to time).

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

5.11 Financed Fees. The Developer shall be entitled to the reimbursement of all Financed Fees paid previously to the applicable agency. In order to receive such reimbursement and fund Financed Fees remaining to be paid within the CFD, the Developer shall complete and provide to the Authority and the Administrator a Payment Request Form in the form attached hereto as Exhibit E. Upon determination of the Acquisition Price, the Administrator shall provide the City Representative with a Disbursement Request Form as shown in Exhibit D for review and approval. The City Representative shall finalize and approve the Disbursement Request Form within ten (10) business days after determination of the Acquisition Price.

6. Indemnity and Insurance.

6.1. Indemnification.

(a) Developer agrees to indemnify, defend and hold the City and Authority, including elective and appointed boards, commissions, officers, agents, employees and consultants (each an "**Indemnified Party**" and collectively the "**Indemnified Parties**"), harmless from and against any and all claims, liabilities, losses, damages or injuries of any kind, including Hazardous Substance Claims (collectively, "**Claims**") arising out of Developer's, or Developer's contractors', subcontractors', agents' or employees', acts, omissions, or operations under this Agreement, including, but not limited to, the construction by the Developer of any Acquisition Improvement, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims are caused by the sole negligence or willful misconduct of an Indemnified Party. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City and Authority, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. Developer shall defend the City as required by California Civil Code Section 2778, and with

counsel reasonably acceptable to the City and Authority. Developer shall have no right to seek reimbursement from City or Authority for the costs of defense.

As used herein, a “**Hazardous Substance Claim**” means any liability, claim, demand, damage, or cost (including reasonable attorneys’ fees, whether for outside counsel or internal counsel to the City or Authority) arising from any death, bodily injury, personal injury, property damage, economic loss, damage to the environment, or violation of law that—(A) relates to the use, storage, treatment, transportation, release, or disposal of any hazardous substances by any person or entity (except persons or entities acting on the City’s or Authority’s behalf or under the City’s or Authority’s control) on, under, about, or around the portion of the land on which any of the Acquisition Improvements or the easements that are required to be or are transferred to City are located; and (B) occurs on or before the date the land or the Acquisition Improvements are conveyed to City under this Agreement.

(b) The aforementioned indemnity shall apply regardless of whether or not City has approved plans and/or specifications for the Acquisition Improvements and regardless of whether any insurance, workers compensation, disability or other employee benefit acts or terms required under this Agreement are applicable to any Claims. The City does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer’s obligations to indemnify the City and Authority shall survive the expiration or termination of this Agreement. Developer agrees to obtain and forward to the City executed indemnity agreements in favor of the City with provisions identical to those set forth here in this section from each and every construction contractor involved by, for, with or on behalf of Developer in the performance of this Agreement. In the event Developer fails to obtain such indemnity obligations from others as required here, Developer agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(c) The Developer’s obligations under sections (a) and (b) above will survive the termination of this agreement until the date that is two years after the City’s written acceptance of the Improvement, except that sections (a) and (b) above will remain in effect with respect to any claim made before that date and for claims that relate directly or indirectly to such a claim. Notwithstanding those time periods, the obligations shall survive longer as to liability the Developer might have under applicable law to the extent the Developer is a contaminator of the land upon which the Improvements are constructed.

6.2. Insurance. For an Acquisition Improvement, Developer shall maintain insurance in amount and substance as required by the City under any Development Documents applicable to such Acquisition Improvement. Before construction commences on any Acquisition Improvements, Developer must coordinate and confirm the insurance requirements specified by the City’s Special Districts Manager.

7. Breach of Agreement; Opportunity to Cure; Remedies.

7.1. Notice of Breach and Default. The occurrence of any of the following constitutes a breach and default of this Agreement:

(1) Developer refuses or fails to complete any Acquisition Improvement within the time set forth in the applicable Development Documents or abandons an Acquisition Improvement.

(2) Developer assigns the Agreement to an unaffiliated entity without the prior written consent of City.

(3) Developer is adjudged bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed in the event of Developer's insolvency.

(4) Developer or Developer's contractors, subcontractors, agents or employees, fail to comply with any terms or conditions of this Agreement to which the Developer or Developer's contractors, subcontractors, agents, or employees are subject.

(5) Any delay in the construction of an Acquisition Improvement or repairs as set forth in the applicable Development Documents, which in the reasonable opinion of the City Representative, endangers public or private property. Any such assertion of opinion of the City shall be final.

(6) Developer fails to perform any obligation under this Agreement. The City must serve written notice of breach and default upon Developer (and any surety that has provided bonds with respect to an Acquisition Improvement). Developer shall have 30 days to cure the breach and default described in the written notice of breach and default.

7.2. Breach of Agreement; Performance by City. If the City gives Developer notice under Section 7.1 and Developer fails to cure the breach and default described in the written notice prior to the expiration of the applicable cure period, a "**Developer Event of Default**" shall be deemed to have occurred. In the event of the occurrence and continuation of a Developer Event of Default, the City may exercise the remedies described in Section 7.1 and in Section 7.3 below, including the right of the City to proceed to complete the Acquisition Improvement by contract or other method the City considers advisable, at the sole expense of Developer, however City is under no financial or performance obligation to complete the Acquisition Improvement. Where funds are currently available from the collection of Special Taxes said funds shall be used first for completion of the Acquisition Improvements in the event that the City elects to complete the Acquisition Improvement. In the event of the occurrence and continuance of a Developer Event of Default, (i) Developer, immediately upon demand, shall pay the costs and charges related to the Acquisition Improvement and any subsequent repairs, provided, upon such payment, Developer shall be entitled to payment for the Acquisition Improvement from the Available Amount, (ii) City, without liability for doing so, may take possession of and utilize in completing the Acquisition Improvement and repairs, if any, such materials and other property belonging to Developer as may be on or about the Property and necessary for completion of the Acquisition Improvement, and (iii) the City may draw upon any surety bonds required by the applicable Development Documents.

If the Developer gives the City notice under Section 7.1 and City fails to cure the breach and default described in the written notice prior to the expiration of the applicable cure period, a "**City Event of Default**" shall be deemed to have occurred.

7.3. Remedies. It is acknowledged by the parties that the City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Developer of any (i) moneys owing to the Developer hereunder, or (ii) moneys paid by the Developer pursuant to the provisions hereof which are misappropriated or improperly obtained, withheld or applied by the City.

In general, upon the occurrence and continuation of a Developer Event of Default or a City Event of Default, the applicable party may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the City shall not be liable in damages to the Developer or to any assignee or transferee of the Developer other than for the payments to the Developer specified in the preceding paragraph. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

8. Miscellaneous.

8.1. Compliance with Laws. Developer shall fully comply with all federal, state, and local laws, ordinances, and regulations in the performance of this Agreement. Developer shall, at its own cost and expense, obtain all necessary permits and licenses for each Acquisition Improvement, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Project. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the City Representative upon request.

8.2. Cooperation. The City, the Authority and the Developer agree to cooperate with respect to the completion of the financing of the Acquisition Improvements by the Authority through the levy of the CFD Special Taxes and issuance of Bonds. The City, the Authority, and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

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

8.4. Notices. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if: (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this section.

City: City of Sacramento  
Attn: Special Districts Manager  
915 I Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814

Authority: California Municipal Finance Authority  
Attn: John Stoeker  
2111 Palomar Airport Road, Suite 320  
Carlsbad, CA 92011

Administrator: Francisco & Associates, Inc.

Attn: Ed Espinoza  
5927 Balfour Court, Suite 109  
Carlsbad, CA 92008

Developer:

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

8.5. Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement among Authority, City, and Developer with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of all parties hereto.

8.6. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer from any condition of development or requirement imposed by any other agreement between the City and the Developer or any Member of Developer.

8.7. Waiver by Developer. The Developer and its successors and assigns hereby waive and release all claims of whatever nature that may arise against the City or Authority or the City's or Authority's officials, officers, employees, and agents in connection with the design or construction of the Acquisition Improvements. This waiver and release includes all claims arising under section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Thus, this Agreement releases and extinguishes, without limitation, all claims that the parties do not know or suspect to exist as well as all claims that the parties do know or suspect to exist.

8.8. Assignment. The obligations and rights of the parties to this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but, those rights and obligations shall not be assignable, transferable or delegable, without the written consent of the other parties hereto, such consent to not be unreasonably withheld, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms hereof shall be void. Any assignment shall be contingent on Developer providing a written assignment and assumption agreement to City and Authority immediately upon such assignment.

8.90. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

8.10. Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

8.112. Waiver or Modification. Any waiver or modification of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of each party. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of the party's right to insist upon and demand strict compliance by the other party with the terms of this Agreement.

8.12. Relationship of the Parties. Neither Developer nor the Authority nor either's contractors, subcontractors, agents, officers, or employees are agents, partners, joint ventures or employees of City and the Developer's relationship to the City, if any, arising herefrom is strictly that of an independent contractor. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Further, there are no intended third-party beneficiaries of any right or obligation assumed by the parties.

8.13. Binding upon Heirs, Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and permitted assigns of the parties hereto; provided, however, that this Agreement shall not be binding upon a purchaser or transferee of any portion of the Property unless this Agreement has been assigned and assumed pursuant to Section 8.9, in which event this Agreement shall remain binding upon purchaser or transferee.

8.14. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court for the County of Sacramento, State of California.

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

8.16. Interpretation. This Agreement shall be construed according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall apply to the interpretation of this Agreement.

8.17. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

8.18. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

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

8.20. Sole Agreement. This Agreement, including all exhibits hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

IN WITNESS WHEREOF, City, Authority, and Developer have executed this Agreement as of the date first set forth above.

CITY OF SACRAMENTO, a municipal corporation and charter city

By: \_\_\_\_\_

[[[DEVELOPER]]]

By: \_\_\_\_\_

CALIFORNIA MUNICIPAL FINANCE AUTHORITY, a joint exercise of powers authority

By: \_\_\_\_\_

Edward J. Becker  
Executive Director

**EXHIBIT A**  
**MAP OF THE CFD BOUNDARY**

## EXHIBIT B

### DESCRIPTION OF IMPROVEMENTS AND ESTIMATED COSTS

Unless specifically excluded in the Agreement, the list of eligible facilities and costs consist of the following:

#### Acquisition Improvements:

The authorized Acquisition Improvements are estimated to cost \$\_\_\_\_\_ and include the following:

## EXHIBIT C

### ACTUAL COST CERTIFICATE

Pursuant to the Acquisition Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Acquisition Agreement"), by and between \_\_\_\_\_ (the "Developer"), the California Municipal Finance Authority ("Authority"), and the City of \_\_\_\_\_, California ("City"), the Developer hereby requests (a) payment of the Acquisition Price of the Acquisition Improvements or Eligible Portion thereof, described in Attachment 1 hereto. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Acquisition Agreement.

In connection with this Actual Cost Certificate the undersigned hereby represents and warrants to the Authority and City as follows:

1. The undersigned is an authorized representative of the Developer, qualified to execute this certificate on behalf of the Developer and knowledgeable as to the matters set forth herein.

2. The Developer has submitted or submits herewith to the City Representative and the Administrator Record Drawings or in the case of an Eligible Portion, commits to submit Record Drawings at the completion of construction and acceptance by the City of the Acquisition Improvements, for each of the Acquisition Improvements described in Attachment 1, and such drawings, as applicable, are true, correct and complete representations of the Acquisition Improvements listed in Attachment 1.

3. Each of the Acquisition Improvements or Eligible Portion thereof described in Attachment 1 has been constructed in accordance with the approved improvement plans (the "Plans"), and in accordance with all applicable City standards and the requirements of the Acquisition Agreement, and the Plans, and none of the Acquisition Improvements described in Attachment 1 or Eligible Portion thereof has been the subject of any prior Payment Request.

4. The true and correct Actual Cost of each of the Authorized Facilities and/or Eligible Portion is set forth in Attachment 1 hereto.

5. The Developer has submitted or submits herewith to the City Representative and the Administrator a copy of each construction contract for each of the Acquisition Improvements described in Attachment 1, a copy of the bid notice for each such contract, a copy of each change order applicable to each such contract, all change orders having been approved by the City Representative, or his designee, and construction quantities certified by the engineer of record.

6. The Developer has submitted or submits herewith to the City Representative and the Administrator invoices, receipts, worksheets and other evidence of costs for each of the Acquisition Improvements described in Attachment 1 or Eligible Portion thereof, which are in sufficient detail to allow the City Representative and Administrator to verify the Actual Cost of such Acquisition Improvements or Eligible Portion thereof.

7. The Developer has submitted or submits herewith to the City Representative and the Administrator evidence that each of the invoices, receipts, worksheets and other evidence of

costs referred to in the preceding paragraph, has been paid in full, which evidence is in the form of copies of cancelled checks or such other form as the Administrator has approved in writing.

8. There has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive, the payment of the Acquisition Price for each of the Acquisition Improvement described in Attachment 1 or Eligible Portion thereof which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing by operation of law.

9. The Developer has submitted or submits herewith to the City Representative and the Administrator copies of unconditional or conditional (providing for release upon payment) lien releases from the General Contractor for all work with respect to each Eligible Portion of the Acquisition Improvements described in Attachment 1. In the case of a Payment Request for a completed Acquisition Improvement including the release of prior held retention for Eligible Portions thereof, the Developer submits herewith to the City Representative and the Administrator copies of unconditional or conditional (providing for release upon payment) lien releases from all contractors, subcontractors and materialmen in addition to a recorded Notice of Completion for said Acquisition Improvement,

10. The representations and warranties of the Developer set forth in the Acquisition Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.

11. The Developer represents that it has satisfied the conditions specified in the Acquisition Agreement for the payment of the Acquisition Price.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

[[[Developer]]]

By: \_\_\_\_\_  
Name:  
Title:

**ATTACHMENT 1**

<b>Acquisition Improvement (or Eligible Portion thereof)</b>	<b>Actual Cost</b>
<i>[Insert detailed description of Acquisition Improvement to be acquired]</i>	
<b>Total</b>	

**EXHIBIT D**

**DISBURSEMENT REQUEST FORM**

To: \_\_\_\_\_  
Attention: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Phone: \_\_\_\_\_

Re: CMFA CFD No. 20\_\_ - \_\_ (City of \_\_\_\_\_ - \_\_\_\_\_)

The undersigned, a duly authorized officer of the City of \_\_\_\_\_ (the "City") hereby requests a withdrawal from the Acquisition and Project Fund for the CFD as follows:

Request Date: [Insert Date of Request]  
Name of Developer: \_\_\_\_\_  
Withdrawal Amount: [Insert Acquisition Price/Installment Payment]  
Acquisition Improvements and/or Financed Fees: [Insert Description of Acquisition Improvement(s)/Eligible Portion(s) and/or Financed Fees]  
Payment Instructions: [Insert Wire Instructions or Payment Address for Developer or Developer's designee as provided by the Developer]

The undersigned hereby certifies as follows:

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

None of the items for which payment is requested have been reimbursed previously from this or any other Acquisition and Project Fund.

If the Withdrawal Amount is greater than the funds held in the Acquisition and Project Fund, the Authority Trustee is authorized to pay the amount of such funds and to pay remaining amount(s) as funds are subsequently deposited in the Acquisition and Project Fund, should that occur.

The amounts being disbursed pursuant to this request are being used to finance or refinance certain public infrastructure and facilities (the "Acquisition Improvements"). The City will own, and for the entire useful life of such Acquisition Improvements reasonably expects to own, all such Acquisition Improvements, except those facilities identified in Government Code Section 53313.5(e). To the extent any of such Acquisition Improvements are sold to an entity that is not a state or local government agency, the City will seek the advice and approval of bond counsel to the Authority prior to any such sale. The City will not allow any of such Acquisition Improvements

to be used (for example, by lease or other contract) in the trade or business of any nongovernmental persons (other than in their roles as members of the general public) except as permitted pursuant to Government Code Section 53313.5(e). All such Acquisition Improvements will be used in the performance of essential governmental functions of the City or another state or local government agency. The average expected useful life of such Acquisition Improvements is at least 5 years. The representations and covenants contained in this paragraph are intended to support the conclusion that the interest paid on the bonds issued to finance the Acquisition Improvements is excluded from gross income for federal income tax purpose under Section 103 of the Internal Revenue Code of 1986 (the "Code").

CITY OF \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT E**

**California Municipal Finance Authority**

**Special Tax Revenue Bonds**

**BOLD Program Series \_\_\_\_\_**

Payment Request Form

1. The undersigned is an authorized representative of the Developer, qualified to execute this request for payment on behalf of the Developer and knowledgeable as to the matters set forth herein.
2. The identity and amount of the Financed Fees are described in Attachment 1.
3. The Developer has submitted or submits herewith to the CMFA Administrator one or both of the following related to this request for payment as applicable:
  - For Financed Fees not already paid to the public agency, a payment request made payable to the public agencies for the fees and amounts identified in Attachment 1 to establish fee credits.
  - For Financed Fees already paid to the public agency, evidence that Financed Fees listed in Attachment 1 have been paid in full, which evidence is in the form of copies of cancelled checks or such other form of proof of payment, such as bank statements.
4. The Developer represents that it has satisfied the conditions for the reimbursement or payment of Financed Fees and that the Financed Fees described in Attachment 1 have not been previously submitted for reimbursement or for the establishment of fee credits.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

Developer:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment 1

<b>Public Agency</b>	<b>Credit or Reimbursement?</b>	<b>Description of Financed Fees</b>	<b>Description of Lots or Parcels</b>	<b>Total Amount</b>

## EXHIBIT F

### **City of Sacramento Departments of Utilities and Public Works Guidelines for Special District Acquisition Projects**

#### **1. Definitions**

1.1 **Advertisement.** The solicitation that requests bids for the Acquisition Improvements in accordance with these guidelines and applicable law.

1.2 **Acquisition Improvement.** Each of the Acquisition Improvements that will be constructed by the Developer, as provided in Exhibit B of the Acquisition Agreement.

1.3 **Bid Documents.** Plans, Specifications, and proposal documents that are prepared by, or under the supervision of, the Design Engineer; conform with policies, rules, regulations, and laws applicable to the City; and are suitable for the solicitation and submittal of bids by contractors for construction of an Acquisition Improvement.

1.4 **City Engineer.** The Engineering Services Division Manager of the City's Department of Public Works or the Engineering Services Division Manager's designee.

1.5 **Construction Security.** Performance bonds and labor-and-material payment bonds or other security, provided by the Contractor to the Developer in a form assignable to the City, which guarantee that the Contractor will meet all contractual obligations.

1.6 **Contractor.** A person or entity that is under contract to construct the Acquisition Improvement and who possesses the appropriate California contractor's license or licenses for the work.

1.7 **Design Engineer.** A California-licensed professional civil engineer the Developer has retained for the purpose of designing, stamping and signing the Plans, and supervising construction of the Acquisition Improvement.

1.8 **Developer.** The person or entity identified as the "Developer" in the Acquisition Agreement to which these guidelines are attached as an exhibit.

1.9 **Engineer's Estimate.** A cost estimate for the Acquisition Improvement prepared by the Design Engineer and approved by the City Engineer.

1.10 **Plans.** Final construction drawings prepared, stamped, and signed by the Design Engineer and its consultants and approved by the City for construction of the Acquisition Improvement. Approved City plans require signatures from various City engineers representing specific public facilities.

1.11 **Specifications.** Documents prepared by the Design Engineer or its consultants that describe in detail for construction-contract purposes the material and workmanship required to complete an Acquisition Improvement.

## 2. **Pre-Advertisement Procedures**

2.1 The Developer shall submit its proposed project schedules to the City Engineer.

2.2 Prior to advertisement of the Bid Documents, the Design Engineer shall prepare and submit final Plans and Specifications to the City Engineer for review and approval. The Bid Documents cannot be advertised unless and until the City Engineer approves the Plans and Specifications in writing.

2.3 The Developer shall pay City plan-check fees and inspection fees (normal and specific) in accordance with normal City procedures.

2.4 The Design Engineer shall prepare the Bid Documents for the Acquisition Improvement and shall submit the documents to the City Engineer for review, and the City Engineer shall, in writing, either approve or disapprove the Bid Documents. The Bid Documents must be in conformance with all ordinances, laws, policies, rules, and regulations applicable to the City, including but not limited to the following:

(a) Compliance with all applicable City and State of California requirements for public-works contracts, including but not limited to Sacramento City Code sections 3.60.040 (concerning prevailing wages, hours of work, etc.) and 3.60.050 (concerning apprentices).

(b) Compliance with the City of Sacramento's "Standard Specifications for Public Construction."

2.5 The City Engineer shall review the Bid Documents to determine whether they meet the following requirements:

(a) The Engineer's Estimate is reasonable and has been approved by the City Engineer.

(b) The bidding procedures are consistent with the requirements of the guidelines in this Exhibit F, and the bid forms clearly describe each bid item.

(c) The construction contract includes the following:

(1) Requires the Contractor and its subcontractors to comply with Sacramento City Code sections 3.60.040 (concerning prevailing wages, hours of work, etc.) and 3.60.050 (concerning apprentices).

(2) Requires the Contractor and its subcontractors to maintain insurance pursuant to the requirements of Section 6.2 of the Acquisition Agreement.

(3) Requires the Contractor to provide Construction Security in the same manner as is provided for normal City public-works projects.

(4) Requires that the Contractor submit to the City Engineer, in a form acceptable to the City, a non-collusion affidavit signed by an officer or manager of the Contractor.

(5) A liquidated-damages clause that is consistent with City policy.

(d) The number of allotted working days specified in the contract documents is reasonable for the proposed work.

(e) The Developer's request for bids must inform bidders that all work must be performed in accordance with the approved Plans and Specifications and any City-approved changes thereto, and in strict conformity with the City's "Standard Specifications for Public Construction," unless exceptions are approved by the City Engineer. The Developer's request for bids must further inform bidders that the construction contract will contain the requirements specified in Section 2.5(c) of these guidelines and will require compliance with all other applicable provisions of the Acquisition Agreement.

2.6 The Developer may be excused from complying with some or all of this section 2, other than sections 2.4(a) and 2.5(c)(1) regarding compliance with Sacramento City Code sections 3.60.040 and 3.60.050, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

### **3. Advertisement and Bid-Opening Procedures**

3.1 After the Plans and Specifications are approved in writing by the City Engineer, the Developer shall solicit and obtain sealed bids to perform the work shown on the approved Plans and Specifications from a minimum of three licensed contractors. The Developer is encouraged to advertise the project in a trade paper or newspaper of general circulation.

3.2 The Developer shall provide the City Engineer with a complete copy of all final Bid Documents, including any addenda, and may advertise the Project only after the City Engineer has approved the Plans and has approved the final Bid Documents in writing.

3.3 The bids must be sealed, must be submitted on or before the specified date and time, and must be opened at the same time.

3.4 Bidders must be provided a minimum of ten (10) working days to prepare and submit bids, and the City Engineer must be informed (in advance) of the date and time for each pre-bid meeting (if any) and the opening of the bids by the Developer.

3.5 The Developer may be excused from complying with Section 3, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

#### 4. **Construction Contract Award**

4.1 The Developer shall provide the City Engineer with a copy and summary of all bids and a copy of the lowest bid proposal submitted, together with a written evaluation of the bids and a recommendation for award. The Developer shall provide a certification to the City Engineer with the evaluation and recommendation, stating the following:

- (a) That there are no pending disputes over the bidding procedures.
- (b) That all bidders received the same set of Bid Documents and all of the addenda issued.
- (c) That all applicable City approvals required for the work have been obtained.
- (d) That the bid proposal has not been conditioned in any way.
- (e) If the Developer is not recommending award to the low bidder, the basis and reasons for the Developer's recommendation.
- (f) The contract amount for the bidder proposed by the Developer.

4.2 Within five working days after receipt of the bid material specified in Section 4.1, the City Engineer shall review the bid summary and a copy of the lowest bid and shall determine whether: (a) to concur in the Developer's recommendation or (b) to notify the Developer that additional review time will be required, specifying the date by which review will be complete. The City Engineer will then give the Developer written notification of his or her determination within the time frame specified for review.

4.3 If the lowest bidder is not recommended, if the City Engineer does not concur with the Developer's recommendation, or if the City Engineer is aware of any irregularities or possible disputes over the bidding procedure, then the Developer or the City Engineer shall notify the Director of the City's Department of Public Works. This notice must be in writing and must be submitted within five working days after the City Engineer's determination required by Section 4.2 has been made. Within ten days after receiving the notice, the Public Works Director shall review the Bid Documents and procedures and advise the Developer of the City's decision regarding the award of the contract.

4.4 The Developer may reject all bids received and re-advertise for bids in accordance with the guidelines in this Exhibit F or, with the City Engineer's concurrence, may dispense with further competitive bidding. The Developer may not reject individual bids without the City Engineer's concurrence.

4.5 The Developer must obtain the City Engineer's formal written concurrence before awarding the construction contract. The Developer may not award the contract unless and until the City Engineer has reviewed the bids, has concurred in the Developer's recommendation for award, and has provided written approval of the amount of the construction contract to be awarded by the Developer.

4.6 The Developer shall award the contract, with the City Engineer's concurrence, within 60 days after the bid opening and shall authorize the Contractor to complete the Acquisition Improvement.

4.7 The Developer shall provide the following items to the City Engineer within 30 days after the Developer has authorized the Contractor to proceed:

(a) A copy of the signed contract with the Contractor, specifying the award date.

(b) A written statement: (1) that the contract award amount is within the Engineer's Estimate; or (2) that the contract award amount exceeds the Engineer's Estimate and the Developer will pay all amounts by which the contract exceeds the estimate.

4.8 The Developer may be excused from complying with this Section 4, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

## 5. **Prevailing Wages and Apprentices**

5.1 The Contractor and all subcontractors shall comply with Sacramento City Code sections 3.60.040 (concerning prevailing wages, hours of work, etc.) and 3.60.050 (concerning apprentices) for all work performed on the Project. The Developer shall hire a labor-compliance consultant to certify to the City Engineer, in writing, that all requirements of Sacramento City Code sections 3.60.040 (concerning prevailing wages, hours of work, etc.) and 3.60.050 (concerning apprentices) have been satisfied. The consultant's certification must be submitted to the City Engineer when the Developer submits a request for reimbursement in accordance with the Acquisition Agreement. Upon request, the Developer shall provide copies of certified payrolls to the City Engineer.

5.2 Consistent with California Labor Code section 1720, subdivision (c)(2), work performed on the Project will be eligible for reimbursement only if all public-improvement work has been performed in compliance with Sacramento City Code sections 3.60.040 and 3.60.050.