

ACQUISITION AGREEMENT

by and among

CITY OF BEAUMONT,

**CITY OF BEAUMONT COMMUNITY FACILITIES DISTRICT NO. 93-1
IMPROVEMENT AREA NO. 8F**

and

PARDEE HOMES

Dated as of May 1, 2020

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

Section 1.1 Definitions 2

ARTICLE II

FUNDING

Section 2.1 Issuance of Bonds 5
Section 2.2 Special Taxes and Bonds 6
Section 2.3 Net Proceeds 6
Section 2.4 Disclosure of Special Tax 7
Section 2.5 City DIF Program 7

ARTICLE III

CONSTRUCTION AND ACQUISITION OF FACILITIES

Section 3.1 Schedule for DIF Improvements and/or Advances 7
Section 3.2 Duty of Owner to Construct 7
Section 3.3 Relationship to Public Works 8
Section 3.4 Independent Contractor 9
Section 3.5 Performance and Payment Bonds 9
Section 3.6 Contracts and Change Orders 9
Section 3.7 Time for Completion 9
Section 3.8 Inspection 9
Section 3.9 Agreement to Sell and Acquire Facilities 10
Section 3.10 Payment Requests 10
Section 3.11 Payment 11
Section 3.12 Restrictions on Payments 12
Section 3.13 Defective or Nonconforming Work 13
Section 3.14 Restrictions on Payments 13

ARTICLE IV

OWNERSHIP AND TRANSFER OF FACILITIES

Section 4.1 Facilities to be Owned by the City; Conveyance of Land and
Easements to City 14
Section 4.2 Facilities to be Owned by the City; Title Evidence 14
Section 4.3 Facilities Constructed on Private Lands 14
Section 4.4 Facilities Constructed on City Land 15
Section 4.5 Maintenance and Warranties 15

TABLE OF CONTENTS

(continued)

	Page
ARTICLE V	
INSURANCE	
Section 5.1 Insurance Requirements	15
Section 5.2 Standards Applicable.....	16
Section 5.3 Evidence of Insurance	16
ARTICLE VI	
DIFS	
Section 6.1 Reimbursement of DIFs and Advances	17
Section 6.2 Disbursement to the City	17
Section 6.3 DIF Credits	17
ARTICLE VII	
REPRESENTATIONS, WARRANTIES AND COVENANTS	
Section 7.1 Representations, Covenants and Warranties of the Owner	17
Section 7.2 Indemnification and Hold Harmless.....	18
ARTICLE VIII	
TERMINATION	
Section 8.1 Mutual Consent	19
Section 8.2 City Election to Terminate for Cause	19
Section 8.3 Force Majeure.....	20
ARTICLE IX	
MISCELLANEOUS	
Section 9.1 Limited Liability of City	21
Section 9.2 Excess Costs	21
Section 9.3 Review of Records	21
Section 9.4 Attorney’s Fees.....	21
Section 9.5 Notices.....	21
Section 9.6 Severability.....	22
Section 9.7 Successors and Assigns	22
Section 9.8 Other Agreements.....	22
Section 9.9 Waiver	22
Section 9.10 Agreements in Writing	22
Section 9.11 Parties in Interest	23
Section 9.12 Amendment	23
Section 9.13 Counterparts	23
Section 9.14 Termination	23
Signatures	S-1

TABLE OF CONTENTS
(continued)

Page

List of Exhibits

Exhibit A:	Description of Authorized Facilities and Discrete Components Eligible for Acquisition from the Owner.....	A-1
Exhibit B:	DIFs	B-1
Exhibit C	DIF Improvements Schedule.....	C-1
Exhibit D:	Form of Payment Requests.....	D-1
Exhibit E:	City CFD Policies.....	E-1

THIS ACQUISITION AGREEMENT (the “Acquisition Agreement”), dated as of May 1, 2020, is by and among the CITY OF BEAUMONT, a general law city (the “City”), the CITY OF BEAUMONT COMMUNITY FACILITIES DISTRICT NO. 93-1, a community facilities district created pursuant to the Act (defined herein) (the “District”), and PARDEE HOMES, a California corporation (the “Owner”).

RECITALS

A. **The District.** The City Council of the City has established the District and Improvement Area No. 8F (the “Improvement Area”) therein under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the District and the Improvement Area, which include the facilities listed in Exhibits A and C hereto (the “Facilities”), and which include the DIF Improvements (as hereinafter defined).

B. **The Development.** The land within the Improvement Area is currently expected to be developed with 294 dwelling units within Tracts 37428 and 31469-6 and a portion of Tracts 31469-3 and 31469-1 as part of a master-planned community commonly known as “Sundance.”

C. **The Facilities.** As part of the District and the Improvement Area formation proceedings, the Facilities were authorized to be acquired by the District, and the District proceedings contemplated that acquisition agreements would be entered into from time to time to describe the terms of such acquisition. The Facilities are within or serve the City, and the City and the Owner will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land within the Improvement Area. The facilities that are eligible for acquisition by the City from the Owner under this Acquisition Agreement are only the Facilities listed in Exhibit A hereto, as such Exhibit may be amended and/or supplemented by any Supplement approved by the City and Owner.

D. **The Settlement Agreement.** The Owner, the City, the District and certain other community facilities districts of the City entered into that certain Settlement Agreement (the “Settlement Agreement”) dated February 7, 2017, which is incorporated herein by this reference. This Acquisition Agreement is intended to, among other things, implement the terms of Sections 4 and 5 of the Settlement Agreement. Under the Settlement Agreement, the Owner and the City are to enter into this Acquisition Agreement and similar acquisition agreements with respect to the Improvement Area, the City’s Community Facilities District No. 2016-2, the City’s Community Facilities District No. 2016-3 and Improvement Areas 8E and 17D of the District (the “Other Acquisition Agreements”) in order to, among other things, provide the terms pursuant to which the Owner is to design and construct certain DIF Improvements (defined below) or advance funds to the City to design and construct other DIF Improvements. The amount of the advances and expenditures for DIF Improvements shall be reimbursed to the Owner from the proceeds of special taxes and bonds of the Improvement Area as specifically provided for in this Acquisition Agreement. Under the Settlement Agreement, the Owner has the right to receive a credit against DIFs for its design and construction of identified DIF Improvements.

E. **The Financing.** In order to facilitate development within the Improvement Area, the Owner, the District and the City wish to enter into this Acquisition Agreement to finance the acquisition of the Facilities, as defined below, and provide for the payment of the Facilities and

Discrete Components thereof as shown in Exhibits A and C hereto (as such Exhibits may be amended and supplemented by any Supplement).

G. **The Bonds.** The District may proceed with the authorization and issuance of the Bonds in one or more series under the Act and the Indenture, the proceeds of which Bonds shall be used, in part, to finance the Facilities.

H. **No Advantage to City Construction.** The City, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the City directly of the Facilities and that the provisions of this Acquisition Agreement require that the Facilities constructed by the Owner and acquired with the funds in the Improvement Fund, as defined below, be constructed as if they had been constructed under the direction and supervision of the City. The Owner hereby represents that it has experience in the supervision of the construction of improvements of the character of the Facilities.

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

ARTICLE I DEFINITIONS

Section 1.1 Definitions. The following terms shall have the meanings ascribed to them in this Section 1.1 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Indenture (as hereinafter defined).

“Acceptable Title” means title to land or interest therein, in form acceptable to the Director, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an “Acceptable Title” if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director, (iii) the Director has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Owner commits in writing not to allow any liens to be imposed on such property prior to its acceptance.

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

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

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

“Actual Cost” means the substantiated cost of a Facility or a Discrete Component, which costs may include: (i) the costs incurred for the construction of such Facility or Discrete Component,

(ii) the costs incurred in preparing the Plans for such Facility or Discrete Component and the related costs of environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies or utilities for obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component, (iv) professional costs incurred that are associated with such Facility or Discrete Component, such as construction management and supervision (not to exceed 15% of the costs in (i) above), engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) the actual costs directly related to the construction and/or acquisition of a Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder) (but excluding the cost of real property unless paid to unrelated third parties).

“Advances” means funds advanced by the Owner to the City for DIF Improvements pursuant to and as specifically identified in the DIF Improvements Schedule.

“Affiliate” means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by any of the Owner and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Owner, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity.

“Bonds” means the bonds to be issued by the District for the Improvement Area pursuant to the Act in one or more series.

“City” means the City of Beaumont, a general law city.

“City Fees” means fees paid by the Owner to the City pursuant to the conditions of development or as development impact fees that relate to the Facilities.

“Conditions of Approval” means, with respect to any portion of the property within the Improvement Area, the conditions of approval of all land use entitlements approved by the City and the conditions of any development agreement, subdivision improvement agreement or other agreement between the Owner and the City relating to such property which conditions must be satisfied in order to develop such property.

“County” means the County of Riverside, California.

“Deposit” means the amounts paid to the City by the Owner as Fees.

“DIFs” means those development impact, connection and capacity fees of the City imposed on development within the City, as specific in Exhibit B hereto.

“DIF Improvements” means those Facilities identified in Exhibit C, which also includes Facilities or Discrete Components thereof that are or will be the subject of a TUMF Credit Agreement.

“DIF Improvements Schedule” means Exhibit C hereto.

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

“Discrete Component” means a component of a Facility that the Director has agreed can be separately identified, inspected and completed, and be the subject of a Payment Request hereunder. The Discrete Components are described in Exhibit A hereto.

“District” means the City of Beaumont Community Facilities District No. 93-1, created by the City under the Act.

“Facilities” means the facilities described in Exhibit A hereto which are to be acquired with the proceeds of the Special Taxes and Bonds, and shall include the DIF Improvements.

“Financing Policies” means the City of Beaumont’s Goals and Policies for Community Facilities Districts, as adopted May 8, 1995 by Resolution No. 1995-23, attached hereto as Exhibit E.

“Improvement Area” means Improvement Area No. 8F of the District.

“Improvement Fund” means, (a) prior to the initial issuance of Bonds, the fund or account established by the City for the District, howsoever denominated, into which Net Proceeds of the Special Taxes are to be deposited, and (b) from and after the initial issuance of Bonds, the fund or account established under the Indenture for such Bonds, howsoever denominated, into which Net Proceeds of Bonds and Special Taxes are to be deposited.

“Indenture” means the bond indenture or similar document between the District and the Trustee, providing for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended from time to time.

“Net Proceeds” means (a) with respect to Special Taxes, the proceeds of such Special Taxes received prior to the initial issuance of Bonds and remaining after the payment or setting aside of, or provision for, administrative expenses of the District, and (b) with respect to Bonds, the proceeds of such Bonds remaining after the payment or setting aside of, or provisions for (i) the underwriter’s discount for such Bonds, (ii) the costs of issuance of such Bonds, including the costs of authorizing the Special Taxes and Bonds of the District incurred by the City and Owner, (iii) any required reserve fund deposit for such Bonds, (iv) capitalized interest on such Bonds, and (v) prefunded administrative expenses of the District.

“Owner” means Pardee Homes, a California corporation, and its successors or assigns to the extent permitted under Section 8.7 hereof.

“Payment Request” means a document, substantially in the form of Exhibit D hereto, to be used by the Owner in requesting payment of a Purchase Price.

“Plans” means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the City.

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

“Rate and Method” means the rate and method of apportionment of the special taxes of the District approved by the qualified electors of the Improvement Area.

“Special Taxes” means the special taxes for facilities in the Improvement Area levied in accordance with the Rate and Method.

“Supplement” means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including any amendments to the list of Discrete Components in Exhibit A, and/or the addition to Exhibit A of additional Facilities (and Discrete Components) to be financed with the proceeds of the Bonds deposited in the Improvement Fund eligible to be financed by the District.

“Trustee” means a financial institution in its capacity as trustee or fiscal agent under the Indenture, or any successor thereto acting as trustee or fiscal agent under the Indenture.

ARTICLE II

FUNDING

Section 2.1 Issuance of Bonds. Upon the written request of the Owner or City, the Owner and the City staff shall meet regarding the amount, timing and other material aspects of each series of the Bonds. The legal proceedings for the issuance of the Bonds and the series, principal amounts, rates, terms, conditions and timing of the sale of the Bonds shall be in all respects be solely determined by the City Council of the City, acting as the governing body of the District, in accordance with this Acquisition Agreement; provided that, subject to satisfaction of the applicable Financing Policies, sound municipal financing practices and the requirements of this Acquisition Agreement, as soon as possible following the execution of this Acquisition Agreement the City shall use commercially reasonable efforts to cause the District to issue and sell the Bonds in an amount sufficient to fund the Facilities. For purposes of sizing each series of Bonds, the priority annual Administrative Expense shall be \$30,000 for the Improvement Area.

Prior to the Bonds being issued for the Improvement Area, the Owner will be required to provide all information regarding the development of its property within the Improvement Area, including the financing plan for such development, which is necessary to ensure that the official statement for such Bonds complies with the requirements of all applicable federal and state securities laws, including without limitation Rule 15c2-12 and Rule 10(b)-5 of the Securities and Exchange Commission (the “Commission”). Moreover, each property owner which is responsible for twenty percent (20%) or more of the maximum special tax within the Improvement Area, or owns a comparable amount of taxable property within the Improvement Area at the time each series of Bonds are issued (each a “Major Landowner”) will be required to enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to the development of the land owned by such Major Landowner in the Improvement Area as necessary to assist the underwriter of the series of Bonds in complying with the continuing disclosure requirements of Rule 15c2-12 of the Commission and/or in marketing the Bonds. Each Major Landowner shall be required to execute a certificate in connection with each public sale of Bonds pursuant to which the Major Landowner shall indemnify and hold harmless City from claims arising from, or based upon, any untrue statement or alleged untrue statement of a material fact or omission or alleged omission of a material fact in the above-referenced information.

Section 2.2 Special Taxes and Bonds. Prior to the issuance of the first series of Bonds for the Improvement Area, the “Assigned Special Tax” has been and shall continue to be levied in each fiscal year on parcels classified as “Developed Property” pursuant to and as defined in the Rate and Method. The Net Proceeds of such Special Taxes have been and shall continue to be deposited in the Improvement Fund. In addition, the proceeds of each full or partial prepayment of Special Taxes attributable to eligible facilities prior to the issuance of Bonds shall be deposited in the Improvement Fund. The City, the District and the Owner are entering into this Acquisition Agreement and authorized the levy of the Special Taxes for the purpose of creating and allocating certain streams of revenues that are or will be available to pay directly or reimburse the costs of acquisition and construction of the Facilities and to pay debt service on Bonds and other indebtedness of the District. The District shall make available the Net Proceeds of Special Taxes to the Owner for the reimbursement of costs of the Facilities, including the payment and Advances of DIFs for DIF Improvements.

Following the issuance of the Bonds, the District shall have no obligation to levy Special Taxes to pay directly for the costs of reimbursing or paying the Owner for the Facilities. The Owner, the City and the District hereby acknowledge and agree that any reduction or termination of the Special Taxes by exercise of the initiative power or the exercise of discretion of the City or the District would constitute a substantial impairment of revenue stream of Special Taxes that the Owner, the City and the District intend to create for the purpose of providing an assured source of funding for such costs, and the Owner agrees not to participate in or support, directly or indirectly, any such actions.

Section 2.3 Net Proceeds. The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Indenture. The Net Proceeds of the Bonds will be set aside under the Indenture in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Indenture and the applicable provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), and to discharge the Owner’s obligation to pay the DIFs, all as herein provided. Funds in the Improvement Fund shall be reserved and disbursed in accordance with the following preferred priority:

- (i) The first priority shall be the reimbursement of DIFs and Advances paid previously by the Owner;
- (ii) The second priority shall be the payment of the Purchase Price of DIF Improvements and Discrete Components of DIF Improvements pursuant to the DIF Improvements Schedule; and
- (iii) The third priority shall be the payment of the Purchase Price of other Facilities and Discrete Components.

The Owner acknowledges that any lack of availability of amounts in the Improvement Fund to pay the Purchase Price of Facilities or any Discrete Components thereof and/or to discharge the Owner’s obligation to pay the DIFs and/or to reimburse the Owner for Advances shall in no way diminish any obligation of the Owner with respect to the construction of or contributions for public facilities and mitigation measures required by the Conditions of Approval or any subdivision, development or other agreement to which the Owner is a party, or any governmental approval to which the Owner or any land within the Improvement Area are subject.

Section 2.4 Disclosure of Special Tax. Copies of the executed “Notice of Special Tax” required by California Government Code Section 53341.5 provided to the purchaser of real property within the Improvement Area shall be provided to the City Director of Finance. The Director of Finance’s receipt of such “Notice of Special Tax” shall not be construed as City or District approval of the form of Notice or in any way make the City or District liable for deficiencies in such “Notice of Special Tax.” Owner agrees to retain copies of the Notice of Special Tax it has provided to homebuyers within the Improvement Area for a period of three (3) years and to provide them to the City upon City’s written request.

Section 2.5 City DIF Program. In accordance with the Settlement Agreement, the City and the Owner agree the Owner shall provide for the design, engineering and construction of the DIF Improvements and/or make advances for the DIF Improvements in accordance with the DIF Improvements Schedule attached hereto as Exhibit C. Advances for DIF Improvements shall be diligently completed on a date mutually agreed to by the Owner and the City. The amount the Owner is required to spend for each DIF Improvement or Advance, as specified in the DIF Improvements Schedule, shall be adjusted in accordance with Section 5 of the Settlement Agreement and shall be inclusive of amounts spent or financed by the Owner pursuant to this Acquisition Agreement and all Other Acquisition Agreements.

ARTICLE III

CONSTRUCTION AND ACQUISITION OF FACILITIES

Section 3.1 Schedule for DIF Improvements and/or Advances. In accordance with the Settlement Agreement, the City and Owner agree Owner shall provide for the design, engineering and construction of the DIF Improvements and/or make Advances for the DIF Improvements in accordance with the DIF Improvements Schedule attached hereto as Exhibit C. Advances for DIF Improvements shall be made on the dates provided in Exhibit C or, if not specifically provided therein, will be commenced as soon as reasonably possible following the City's written request and DIF Improvements shall be diligently completed on a date mutually agreed to by Owner and City. The amount Owner is required to spend for each DIF Improvement or Advance, as specified in the DIF Improvements Schedule, shall be adjusted in accordance with Section 5 of the Settlement Agreement and shall be inclusive of amounts spent or financed by Owner pursuant to this Agreement and all Other Acquisition Agreements. The Owner shall cause Plans to be prepared for the Facilities. The Owner shall obtain the City’s written approval of the Plans in accordance with applicable ordinances and regulations of the City. Copies of all Plans shall be provided by the Owner to the Director upon request therefor, and, in any event, a written assignment of the Plans for any Facility shall be provided to the City prior to its acceptance of the Facility and as built drawings shall be provided to the City within 60 days of such acceptance.

Section 3.2 Duty of Owner to Construct. All Facilities and Discrete Components thereof to be acquired hereunder shall have been constructed at the direction of the Owner in accordance with the approved Plans following the solicitation of competitive bids. The Owner shall have employed at all times adequate staff or consultants with the requisite experience necessary to bid, administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the City from the Owner hereunder.

The Owner shall be obligated: (i) to cause the construction and cause conveyance to the City (or other applicable governmental agency) of all DIF Improvements and Discrete Components

specified for construction by the Owner in the DIF Improvements Schedule in accordance with this Acquisition Agreement and, as applicable, the TUMF Credit Agreements and Supplement to TUMF Agreement and all other Facilities and Discrete Components thereof in Exhibit A hereto in accordance with the Conditions of Approval, and (ii) with respect to all Facilities other than DIF Improvements, to use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid hereunder, if any.

With respect to the Facilities, the Owner shall not be relieved of its obligation to cause the construction of each Facility and Discrete Component thereof listed in Exhibit A hereto and convey each such Facility and Discrete Component to the City in accordance with the terms of this Acquisition Agreement and the Conditions of Approval even if, (i) because of the limitations imposed by this Agreement, the Purchase Price for such Discrete Component or Facility is less than the Actual Cost, or cost to the Owner, of such Discrete Component or Facility, or (ii) there are no funds or insufficient funds in the Improvement Fund to pay the Purchase Prices thereof, and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the Improvement Area under the Conditions of Approval with respect to the public improvements required in connection with the development of the land within the Improvement Area. The obligation of the Owner to construct and convey such Facilities, and pay the costs thereof in excess of available monies in the Improvement Fund and the timing of construction of such Facilities, shall be determined by the applicable Conditions of Approval and this Acquisition Agreement.

Section 3.3 Relationship to Public Works. This Acquisition Agreement is for the acquisition by the City of the Facilities and payment for Discrete Components thereof listed in Exhibits A and C hereto from monies in the Improvement Fund and is not intended to be a public works contract. Notwithstanding the foregoing, the Owner shall competitively bid and award all contracts for construction of the Facilities listed in Exhibits A and C hereto, as amended from time to time, and materials related thereto by means of a competitive bid process acceptable to the Director unless the same are Completed Facilities. At the Owner's request, the Director shall review the Owner's proposed bid process and either provide modifications or written acknowledgment that it is acceptable. The Owner shall endeavor to obtain at least three bids for such Facility or Discrete Component thereof by means of a bidding process acceptable to the Director. Bids for each Discrete Component shall be submitted in sealed envelopes to the Owner prior to the time and date prescribed for bid opening. The Owner shall open the bids immediately following the submittal deadline. The Director or his designee shall be present at all bid openings and may direct that all bids be submitted to him. Upon written request of the Director, the Owner shall provide an analysis of bids for construction and materials for the Facilities, constructed or to be constructed by or under the supervision of the Owner. The Owner shall award each bid to the lowest responsible bidder and shall require each contractor to provide for the payment of prevailing wages and maintain records with respect to such payment.

From time to time at the request of the Director, the Owner shall meet and confer with City staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities, Discrete Components and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Acquisition Agreement. The Owner shall advise the Director in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The Director or the Director's designated representative shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the Director to resolve disputes and/or ensure the proper completion of the Facilities.

Section 3.4 Independent Contractor. In performing this Acquisition Agreement, the Owner is an independent contractor and not the agent or employee of the City. The City shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Owner.

Section 3.5 Performance and Payment Bonds. The Owner agrees to comply with all applicable performance and mechanics and materialmen bonding requirements of the City (and other applicable public entities and/or public utilities) with respect to the construction of the Facilities, as requested by the City.

Section 3.6 Contracts and Change Orders. The Owner shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as “change orders”) required for the construction of the Facilities including, but not limited to those listed in Exhibits A and C hereto, as amended from time to time, and all such contracts and change orders shall be submitted to the Director and subject to the Director’s advance written approval unless they are Completed Facilities. The Director’s prior written approval shall also be required for any contracts for DIF Improvements. Prior approval of change orders by the Director shall only be required for change orders relating to DIF Improvements or such change orders for other Facilities which in any way change the cost or materially alter the quality or character of the subject Facilities. The City expects that such contracts and change orders needing prior approval by the Director will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director thereof.

Section 3.7 Time for Completion. The Owner agrees that this Acquisition Agreement is for the benefit of the City and the Owner and, therefore, the Owner represents that it shall use good faith efforts to complete the Facilities that are intended to be financed with the Net Proceeds of each series of Bonds and to have requested payment for such Facilities under this Acquisition Agreement within eighteen (18) calendar months from the date of the closing of the series of Bonds. Any failure to complete the Facilities within said time period shall not, however, in itself, constitute a breach by the Owner of the terms of this Acquisition Agreement provided that it obtains a written extension of time from the Director.

The Owner agrees to use its good faith efforts to complete all Facilities that are intended to be financed with the Net Proceeds of each series of Bonds within eighteen (18) calendar months from the date of closing of the Bonds. To the extent that Net Proceeds of a series of Bonds remains unexpended on the date which is thirty six (36) calendar months from the date of closing of the Bonds, the Director may direct that such unexpended amounts be applied to pay, redeem or defease Bonds under the Indenture.

Section 3.8 Inspection. No payment hereunder shall be made by the City to the Owner for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected and found to be completed in accordance with the Plans by the City or other applicable public entity or utility. However, due to the age of some of the Facilities it is understood that normal wear and tear and aging may have occurred which shall not be a basis for denial. The City shall make or cause to be made periodic site inspections of the Facilities or Discrete Components to be acquired hereunder on a timely basis; provided that in no event shall the City incur any liability for any delay in the inspection of any Facilities or Discrete Components. For Facilities to be acquired by other public entities or utilities, the Owner shall be responsible for obtaining such

inspections and providing written evidence thereof to the Director. The Owner agrees to pay all inspection, permit and other similar fees of the City applicable to construction of the Facilities.

Section 3.9 Agreement to Sell and Acquire Facilities. The Owner hereby agrees to sell the Facilities and Discrete Components listed in Exhibit A hereto to the City, and the City hereby agrees to use amounts in the Improvement Fund to pay the Purchase Price of each of such Facilities and Discrete Components to the Owner, subject to the terms and conditions hereof. The City shall not be obligated to acquire any Facility or Discrete Component until the Facility or Discrete Component is completed and the Acceptance Date for such Facility or Discrete Component has occurred; provided that the City has agreed hereunder to make payments to the Owner for certain Discrete Components of Facilities as shown in Exhibit A hereto. The Owner acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not accept a Facility of which a Discrete Component is a part until the entire Facility has been completed. The City acknowledges that the Discrete Components do not have to be accepted by the City as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been completed in accordance with the Plans therefor, as determined by the Director. In any event, the City shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the moneys in the Improvement Fund.

Section 3.10 Payment Requests. In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 3.1 shall have been made and the Owner shall deliver to the Director: (i) a Payment Request in the form of Exhibit D hereto for such Facility or Discrete Component, together with all attachments and exhibits required by Exhibit D and this Section 3.3 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit D), and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the City at the time of the request, a copy of the recorded documents conveying to the City Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 4.1 hereof, (b) to the extent paid for with the proceeds of the Bonds, an assignment to the District of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements, and (c) an assignment of warranties and guaranties for such Facility, as described in Section 4.5 hereof, in a form acceptable to the City.

Upon receipt of a Payment Request (and all accompanying documentation requested by the Director including, but not limited to, copies of applicable invoices, receipts, cancelled checks and lien releases), the Director shall conduct a review in order to confirm that such request is complete, that such Discrete Component or Facility identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component or Facility specified in such Payment Request provided that, with respect to DIF Improvements and other Facilities (but excluding Completed Facilities), it does not exceed the sum of the contracts and change orders previously approved in writing by the Director. The Director shall also conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Owner agrees to cooperate with the Director in conducting each such review and to provide the Director with such additional information and documentation as is reasonably necessary for the Director to conclude each such review. For any Facilities to be acquired by another public entity or utility, the Owner shall provide evidence acceptable to the Director that such Facilities are acceptable to such entity or utility. Within fifteen (15) business days of receipt of any Payment Request, the Director expects to review the request for completeness and notify the Owner whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment

Request is complete, the Director expects to provide a written approval or denial (specifying the reason for any denial) of the request within thirty (30) calendar days of its submittal. However, the Facilities documentation will be delivered by Owner to City in large quantities which may be beyond the ability of City to process, in accordance with the forgoing timeframes. At the request of City or Owner, City may engage an outside contractor to review and process the Facilities documentation on behalf of the City the cost of which shall be borne by Owner subject to a written agreement executed by City and Owner. If a Payment Request seeking reimbursement for more than one Facility or Discrete Component is denied, the Director shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components shall be processed for payment under Section 3.4 notwithstanding such partial denial. The City's and District's Costs associated with the acquisition of Facilities and processing of Payment Requests shall be reimbursed from the Improvement Fund or from amounts advanced by the Owner to the extent insufficient funds are on deposit in the Improvement Fund, which advances may be later reimbursed to the Owner out of the Improvement Fund.

Section 3.11 Payment. Upon approval of the Payment Request by the Director, the Director shall sign the Payment Request and forward the same to the City Director of Finance. Upon receipt of the reviewed and fully signed Payment Request, the City Director of Finance shall, within the then current City financial accounting payment cycle but in any event within fifteen (15) business days of receipt of the approved Payment Request, cause the same to be paid by the Trustee under the applicable provisions of the Indenture, to the extent of funds then on deposit in the Improvement Fund. Any approved Payment Request not paid due to an insufficiency of funds in the Improvement Fund, shall be paid promptly following the deposit into the Improvement Fund of proceeds of any investment earnings or other amounts transferred to the Improvement Fund under the terms of the Indenture.

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

The City shall withhold payment for any Discrete Component or Facility constructed on land not already owned by the City or other public entity, until Acceptable Title to such land is conveyed to the City or other public entity that will own the respective Facility, as described in Article IV hereof.

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

The City shall be entitled to withhold payment for any Facility (or final Discrete Component) hereunder to be owned by the City until: (i) the Director determines that the Facility is ready for its intended use, and (ii) the Acceptance Date for the Facility has occurred and the requirements of

Section 4.1, if applicable to such Facility, have been satisfied. The City hereby agrees that the Owner shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify it for any losses sustained by the City because of any liens that may exist at the time of acceptance of such a Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director. The City shall be entitled to withhold payment for any Facility (or the final Discrete Component of any such Facility) to be owned by other governmental entities, until the Owner provides the Director with evidence that the governmental entity has accepted dedication of and/or title to the Facility. If the Director determines that a Facility is not ready for intended use under (i) above, the Director shall so notify the Owner as soon as reasonably practicable in writing specifying the reason(s) therefor.

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

Subject to the last paragraph of this Section 3.5, the City shall withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each Discrete Component to be paid hereunder other than the final Discrete Component of any Facility. Any such retention will be released to the Owner upon final completion and acceptance of the related Facility.

Notwithstanding the foregoing, the Owner shall be entitled to payment of any such retention upon the completion and acceptance of a Discrete Component, if securities meeting the requirements of the California Public Contracts Code are deposited in lieu thereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefore. No retention shall apply if the Owner proves to the Director's satisfaction that the Owner's contracts for the Discrete Components provide for the same retention as herein provided, so that the Purchase Price paid for the Discrete Component is at all times net of the required retention.

Section 3.12 Restrictions on Payments. Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Owner:

(a) Amounts of Payments. Subject to the following paragraphs of Section 3.11, payments for each Discrete Component or Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or Facility.

Nothing herein shall require the City in any event (i) to pay more than the Actual Cost of a Facility or Discrete Component, or (ii) to make any payment beyond the available funds in the Improvement Fund. The parties hereto acknowledge and agree that all payments to the Owner for the Purchase Prices of Facilities or Discrete Components are intended to be reimbursements to the Owner for monies already expended or for immediate payment by the Owner (or directly by the City) to third parties in respect of such Facilities and/or Discrete Components.

(b) Joint or Third Party Payments. The City may make any payment jointly to the Owner and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Owner requests the same in writing.

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

Section 3.13 Defective or Nonconforming Work. If any of the work done or materials furnished for a Facility or Discrete Component are found by the Director to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such Facility or Discrete Component hereunder, the City may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director, or (ii) and such finding is made after payment of the Purchase Price of such Facility or Discrete Component, the City and the Owner shall act in accordance with the City's standard specification for public works construction.

Section 3.14 Restrictions on Payments. Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Owner:

(a) Amounts of Payments. Subject to the following paragraphs of this Section 3.8, payments for each Discrete Component or Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or Facility.

Nothing herein shall require the City in any event (i) to pay more than the Actual Cost of a Facility or Discrete Component, or (ii) to make any payment beyond the available funds in the Improvement Fund. The parties hereto acknowledge and agree that all payments to the Owner for the Purchase Prices of Facilities or Discrete Components are intended to be reimbursements to the Owner for monies already expended or for immediate payment by the Owner (or directly by the City) to third parties in respect of such Facilities and/or Discrete Components

(b) Joint or Third Party Payments. The City may make any payment jointly to the Owner and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Owner requests the same in writing.

(c) Withholding Payments. The City shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component or a Facility if the Owner or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or special taxes levied in the Improvement Area. In the event of any such delinquency, the City shall only make payments hereunder, should any be made at the City's sole discretion, directly to contractors or other third parties employed in connection with the construction of the Facilities or to any assignee of the Owner's interests in this Acquisition Agreement (and not to the Owner or any

Affiliate), until such time as the Owner provides the Director with evidence that all such delinquent taxes and assessments have been paid.

ARTICLE IV OWNERSHIP AND TRANSFER OF FACILITIES

Section 4.1 Facilities to be Owned by the City; Conveyance of Land and Easements to City. Acceptable Title to all property on, in or over which each Facility to be acquired by the City will be located, shall be deeded over to the City by way of grant deed, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Owner to perform its obligations as set forth in this Acquisition Agreement. The Owner agrees to assist the City in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a Facility (or the last Discrete Component thereof) and shall be evidenced by recordation of the acceptance thereof by the City Council or the designee thereof.

Section 4.2 Facilities to be Owned by the City; Title Evidence. The Owner shall furnish to the City a preliminary title report for land with respect to Facilities to be acquired by the City and not previously dedicated or otherwise conveyed to the City, for review and approval at least thirty (30) business days prior to the transfer of the Acceptable Title to a Facility to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the land with respect to such Facility or pay the Purchase Price for such Facility (or the last Discrete Component thereof) until the Owner has cured such objections to title to the reasonable satisfaction of the City and caused a standard title insurance policy to be issued to the City with respect to such land in the amount of the Purchase Price. In the event the Owner cannot cure such objections to title, City agrees to consider the use of eminent domain pursuant to Section 4.3 hereof for such purpose.

Section 4.3 Facilities Constructed on Private Lands. If any Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed Facilities until acquisition of the Facilities under Article III hereof. Pending the completion of such transfer, the Owner shall not be entitled to receive any payment for any such Facility or the last Discrete Component thereof. The Owner shall, however, be entitled to receive payment for Discrete Components (other than the last Discrete Component) upon making an irrevocable offer of dedication of such land in form and substance acceptable to the Director. Notwithstanding the foregoing, upon written request of the City before payment for any Discrete Component of such a Facility, the Owner shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Sections 4.1 and 4.2 hereof.

It shall be the responsibility of the Owner to acquire all property rights on property which is not owned by the City or the Owner which is necessary for the construction of any of the Facilities, if any. In the event, despite its exercise of best efforts to do so, the Owner is unable to acquire such property rights, the City shall in good faith consider the undertaking of proceedings to acquire such property rights through its exercise of the power of eminent domain, and the costs of such

proceedings and acquisition shall be the responsibility of the Owner and shall comprise part of the Purchase Price of the related Facility.

Section 4.4 Facilities Constructed on City Land. If the Facilities to be acquired are on land owned by the City, including land as to which the City has acquired sufficient property rights in the manner described in Section 4.3 or otherwise, the City hereby grants to the Owner a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

Section 4.5 Maintenance and Warranties. The Owner shall maintain or cause to be maintained each Discrete Component in good and safe condition until the Acceptance Date of the Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Owner shall be responsible for performing any required maintenance on any completed Discrete Component or Facility. On or before the Acceptance Date of the Facility, the Owner shall assign to the City all of the Owner's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility. For each Facility to be owned by the City, the Owner shall provide a warranty bond reasonably acceptable in form and substance to the Director to remain in effect for a period of one year from the date of acceptance of each Facility. The City shall be responsible for maintenance of each Facility from and after the Acceptance Date thereof, except that with respect to landscaping improvements, the Owner shall maintain or cause to be maintained such landscape improvements for a period of one year following the Acceptance Date thereof or shall provide a bond reasonably acceptable in form and substance to the Director for such period and for such purpose (for landscaping improvements only, and for the posting of a warranty bond to remain in effect for one year as to other Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Owner, at its own cost and expense, to the satisfaction of the Director. The Owner shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the City to the Owner, and shall complete such repairs, replacement or correction as soon as practicable. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the Director as part of the transfer of title.

ARTICLE V INSURANCE

Section 5.1 Insurance Requirements. The Owner shall, at all times prior to the final Acceptance Date of all Facilities, maintain and deliver to the City evidence of and keep in full force and effect, not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to the Director: (i) Workers Compensation and Employer's Liability - Workers' Compensation - coverage as required by law; Employer's Liability - limits of at least \$1,000,000.00 per occurrence; (ii) Comprehensive General Liability - Combined Single Limit - \$2,000,000.00; (iii) Automobile Liability - Combined Single Limit - \$1,000,000.00; and (iv) Errors and Omissions Insurance - Combined Single Limit - \$2,000,000.00.

All of the Owner's insurance policies shall contain an endorsement providing that written notice shall be given to the City at least 30 calendar days prior to termination or cancellation of coverage of the policy.

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

(a) An endorsement extending coverage to the City and its agents as an additional insured, as respects liabilities arising out of the performance of any work related to the Facilities. Which insurance shall be primary insurance as respects the interest of the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the insurance required hereunder.

(b) Severability of interest clause.

(c) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to contractual liability assumed by the Owner.

Promptly on execution of this Acquisition Agreement by the Owner, the Owner shall deliver to the Director copies of all required certificates of insurance and endorsements thereto on forms which are acceptable to the Director and the City Attorney.

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

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

Any policy or policies of insurance that the Owner or its contractors or subcontractors elect to carry as insurance (i) against loss or damage to their construction equipment and tools or other personal property used in fulfillment of this Acquisition Agreement or a contract related to the Facilities shall include a provision waiving the insurer's right of subrogation against the City, and (ii) in fulfillment of this Acquisition Agreement involving a dual obligee bond may contain a clause to the effect that: "provided that Principal and Surety shall not be liable to the Obligees or any of them unless the Obligees or any of them have performed the obligations to the Principal in accordance with the terms of said contract; and provided, further, that Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated."

Section 5.2 Standards Applicable. The Owner may effect such coverage under blanket insurance policies, provided, however, that (i) such policies are written on a per occurrence basis, (ii) such policies comply in all other respects with the provisions of Section 5.1, and (iii) the protection afforded the City under any such policy shall be no less than that which would be available under a separate, policy relating only to this Acquisition Agreement. All policies of insurance shall be with companies licensed or approved by the State of California Insurance Commissioner and rated (i) A or better with respect to primary levels of coverage, and (ii) B+12 or better with respect to excess levels of coverage, in the most recent edition of Best's Insurance Guide and shall be issued and delivered in accordance with State law and regulations.

Section 5.3 Evidence of Insurance. Prior to the Acceptance Date, the Owner shall furnish to the City, from time to time upon request of the Director, a certificate of insurance regarding each insurance policy required to be maintained by the Owner hereunder.

ARTICLE VI

DIFS

Section 6.1 Reimbursement of DIFs and Advances. As provided in the Settlement Agreement, the Owner may submit to the City from time to time a Payment Request in the form attached hereto as Exhibit D-1 for reimbursement from the Improvement Fund of any DIFs or Advances previously paid to the City. In the event that the amount in the Improvement Fund is less than the total amount of such DIFs or Advances previously paid to the City and requested for reimbursement in a Payment Request, the unpaid amount shall be reimbursed to the Owner when, and if, additional funds are subsequently deposited in the Improvement Fund and designated to construct the facilities authorized to be financed with such DIFs or Advances in an amount equal to or greater than such unpaid amount of the Payment Request. Payment Requests for reimbursement for which moneys on deposit in the Improvement Fund are a prerequisite shall be provided to the City not more than ninety (90) days following issuance of the last series of Bonds issued by the District.

Section 6.2 Disbursement to the City. Upon receipt of a Disbursement Request in the form attached hereto as Exhibit D-2 (a “Disbursement Request”), the City may withdraw from the Improvement Fund the amount specified in such Disbursement Request to pay for DIF Improvements in lieu of payment by the Owner of all or a portion of the DIFs or Advances which are then estimated to be due and payable by Owner. Each time Owner makes an Advance, the City shall provide to Owner a credit against the DIFs equal to the amount of the money advanced.

Section 6.3 DIF Credits. Pursuant to the Settlement Agreement, the Owner shall be entitled to a credit against all DIFs based upon the Actual Costs incurred by the Owner for DIF Improvements it constructs and for Advances made to the City for DIF Improvements the City constructs in accordance with the DIF Improvements Schedule. The credit shall be calculated on a per equivalent dwelling unit (“EDU”) basis by dividing the total amount of such Actual Costs incurred and/or Advance paid by the Owner by the total amount of the DIFs per EDU. The result of such calculation shall be a total number of EDUs for which all DIFs are deemed satisfied. In addition, some of the Facilities identified in Exhibit A, in addition to the DIF Improvements specified in the DIF Improvements Schedule, may be in the City DIF program. Owner shall be entitled to full credit, in an amount not to exceed the estimated cost of such Facility in the applicable nexus study, against the applicable DIF for the Owner's construction of such Facility whether or not the Purchase Price of such Facility is funded out of the Improvement Fund provided that the Facility is constructed under the procedures in Article III. If Owner receives a credit against a DIF as the result of Owner's construction of any DIF Improvement or Facility, Owner shall only be entitled to obtain a further credit pursuant to the terms of this Acquisition Agreement of Owner's remaining obligation for such DIF, net of such credit amount.

ARTICLE VII

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 7.1 Representations, Covenants and Warranties of the Owner. The Owner represents and warrants for the benefit of the City, as follows:

(a) Organization. Owner is a California corporation and is validly doing business and in good standing in the State of California, is in compliance with all applicable laws of the State,

and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) Authority. The Owner has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Owner.

(c) Binding Obligation. This Acquisition Agreement is a legal, valid and binding obligation of the Owner, enforceable against the Owner in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) Compliance with Laws. The Owner shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Owner in the Improvement Area or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the Improvement Area or the Facilities.

(e) Requests for Payment. The Owner represents and warrants that (i) it will not request payment from the City for the acquisition of any improvements that are not part of the Facilities, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to the Payment Requests.

(f) Financial Records. Until the final acceptance of the Facilities, the Owner covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto, which accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

(g) Prevailing Wages. The Owner covenants that, with respect to any contracts or subcontracts for the construction of the Facilities to be acquired from the Owner hereunder, it has assured complete compliance with any applicable law or regulation for the payment of prevailing wages for such construction.

(h) Plans. The Owner represents that it has obtained or will obtain approval of the Plans for the Facilities to be acquired from the Owner hereunder from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Owner further agrees that the Facilities to be acquired from the Owner hereunder have been or will be constructed in full compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto, as approved in the same manner.

Section 7.2 Indemnification and Hold Harmless. The Owner shall assume the defense of, indemnify and save harmless the City, members of the City Council, their officers, officials, employees and agents and each of them, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Acquisition Agreement by the Owner, the Owner's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Owner hereunder, the Owner's non-payment under contracts between the Owner and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of

the Facilities, any claims of persons employed by the Owner or its agents to construct the Facilities, claims for damages to persons or property related to the actions of Owner contemplated by this Acquisition Agreement or any claims arising out of any alleged misstatement of a material fact or omission of a material fact with respect to provisions in any Official Statement for the Bonds for which the Owner certifies in a customary certificate executed in connection with the printing of the Official Statement for such Bonds. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable solely to the intentional acts or negligence of the City, or its officers, directors, employees or agents hereunder.

No provision of this Acquisition Agreement shall in any way limit the Owner's responsibility for payment of damages resulting from the operations of the Owner, its agents, employees or its contractors.

ARTICLE VIII TERMINATION

Section 8.1 Mutual Consent. This Acquisition Agreement may be terminated by the mutual, written consent of the City and the Owner, in which event the City may let contracts for any remaining work related to the Facilities not theretofore acquired from the Owner hereunder, and use all or any portion of the monies in the Improvement Fund to pay for same, and the Owner shall have no claim or right to any further credits against the amount of DIFs payable by the Owner or the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent. In any event, this Acquisition Agreement shall terminate upon the earlier of (i) ten (10) years following the issuance of building permits for all dwelling units expected to be built within the Improvement Area, (ii) the funding of all Facilities pursuant to this Acquisition Agreement, or (iii) December 31, 2030. Notwithstanding the foregoing, this Acquisition Agreement shall not terminate pursuant to (iii) of the previous sentence if, on December 31, 2030, all of the building permits within the Improvement Area have been pulled, construction within the Improvement Area, as contemplated by the parties hereto, is ongoing, and bonds have not been issued to reimburse the Owner for completed Facilities.

Section 8.2 City Election to Terminate for Cause. The following events shall constitute grounds for the City, at its option and in its sole discretion, to terminate this Acquisition Agreement, without the consent of the Owner:

(a) The Owner shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(b) The Owner shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Owner, or shall suffer an attachment or levy of execution to be made against the property it owns within the Improvement Area unless, in any of such cases, such circumstance shall have been terminated or released within ninety (90) days thereafter.

(c) The Owner shall abandon construction of the Facilities. Failure for a period of six consecutive months to undertake substantial work related to the construction of Facilities that are required to be constructed at that time pursuant to the Conditions of Approval or DIF

Improvements Schedule, other than for a reason specified in Section 7.3 hereof, shall constitute a non-inclusive example of such abandonment.

(d) The Owner shall breach any material covenant or default in the performance of any material obligation hereunder.

(e) The Owner shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the City or as otherwise permitted hereunder.

(f) The Owner shall have made any material misrepresentation or omission of any written materials furnished in connection with any preliminary official statement, official statement or bond purchase contract used in connection with the sale of any series of the Bonds.

If any such event occurs, the City shall give written notice of its knowledge thereof to the Owner, and the Owner agrees to meet and confer with the Director and other appropriate City staff and consultants as to options available to assure timely completion of the Facilities. Such options may include, but not be limited to the termination of this Acquisition Agreement by the City. If the City elects to terminate this Acquisition Agreement, the City shall first notify the Owner (and any mortgagee or trust deed beneficiary specified in writing by the Owner to the City to receive such notice) of the grounds for such termination and allow the Owner a reasonable period (minimum of thirty (30) days) to eliminate or mitigate to the satisfaction of the Director the grounds for such termination. Such period may be extended, at the sole discretion of the City, if the Owner, to the satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof, as determined solely by the City), the Owner has not eliminated or completely mitigated such grounds, to the satisfaction of the City, the City may then terminate this Acquisition Agreement.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through and including (f) above has occurred, notice of which has been given by the City to the Owner, and such event has not been cured or otherwise eliminated by the Owner, the City may in its sole discretion cease making payments for the Purchase Price of Facilities or Discrete Components under Article V hereof.

Section 8.3 Force Majeure. Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes, inclement weather or other acts of God, war, civil commotion, riots, strikes, acts of terrorism, picketing, other labor disputes, damage to work in progress by casualty, government shutdowns, moratoria or other restrictive laws or regulations, or the acts, omissions or breach of agreement by the other party to this Acquisition Agreement or its agents, contractors or subcontractors, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

Owner: Pardee Homes
1250 Corona Pointe Court, Suite 600
Corona, CA 92879
Attention: Mike Taylor, Jeff Chambers

With a copy to: John P. Yeager, Esq.
O'Neil LLP
19900 MacArthur Boulevard, Suite 1050
Irvine, CA 92612

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

Section 9.6 Severability. If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

Section 9.7 Successors and Assigns. This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Owner, except in whole to an Affiliate, or to any other entity of which the Owner and/or its members or partners will be managing members or general partners which assume all of the Owner's obligations hereunder (which transfer is expressly authorized hereunder, upon notice to the City without further act of the City), without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In connection with any required consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee, the assignee's express assumption of all obligations of the Owner hereunder, and/or upon any other factor which the City deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned, and shall not be effective until approved by the City. Without the City's written consent, no assignment shall release the Owner from its obligations and liabilities under this Acquisition Agreement.

Section 9.8 Other Agreements. The obligations of the Owner hereunder shall be those of a party hereto and not as an owner of property in the Improvement Area. Nothing herein shall be construed as affecting the City's or the Owner's rights, or duties to perform their respective obligations, under other agreements, if any, use regulations or subdivision requirements relating to the development of the lands in the Improvement Area. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

Section 9.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

Section 9.10 Agreements in Writing. No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

Section 9.11 Parties in Interest. Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City, the District and the Owner any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the City, the District or the Owner shall be for the sole and exclusive benefit of the City, the District and the Owner.

Section 9.12 Amendment. This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by the City, the District and the Owner; provided, further, that Exhibit A may be modified to add additional authorized facilities or make adjustments to the existing Facilities only with the written approval of the City Council and the Owner.

Section 9.13 Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 9.14 Termination. This Acquisition Agreement shall terminate and be of no further force pursuant to Section 8.1 hereof, unless extended by agreement of all the parties. If the Acquisition Agreement is terminated as provided herein, none of the City, the District or the Owner shall have any further responsibility or liability pursuant to this Acquisition Agreement. Upon the termination of this Agreement, the City shall direct the use of any remaining Bond or Special Tax proceeds to complete any remaining authorized facilities, redeem Bonds or use in any way permitted by the Act.

[Signature Page Follows]

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

CITY OF BEAUMONT

By: _____
Todd Parton
City Manager

ATTESTED:

City Clerk

CITY OF BEAUMONT COMMUNITY FACILITIES
DISTRICT NO. 93-1

By: _____
Todd Parton
City Manager of the City of Beaumont

ATTESTED:

City Clerk

[SIGNATURE PAGE CONTINUED.]

PARDEE HOMES,
a California corporation

By: _____
Mike Taylor
Division President

**ACQUISITION AGREEMENT
(CFD NO. 93-1 IMPROVEMENT AREA NO. 8F)**

EXHIBIT A

**DESCRIPTION OF FACILITIES AND DISCRETE COMPONENTS ELIGIBLE FOR
ACQUISITION FROM THE OWNER**

Landscaping and related improvements within right-of-way along Starlight Drive, Cougar Avenue and Highland Springs Avenue.

**ACQUISITION AGREEMENT
(CFD NO. 93-1 IMPROVEMENT AREA NO. 8F)**

EXHIBIT B

DIFs

	(Fee Amount per EDU as of January 1, 2020)¹
Traffic Signal	\$274.17
RR Crossing	\$294.64
Fire Station	\$584.74
Local Road Impact	\$2,496.20
TUMF ²	\$9,146.00
Sewer Capacity	\$5,468.58
Recycled Water	\$786.64
Recreation Facilities	\$735.70
Public Facilities	\$430.45
Police	\$504.90
Emer. Preparedness	\$729.63
Upper Potrero Sewer	\$251.66
Southern Trunk Main	\$90.15
Total per EDU:	\$21,793.50

¹ Each single-family detached dwelling unit equals one (1) EDU. These amounts shall adjust as the DIFs are adjusted by the City or new DIFs are adopted by the City. Nothing in this Acquisition Agreement will restrict the City's ability to adopt, revise, amend or create new DIFs at any time now or in the future and the same shall be applicable to the Property as adopted. The amounts listed are for those DIFs provided for as of June 1, 2019. Some DIFs contain a 1% administrative fee.

² Per TUMF Credit Agreements, the TUMF fee is determined at the time that the developer applies for a building permit. As a result, certain TUMF fees may be lower than the amount set forth above.

**ACQUISITION AGREEMENT
(CFD NO. 93-1 IMPROVEMENT AREA NO. 8F)**

EXHIBIT C

DIF IMPROVEMENTS SCHEDULE

<i>DIF Facility</i>	<i>Constructing Party</i>	<i>Construction/ Advance Schedule⁽⁴⁾</i>	<i>Estimated Cost/Advance Amount⁽¹⁾</i>
1. Sewage Treatment Plant Expansion	City	2017	\$ 4,191,833
		2018	1,282,424
		2019	1,519,702
		2020	551,693
2. Cherry Avenue Street Paving	Pardee	2017	497,831
3. Oak Valley/I-10 Interchange ⁽²⁾	City	2018	200,000
		2019	2,556,232
		2020	3,000,000
4. Traffic Signals	City	2017	50,000
		2018	247,240
5. Westside Fire Station	City	2018	618,240
6. Pennsylvania Grade Separation	City	2018	319,430
7. Pennsylvania Ave/2 nd Street ⁽²⁾	City/Pardee	2018	3,000,000
		2019	1,500,000
8. Park Improvements at City Hall and other parks	City	2019	1,000,000
		2020	2,316,814
		2021	2,643,000
9. Potrero Overpass/Interchange ⁽²⁾	City	2018	<u>1,694,743</u>
		TOTAL	<u>\$ 27,189,182</u>

⁽¹⁾ These amounts are based upon the total DIF obligation for DUs for which building permits are expected to be issued within CFD No. 93-1, Improvement Areas 8E, 8F and 17D and CFD Nos. 2016-2 and 2016-3 from January 1, 2018 through buildout of Sundance and Tournament Hills. The unpaid amounts may be adjusted based upon changes in the amount of the DIFs and changes in the expected or actual DUs.

⁽²⁾ Improvements in TUMF Program.

⁽³⁾ This schedule may be modified with the written consent of the City Council and Owner.

⁽⁴⁾ Advances of funds by Pardee for DIF Improvements to be constructed by the City shall be made within thirty (30) days following the City's written request.

ACQUISITION AGREEMENT

EXHIBIT D

FORM OF PAYMENT REQUEST (FACILITIES)

PAYMENT REQUEST NO. ____

The undersigned (the “Owner”), hereby requests payment to the Payees listed on Attachment 2 in the total amount of \$_____ for the Facilities (as defined in the Acquisition Agreement, dated as of May 1, 2020 by and among the City of Beaumont (the “City”), the City of Beaumont Community Facilities District No. 93-1 and the Owner), or Discrete Components thereof (as described in Exhibit A to that Acquisition Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized officer of the Owner, qualified to execute this Payment Request for payment on behalf of the Owner and is knowledgeable as to the matters set forth herein.

2. All costs of the Facilities or Discrete Components thereof for which payment is requested hereby are Actual Costs (as defined in the Acquisition Agreement referenced above) and have not been inflated or misrepresented in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.

3. Supporting documentation (such as third party invoices) is attached with respect to each cost for which payment is requested.

4. There has been full compliance with applicable laws relating to prevailing wages for the work to construct the Facilities or Discrete Components thereof for which payment is requested.

5. The Facilities or Discrete Components thereof for which payment is requested were constructed in accordance with all applicable City or other governmental standards, and in accordance with Plans approved by the City.

6. The Owner is in compliance with the terms and provisions of the Acquisition Agreement.

7. The Purchase Price for each Facility or Discrete Component (a detailed calculation of which is shown in Attachment 2 hereto for each such Facility or Discrete Component), has been calculated in conformance with the terms of the Acquisition Agreement.

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

Dated: _____

OWNER:
PARDEE HOMES,
a California corporation

By: _____

Name: _____

Title: _____

Dated: _____

CITY:

Payment Request Approved for Submission to
Finance Manager

By: _____

Director of Public Works

ACQUISITION AGREEMENT

ATTACHMENT 1

EXHIBIT D

[List here all Facilities or Discrete Components thereafter which payment is requested, and attach support documentation.]

ACQUISITION AGREEMENT

ATTACHMENT 2

EXHIBIT D

CALCULATION OF PURCHASE PRICE

[Use a separate sheet for each Facility or Discrete Component
for which payment is being requested]

- | | | |
|----|---|----|
| 1. | Description (by reference to Exhibit A to the Acquisition Agreement)
of the Facility or Discrete Component | \$ |
| 2. | Actual Cost (list here total of supporting invoices and/or other
documentation supporting determination of Actual Cost): | \$ |
| 3. | Subtractions from Purchase Price: | \$ |
| | A. Holdback for Lien releases (if any, see Section 3.4 of the
Acquisition Agreement) | \$ |
| | B. Retention (if any, see Section 3.4 of the Acquisition
Agreement) | \$ |
| 4. | Total disbursement requested (Amount listed in 2, less amounts, if any,
listed in 3) | \$ |

Payment shall be directed to following payee(s):

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

OWNER:

Dated: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

CITY:

Payment Request Approved for Submission to
Finance Manager

Dated: _____

By: _____

Director of Public Works

ACQUISITION AGREEMENT

EXHIBIT D-1

FORM OF PAYMENT REQUEST (DIF/ADVANCE REIMBURSEMENTS)

1. The undersigned (the “Owner”) hereby requests reimbursement from the City in the amount of \$_____ (“Requested Amount”), which amount has previously been paid to the City for DIFs or as an Advance (as defined in the Acquisition Agreement (the “Acquisition Agreement”), dated as of May 1, 2020 relating to Improvement Area No. 8F of the City of Beaumont Community Facilities District No. 93-1 specified below:

2. The Requested Amount has been paid to the City and has not formed the basis of any prior request or reimbursement.

3. The Owner is in compliance with the terms and provisions of the Acquisition Agreement.

4. Neither the Owner nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or assessments of special assessments or taxes levied in the Improvement Area (as defined in the Acquisition Agreement).

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

OWNER:

Dated: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

CITY:

Payment Request Approved for Submission to
Finance Manager

Dated: _____

By: _____

Director of Public Works

ACQUISITION AGREEMENT

EXHIBIT D-1

FORM OF DISBURSEMENT REQUEST (DIFS/ADVANCES)

1. The City of Beaumont Community Facilities District No. 93-1 (the "CFD") is hereby requested to disburse from the Improvement Fund, or any applicable account or subaccount thereof, the sum set forth below:

\$ _____ (the "Requested Amount")

2. The Requested Amount may be disbursed to the City or its designee to finance facilities authorized to be financed with the DIFs in the aggregate amount of \$ _____ with the credit for the DIFs to be provided with respect to any development within the City.

3. The Requested Amount is due and payable and has not formed the basis of any prior request or disbursement.

4. The Requested Amount is authorized and payable pursuant to the terms of that certain Acquisition Agreement dated as of May 1, 2020 relating to Improvement Area No. 8F of the CFD.

OWNER:

Dated: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ACQUISITION AGREEMENT

EXHIBIT E

CITY CFD POLICIES