ACQUISITION AGREEMENT

by and between

CITY OF CHINO

and

LENNAR HOMES OF CALIFORNIA, INC.

Dated as of June 1, 2019

Relating to:

CITY OF CHINO

COMMUNITY FACILITIES DISTRICT NO. 2019-1
( THE LANDINGS)
OF THE CITY OF CHINO
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>SECTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>DEFINITIONS</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Section 1.1 Definitions</td>
<td>1</td>
</tr>
<tr>
<td>II</td>
<td>RECITALS</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Section 2.1 The District</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Section 2.2 The Development</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Section 2.3 The Facilities</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Section 2.4 The Financing</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Section 2.5 The Bonds</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Section 2.6 No Advantage to City Construction</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Section 2.7 Agreements</td>
<td>4</td>
</tr>
<tr>
<td>III</td>
<td>FUNDING</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Section 3.1 City Proceeding</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Section 3.2 Levy of Special Taxes</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Section 3.3 Bonds</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Section 3.4 Bond Proceeds</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Section 3.5 Disclosure of Special Tax</td>
<td>6</td>
</tr>
<tr>
<td>IV</td>
<td>CONSTRUCTION OF FACILITIES</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 4.1 Plans</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 4.2 Duty of Owner to Construct</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Section 4.3 Relationship to Public Works</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Section 4.4 Independent Contractor</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Section 4.5 Performance and Payment Bonds</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Section 4.6 Contracts and Change Orders</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Section 4.7 Time for Completion</td>
<td>9</td>
</tr>
<tr>
<td>V</td>
<td>ACQUISITION AND PAYMENT</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Section 5.1 Inspection</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Section 5.2 Agreement to Sell and Acquire Facilities</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Section 5.3 Payment Requests</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Section 5.4 Processing Payment Requests</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Section 5.5 Payment</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Section 5.6 Restrictions on Payments</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Section 5.7 Defective or Nonconforming Work</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Section 5.8 Modification of Discrete Components</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Section 5.9 Payments of Purchase Price of Facilities or Discrete Components in Installments</td>
<td>13</td>
</tr>
</tbody>
</table>
## ARTICLE VI
**OWNERSHIP AND TRANSFER OF FACILITIES**
- Section 6.1 Facilities to be Owned by the City-Conveyance of Land and Easements to City ........................................... 14
- Section 6.2 Facilities to be Owned by the City-Title Evidence ........................................... 14
- Section 6.3 Facilities Constructed on Private Lands ........................................... 14
- Section 6.4 Facilities Constructed on City Land ........................................... 15
- Section 6.5 Facilities to be Acquired by Other Public Agencies ........................................... 15
- Section 6.6 Maintenance and Warranties ........................................... 15

## ARTICLE VII
**INSURANCE**
- Section 7.1 Insurance Requirements ........................................... 16
- Section 7.2 Standards Applicable ........................................... 17
- Section 7.3 Evidence of Insurance ........................................... 17

## ARTICLE VIII
**DIFs**
- Section 8.1 Funding of DIFs ........................................... 17

## ARTICLE IX
**REPRESENTATIONS, WARRANTIES AND COVENANTS**
- Section 9.1 Representations, Covenants and Warranties of the Owner ........................................... 18
- Section 9.2 Indemnification and Hold Harmless ........................................... 19

## ARTICLE X
**TERMINATION**
- Section 10.1 Mutual Consent ........................................... 20
- Section 10.2 City Election for Cause ........................................... 20
- Section 10.3 Force Majeure ........................................... 21

## ARTICLE XI
**MISCELLANEOUS**
- Section 11.1 Limited Liability of City ........................................... 21
- Section 11.2 Excess Costs ........................................... 21
- Section 11.3 Audit ........................................... 21
- Section 11.4 Attorney’s Fees ........................................... 22
- Section 11.5 Notices ........................................... 22
- Section 11.6 Severability ........................................... 22
- Section 11.7 Successors and Assigns ........................................... 22
- Section 11.8 Other Agreements ........................................... 23
- Section 11.9 Waiver ........................................... 23
- Section 11.10 Merger ........................................... 23
- Section 11.11 Parties in Interest ........................................... 23
- Section 11.12 Amendment ........................................... 23
- Section 11.13 California Law ........................................... 23
- Section 11.14 Counterparts ........................................... 23
List of Exhibits

Exhibit A: Description of Authorized Facilities Eligible for Acquisition from the Owner
Exhibit B: Discrete Components of Facilities and Fees
Exhibit C: Additional Facilities
Exhibit D: Form of Payment Request
THIS ACQUISITION AGREEMENT (the “Acquisition Agreement”), dated as of June 1, 2019, is by and between the CITY OF CHINO, a municipal corporation and a political subdivision of the State of California (the “City”), acting for and on behalf of itself and Community Facilities District No. 2019-1 (The Landings) of the City of Chino (the “District”), and Lennar Homes of California, Inc., a California corporation (“Owner”).

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 Fiscal Agent Agreement (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.


“Actual Cost” means the substantiated cost of a Facility or a Discrete Component, which costs may include: (i) the costs incurred by the Owner for the construction of such Facility or Discrete Component, (ii) the costs incurred by the Owner in preparing the Plans for such Facility or Discrete Component and the related costs of environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies or utilities for obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component, (iv) professional costs incurred by the Owner or the City associated with such Facility or Discrete Component, such as engineering, legal, accounting, inspection, construction staking, materials testing, public bid administration, and similar professional services; (v) a project administration fee not to exceed 5% of the cost of constructing such Facility or Discrete Component, as determined pursuant to clause (i) of this definition; and (vi) the costs directly related to the construction and/or acquisition of a Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder).
“Affiliate” means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by 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.

“Bidding Requirements” means the City’s bidding and contract requirements for public improvements set forth in Exhibit E.

“Bonds” means the bonds designated “Community Facilities District No. 2019-1 (The Landings) of the City of Chino Special Tax Bonds”, to be issued by the District pursuant to the Act in one or more series.

“Budgeted Cost” means the estimated cost of a Facility or Discrete Component as shown on Exhibit B hereto.

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

“County” means the County of San Bernardino, California.

“DIFs” means those development impact fees imposed on development within the District, as specified in Exhibit B hereto.

“Director” means the Director of Public Works of the City, or his 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 shown on Exhibit B hereto.

“District” means the Community Facilities District No. 2019-1 (The Landings) of the City of Chino, created by the City under the Act.

“Facilities” means the public and other facilities described in Exhibit A hereto and Previously Completed Facilities described in Exhibit A-2 which are to be acquired with the proceeds of the Bonds.

“Fiscal Agent” means a financial institution in its capacity as fiscal agent under the Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under the Fiscal Agent Agreement.

“Fiscal Agent Agreement” means the agreement by that name between the City and the Fiscal Agent, 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.

“Improvement Fund” means (a) prior to the issuance of Bonds, the special fund established pursuant to Section 3.2 below, and (b) following the issuance of Bonds, the Acquisition and Improvement Fund established pursuant to the Fiscal Agent Agreement.

“Local Goals and Policies” means the City’s policy regulating the use of public financing mechanisms to finance public facilities, dated July 5, 2005, as may be amended from time to time.
“Owner” means Lennar Homes of California, Inc., a California corporation, and its successors and assigns to the extent permitted under Section 11.7 hereof.

“Payment Request” means a document, substantially in the form attached as 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 which shall be submitted to and approved by the City pursuant to the applicable standards of the City or other entity that will own, operate or maintain the Facilities when completed and acquired.

“Previously Completed Facilities” means those Facilities listed in Exhibit A-2 attached hereto that were completed by the Owner prior to the formation of the District.

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

“Rate and Method” means the Rate and Method of Apportionment for Community Facilities District No. 2019-1 (The Landings) of the City of Chino attached as Exhibit A to City Resolution No. 2019–___. (Capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Rate and Method.)

“Special Taxes” means the Assigned Annual Special Tax A levied on and collected from Assessor’s Parcels classified as Developed Property pursuant to the Rate and Method, including any prepayments of Special Tax A that are allocated for the payment of improvements pursuant to 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 B, and/or the addition to Exhibit A or Exhibit B 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.

ARTICLE II
RECITALS

Section 2.1 The District.

The City Council of the City has established the District 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, which include the Facilities listed in Exhibit A hereto and the facilities authorized to be financed with the DIFs.

Section 2.2 The Development.

The property within the District is expected to be developed with 200 single-family attached and detached residential dwelling units pursuant to Tract Map No. 20008.
Section 2.3  The Facilities.

The Facilities are within or in the vicinity of the District, 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. The Owner acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the City to issue any Bonds to acquire the Facilities from the Owner or implies that the City has in any way engaged the Owner to construct the Facilities. The facilities which are eligible for acquisition by the City from the Owner under this Acquisition Agreement are only the Facilities listed in Exhibit A hereto and the Discrete Components listed in Exhibit B hereto, as such Exhibits may be amended and/or supplemented by any Supplement.

Section 2.4  The Financing.

The Owner and the City wish to finance the DIFs and the acquisition of the Facilities and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and payment for Discrete Components thereof as shown in Exhibit B hereto (as it may be amended and supplemented by any Supplement) with the proceeds of the Special Taxes and Bonds on deposit in the Improvement Fund.

Section 2.5  The Bonds.

The City may proceed with the authorization and issuance of the Bonds in one or more series under the Act and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the DIFs and acquisition of all or a portion of the Facilities. The execution by the City of this Acquisition Agreement in no way obligates the City to issue any Bonds, or to acquire any Facilities or finance any fees with proceeds of any Bonds issued, except the Facilities and DIFs listed in Exhibit A and Exhibit B hereto which are to be acquired or financed subject to the terms and conditions set forth in this Acquisition Agreement.

Section 2.6  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 be constructed by the Owner 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, provided, however, that the Previously Completed Facilities set forth on Exhibit A-2, which were completed prior to the formation of the District, shall not be so subject.

Section 2.7  Agreements.

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

Section 3.1 City Proceeding.

Upon the written request of the Owner, 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 its sole discretion; provided that, subject to satisfaction of the applicable City financing policies, including the Local Goals and Policies, sound municipal financing practices and the requirements of this Acquisition Agreement, the City shall use reasonable efforts to issue and sell the Bonds in one or more series in an amount sufficient to fund the Facilities and DIFs in accordance with this Acquisition Agreement and the Owner’s schedule for development of its property within the District. The maximum authorized aggregate principal amount of the Bonds is $11,000,000.

Section 3.2 Levy of Special Taxes.

City and Owner agree that in each fiscal year prior to the issuance of Bonds the Special Taxes shall be levied at the rate specified in Table 1 and Table 2 of the Rate and Method on each Assessor’s Parcel classified as Developed Property. Such Special Taxes received by the City that are not required to fund Administrative Expenses shall be deposited in a discrete, special fund of the City and shall be disbursed to fund Facilities and DIFs in accordance with this Acquisition Agreement. Any portion of prepayment amounts received pursuant to Section G and Section H of the Rate and Method that are not needed for bond redemption or Administrative Expenses shall be available for funding Facilities and DIFs.

Section 3.3 Bonds.

The City, in connection with this Acquisition Agreement, shall proceed with the issuance and delivery of the Bonds for the District. The City shall not be obligated to finance any DIFs or pay the Purchase Price of the Facilities or any Discrete Components thereof except from amounts on deposit in the Improvement Fund on or after the formation of the District. The City makes no warranty, express or implied, that the proceeds of the Special Taxes and Bonds deposited and held in the Improvement Fund, including any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the DIFs or the Purchase Price of all of the Facilities.

Section 3.4 Bond Proceeds.

The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds will be set aside under the Fiscal Agent Agreement in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the DIFs and the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), all as herein provided.
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 the DIFs 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 this Acquisition Agreement 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 District is subject. In addition, the funding of the Purchase Price of a Facility shall not preclude the issuance of a credit against any applicable DIF.

Section 3.5 Disclosure of Special Tax.

Copies of the executed “Notices of Special Tax” required by California Government Code Section 53341.5 provided to the purchaser of real property within the District shall be provided to the Finance Director upon request for such Notices of Special Tax. The Finance Director’s receipt of such “Notices of Special Tax” shall not be construed as City or District approval of the form of Notice of Special Tax or in any way make the City or District liable for deficiencies in such “Notice of Special Tax.”

Prior to the Bonds being issued, the Owner will be required to provide all information regarding the development of its property, 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”). Owner shall be required to obtain counsel to review such official statement and render an opinion in connection with the Bond issue in a form reasonably acceptable to the City. Moreover, each property owner which is responsible for twenty percent (20%) or more of the maximum special tax within the District at the time the 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 District if necessary to assist the underwriter of the Bonds in complying with the continuing disclosure requirements of Rule 15c2-12 of the Commission, or prudent given market conditions for the Bonds in the reasonable opinion of the underwriter or disclosure counsel.

ARTICLE IV
CONSTRUCTION OF FACILITIES

Section 4.1 Plans.

To the extent that it has not already done so, 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 and/or the public entity that will own and operate the Facilities. 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 calendar days of such acceptance.

Section 4.2 Duty of Owner to Construct.

All Facilities and Discrete Components thereof to be acquired hereunder specified in Exhibit B hereto, as amended from time to time, shall be constructed at the direction of the Owner in accordance with the approved Plans following the solicitation of competitive bids as provided in Section 4.3 hereof,
unless listed on Exhibit A-2 hereof. The Owner shall employ 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 Facilities and Discrete Components thereof listed in Exhibit B hereto, and (ii) to use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid hereunder, if any.

Except as set forth in the following paragraph, the Owner shall not be relieved of its obligation to cause the construction of each Facility and Discrete Component thereof listed in Exhibit B hereto and convey each such Facility and Discrete Component to the City in accordance with the terms, hereof, even if, (i) because of the limitations imposed by Section 5.6 hereof, 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 District under any agreement or any governmental approval to which any land within the District is subject, with respect to the public improvements required in connection with the development of the land within the District.

Section 4.3 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 Exhibit B hereto from moneys in the Improvement Fund and is not intended to be a public works contract. Except for those Previously Completed Facilities set forth on Exhibit A-2 which were completed prior to the formation of the District, the Owner acknowledges and agrees that the Facilities shall be constructed as if the Facilities had been constructed under the direction and supervision, or under the authority of, the City by adhering to the provisions of this Acquisition Agreement, and the Owner shall adhere to the Bidding Requirements set forth in Exhibit E hereto for all Facilities except for the Previously Completed Facilities.

The Owner shall competitively bid and award all contracts for construction of the Facilities listed in Exhibit B hereto (excluding those Previously Completed Facilities set forth on Exhibit A-2 hereto), as amended from time to time, in conforming with the Bidding Requirements. The Owner shall establish a list of written criteria acceptable to the Director (including experience, ability to perform on schedule and financial ability) to determine qualified contractors for any contract. Formal bids need be requested from only those entities on the list of qualified contractors determined by such criteria; and if no such list is established for any specific Facility or Discrete Component thereof, 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. Owner shall make arrangements with City to schedule the bid opening, which shall be held at City offices, conducted by Owner and witnessed by City staff. Upon written request of the Director, the Owner shall provide an analysis of bids for construction 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. If the Director disapproves of any such contractor, the Owner shall select the next lowest responsible bidder from the competitive bids received who is acceptable to the Director.
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.

This Section 4.3 applies to all direct contracts to be entered into by the Owner under this Section 4. This Section 4.3 does not apply to the purchase of materials by the Owner or any contractor or for professional services associated with the construction of Facilities.

Notwithstanding the foregoing provisions, contract letting procedures that differ from the procedures in this Section 4.3 shall be deemed to satisfy this Acquisition Agreement if the Owner and the Director agree in writing on such other contract letting procedures.

The provisions of this Section 4.3 shall not apply to the Previously Completed Facilities describe in Exhibit A-2.

Section 4.4 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 4.5 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 4.6 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 listed in Exhibit A hereto, as amended from time to time, and all such contracts and change orders shall be submitted to the Director. Prior approval of change orders by the Director shall only be required for such change orders which in any way materially alter the quality or character of the subject Facilities, or which involve an amount equal to the greater of ten percent (10%) of the amount of the bid for the Facility involved or $25,000. The City expects that such 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. Notwithstanding anything in this Section 4.6 to the contrary, this Section 4.6 shall not apply to the Previously Completed Facilities described in Exhibit A-2.
Section 4.7  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 expects to complete the Facilities and to have requested payment for the Facilities under this Acquisition Agreement within three years from the date of the closing of Bonds issued to finance such facilities. 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.

The Owner agrees to use its good faith efforts to complete all Facilities within three years from the date of closing of Bonds issued to finance such facilities.

ARTICLE V
ACQUISITION AND PAYMENT

Section 5.1  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 approved Plans by the City or other applicable public entity or utility. The City shall make or cause to be made periodic site inspections of the Facilities 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 5.2  Agreement to Sell and Acquire Facilities.

The Owner hereby agrees to sell the Facilities and Discrete Component listed in Exhibit B hereto to the City (or other applicable public agency that will own such Facility and Discrete Component), and the City hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof 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 has occurred; provided that the City has agreed hereunder to make payments to the Owner prior to the Acceptance Date for certain Discrete Components of Facilities as shown in Exhibit B hereto, as it may be supplemented by any Supplement. The Owner acknowledges that the Discrete Components have been identified for payment purposes only, and that the City (or other applicable public agency that will own a Facility) 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 (or other applicable public agency that will own a Facility) 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.
In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5.1 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 5.3 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 (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the City (or other applicable public agency that will own the Facility) Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.1 hereof, (b) a copy of the recorded notice of completion of such Facility (if applicable), (c) 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 (d) an assignment of warranties and guaranties for such Facility, as described in Section 6.5 hereof, in a form acceptable to the City.

Upon receipt of a Payment Request (and all accompanying documentation), 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. 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 thirty (30) calendar 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. 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 5.5 notwithstanding such partial denial. The City’s internal cost of staff processing of Payment Requests shall be reimbursed from the amount set aside therefrom from the proceeds of the Bonds or from the Improvement Fund if proceeds of the Bonds is unavailable therefor. The 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 Owners to the extent insufficient funds are on deposit in the Improvement Fund, which advances may be later reimbursed to the Owners out of the Improvement Fund.

Upon approval of the Payment Request by the Director, the Director shall sign the Payment Request and forward the same to the Finance Director of the City. Upon receipt of the reviewed and fully signed Payment Request, the Finance Director of the City shall, within the then current City
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.

Section 5.6 Restrictions on Payments.

Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Owner under Sections 5.2 and 5.5 hereof:

(a) Amounts of Payments.

Subject to the following paragraphs of this Section 5.6, 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 whether or not the Actual Cost exceeds the Budgeted Cost therefor (it being understood that the Budgeted Costs are only estimates and not limitations on the amount of the Purchase Price).

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 District. 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.
The City shall withhold payment for the final Discrete Component of a Facility constructed on land, 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 VI hereof.

The City shall be entitled to withhold any payment hereunder for a 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 Discrete Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Owner for such 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 the final Discrete Component of a Facility hereunder to be owned by the City until: (i) the Director determines that the Facility is ready for its intended use, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.1, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Owner, in a form acceptable to the Director, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility (or final Discrete Component) have been submitted to the Director for the Facility. The City hereby agrees that the Owner shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify it for any losses sustained by the City because of any liens that may exist at the time of acceptance of such a 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, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director.

(d) Retention.

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. 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 in accordance with Section 6.5 hereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefore. No retention shall apply if the Owner proves to the Director’s satisfaction that the Owner’s contracts for the 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.

The provisions of this Section 5.6(d) shall not apply to the Previously Completed Facilities.

(e) **Frequency.**

Unless otherwise agreed to by the Director, no more than one Payment Request shall be submitted by the Owner in any calendar month.

Section 5.7 **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 5.8 **Modification of Discrete Components.**

The Owner may submit to the Director a revised Exhibit B for the purpose of updating the Budgeted Costs for one or more Discrete Components and Facilities or identifying other DIFs that are eligible to be financed and such revised Exhibit B shall replace the original Exhibit B in its entirety. In addition, upon written request of the Owner, the Director shall consider modification of the description of any Discrete Component or the addition of a new Facility or Discrete Component. Any such modification shall be subject to the written approval of the Director, and shall not diminish the overall facilities to be provided by the Owner hereunder (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted to sell the Bonds). It is expected that any such modification will be solely for purposes of dividing up the work included in any Discrete Component for purposes of acceptance and payment, for example: (i) separation of irrigation and landscaping from other components of a Discrete Component, or (ii) modifications to allow for payment for roadway improvements prior to completion of the top course of paving. In most instances, the Director will only approve modification for payment purposes when there will be an unusual period of time between the completion and acceptance of such divided work or to better implement the phasing of the overall construction of the Facilities; but no such circumstances shall in any way obligate the Director to approve such modification. Supplements to modify this Acquisition Agreement in accordance with this Section 5.8 may be approved by the Director without further City Council action.

Section 5.9 **Payments of Purchase Price of Facilities or Discrete Components in Installments.**

The City understands and agrees that (i) Owner will be constructing Facilities or Discrete Components prior to the availability of funds in the Improvement Fund that will be used to pay for such Facilities or Discrete Components, (ii) the City may be inspecting such Facilities or Discrete Components and processing and completing payment requests for the payment on such Facilities or Discrete Components with knowledge that there may be insufficient funds in the Improvement Fund available at such time, (iii) the Facilities or Discrete Components may be conveyed to and accepted by the City when there are insufficient funds in the Improvement Fund to pay the Purchase Prices of such
Facilities or Discrete Components, and (iv) in any such case, the payment of any approved payment requests for the Purchase Prices of such Facilities or Discrete Components will be deferred until there are sufficient funds in the Improvement Fund available to pay the Purchase Prices of such Facilities or Discrete Components (if ever, subject to the terms and conditions set forth in this Acquisition Agreement), at which time the City will make such payments in accordance with this Acquisition Agreement, subject to the limitations set forth in this Acquisition Agreement. At all times, Owner will be constructing such Facilities or Discrete Components with the expectation that the Purchase Prices for such Facilities or Discrete Components will be paid solely from and limited to the funds on deposit in the Improvement Fund. The conveyance of Facilities or Discrete Components to the City prior to receipt of the Purchase Prices for such Facilities or Discrete Components shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such Facilities or Discrete Components. The Purchase Price paid hereunder for any Facility or Discrete Component thereof may be paid in any number of installments as funds in the Improvement Fund become available.

ARTICLE VI
OWNERSHIP AND TRANSFER OF FACILITIES

Section 6.1 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 6.2 Facilities to be Owned by the City-Title Evidence.

Upon the request of the City, 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) calendar 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 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. In the event the Owner cannot cure such objections to title, City agrees to consider the use of eminent domain pursuant to Section 6.3 hereof for such purpose.

Section 6.3 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 V 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 6.1 and 6.2 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. 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 6.4 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 6.3 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 6.5 Facilities to be Acquired by Other Public Agencies.

With respect to any Facility to be acquired by a public entity other than the City, the Owner shall comply with such entities rules and regulations regarding title and conveyance of property, and provide the Director with evidence of such compliance, prior to the payment of the Purchase Price for any such Facility (or the last Discrete Component thereof).

Section 6.6 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) calendar days after written notice thereof by the
City to the Owner, and shall complete such repairs, replacement or correction as soon as practicable. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the Director as part of the transfer of title.

For purposes of this Section 6.6, after the Acceptance Date for a Facility, the terms “maintain” and “maintenance” mean the repair, replacement, or correction of any defects in the Facility, and shall not mean the day-to-day upkeep or correction of normal wear and tear of the Facility (such as watering or weeding for landscape improvements, painting, graffiti removal, etc.).

ARTICLE VII
INSURANCE

Section 7.1 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 $100,000.00 per occurrence; (ii) Comprehensive General Liability - Combined Single Limit - $1,000,000.00; (iii) Automobile Liability - Combined Single Limit - $1,000,000.00, (the automobile and general comprehensive liability policies shall be accompanied by an umbrella policy with a combined limit of $5,000,000.00); and (iv) Errors and Omissions Insurance - Combined Single Limit - $1,000,000.00.

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 7.2 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 7.1, 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) A12 or better with respect to primary levels of coverage, and (ii) B+12 or better with respect to excess levels of coverage, in the most recent edition of Best’s Insurance Guide and shall be issued and delivered in accordance with State law and regulations.

Section 7.3 Evidence of Insurance.

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 VIII
DIFs

Section 8.1 Funding of DIFs.

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 of any DIFs previously paid to the City in an amount not to exceed the amount on deposit in the Improvement Fund. In the event that the amount in the Improvement Fund is less than the total amount of DIFs previously paid to the City and requested for reimbursement in a Payment Request, the unpaid amount shall be reimbursed to the Owner when additional funds are subsequently deposited in the Improvement Fund in an amount equal to or such unpaid amount of the Payment Request. If Owner constructs a DIF facility, Owner shall only be entitled to reimbursement pursuant to the terms of this Acquisition Agreement for the Owner’s DIF obligation that was not satisfied through the construction of such DIF facilities.

The Owner may pay DIFs prior to the availability of funds in the Improvement Fund to reimburse the Owner for the payment of such DIFs. Any DIFs paid by the Owner shall be made with the understanding that the payment of such DIFs may be reimbursed to the Owner from the funds on
deposit in the Improvement Fund if such funds become available therefor. The payment of DIFs prior to the availability of such funds shall not be construed as a dedication or gift of the DIFs, or a waiver of the reimbursement for such DIFs, it being the intention that the DIFs will be reimbursed from funds on deposit in the Improvement Fund if such funds become available therefor. The reimbursement for DIFs may be paid in any number of installments as funds become available therefor in the Improvement Fund.

ARTICLE IX
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Representations, Covenants and Warranties of the Owner.

The Owner represents and warrants for the benefit of the City, as follows:

(a) Organization.

The Owner is a California corporation duly organized and validly existing under the laws of the State, and 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 District 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 District 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.


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 will assure complete compliance with any applicable law or regulation for the payment of prevailing wages for such construction. This subsection (g) shall not apply to the Previously Completed Facilities.

(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.

(i) **Land Owners.**

The Owner agrees that in the event that it sells any land owned by it within the boundaries of the District, the Owner will (i) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement and the Owner’s rights and obligations assigned to the purchaser with respect to the construction of and payment for the Facilities, and (ii) notify the purchaser in writing of the existence of the District and the special tax lien in connection therewith.

Section 9.2 **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, or any claims of persons employed by the Owner or its agents to construct the Facilities. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or active 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 X
TERMINATION

Section 10.1 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 payments for the DIFs or the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent.

Section 10.2 City Election 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 District 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 three hundred sixty-five (365) days to undertake substantial work related to the construction of the Facilities, other than for a reason specified in Section 10.3 hereof, shall constitute such abandonment, it being understood that delays or stoppages approved by the City and Owner shall not constitute 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 in violation of Section 11.7 herein.

(f) The Owner shall have made any intentional 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 10.3 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, or other labor disputes, damage to work in progress by casualty, 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.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Limited Liability of City.

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

Section 11.2 Excess Costs.

The Owner agrees to pay all costs of the Facilities that it is obligated to construct pursuant to Section 4.2 in excess of the moneys available therefor in the Improvement Fund.

Section 11.3 Audit.

The Director and/or the Finance Director or other finance officer of the City shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Owner, to review all books and records of the Owner pertaining to the Actual Cost incurred by the Owner in to any of the Facilities, and any bids taken or received for the construction thereof or materials therefor.
Section 11.4 **Attorney’s Fees.**

In the event that any action or suit is instituted by either party against the other arising out of this Acquisition Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys’ fees.

Section 11.5 **Notices.**

Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by overnight delivery an original of the same within twenty-four hours after such transmission), addressed as follows:

City: City of Chino  
13220 Central Avenue  
Chino, CA 91710  
Attention: Rob Burns, Director of Finance  
Email: rburns@cityofchino.org

Owner: Lennar Homes of California, Inc.  
980 Montecito Drive, Suite 300  
Corona, CA 92879  
Attention: ______________________  
Email: ________________________

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 11.6 **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 11.7 **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 transfer is expressly authorized hereunder, 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 such 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 consent, no assignment shall release the Owner from its obligations and liabilities under this Acquisition Agreement.
Section 11.8  Other Agreements.

The obligations of the Owner hereunder shall be those of a party hereto and not as an owner of property in the District. 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 District. 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 11.9  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 11.10 Merger.

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

Section 11.11 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 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 or the Owner shall be for the sole and exclusive benefit of the City and the Owner.

Section 11.12 Amendment.

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

Section 11.13 California Law.

This Acquisition Agreement shall be governed by the laws of the State of California.

Section 11.14 Counterparts.

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

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

CITY OF CHINO, for itself and on behalf of Community Facilities District No. 2019-1 (The Landings) of the City of Chino

By: ________________________________
Name: Matthew Ballantyne
Its: City Manager

ATTESTED TO:

______________________________
City Clerk

APPROVED AS TO FORM:

______________________________
Rob Burns, Director of Finance
City of Chino

APPROVED AS TO CONTENT:

______________________________
Bradley R. Neal,
Stradling Yocca Carlson & Rauth

LENNAR HOMES OF CALIFORNIA, INC.,
a California corporation

By: ________________________________
Name: ____________________________
Title: Authorized Agent
ACQUISITION AGREEMENT

EXHIBIT A

DESCRIPTION OF AUTHORIZED FACILITIES ELIGIBLE FOR ACQUISITION FROM THE OWNER

A. TYPES OF FACILITIES

The types of Facilities that are eligible to be financed by CFD No. 2019-1 with the proceeds of special taxes and/or bonds issued by CFD No. 2019-1 consist of the following:

(1) Sewer Improvements – Bickmore Avenue & Rincon Meadows Avenue.
(2) Recycled Water Improvements – Bickmore Avenue & Rincon Meadows Avenue.
(3) Street improvements – Bickmore Avenue & Rincon Meadows Avenue.
(4) Public storm drain improvements Bickmore Avenue & Rincon Meadows Avenue.

Incidental expenses of relating to the Facilities may include professional design fees (which include final engineering, field engineering and field services, soils engineering, field observation and reports, dry utility design and coordination, landscape design and field services), staking, environmental reports, plan check, and inspection.

B. SUBSTITUTION FACILITIES

The description of Facilities is general in nature. The final nature and location of the Facilities will be determined upon preparation of final plans and specifications.
ACQUISITION AGREEMENT

EXHIBIT A-2

TYPES OF FACILITIES
COMPLETED PRIOR TO FORMATION

1. Sewer Improvements
   A. Public sewer improvements within Tract No. 20008, including, but not limited to, [TO COME]

2. Storm Drain Improvements
   A. Public storm drain improvements within Tract No. 20008, including, but not limited to, [TO COME]
ACQUISITION AGREEMENT

EXHIBIT B

BUDGETED COSTS OF FACILITIES AND ELIGIBLE DIFs

I. FACILITIES

Each Facility is estimated to have the Budgeted Cost specified below (however, the Purchase Price for a Facility is its Actual Cost). Discrete Components of the Facilities may be described in a supplement to this Agreement.

<table>
<thead>
<tr>
<th>Facility</th>
<th>Budgeted Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Sewer Improvements – Bickmore Ave &amp; Rincon Meadows Ave</td>
<td>$162,807</td>
</tr>
<tr>
<td>(2) Tract No. 20008 Sewer improvements (Exhibit A-2 Facility)</td>
<td>630,910</td>
</tr>
<tr>
<td>(3) Tract No. 20008 Storm Drain improvements (Exhibit A-2 Facility)</td>
<td>1,086,939</td>
</tr>
<tr>
<td>(4) Recycled Water Improvements – Bickmore Ave &amp; Rincon Meadows Ave</td>
<td>26,463</td>
</tr>
<tr>
<td>(5) Street Improvements – Bickmore Ave &amp; Rincon Meadows Ave</td>
<td>372,414</td>
</tr>
<tr>
<td>(6) Public storm drain improvements – Bickmore Ave &amp; Rincon Meadows Ave</td>
<td>184,640</td>
</tr>
</tbody>
</table>

Total $2,464,173

II. DIFs(1)

<table>
<thead>
<tr>
<th>Budgeted Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Storage &amp; Distribution Facilities $1,212,726</td>
</tr>
<tr>
<td>Sewer Collection and Disposal Facilities 225,506</td>
</tr>
<tr>
<td>(Sewage DIF Credit) (162,807)</td>
</tr>
<tr>
<td>General Facilities 24,800</td>
</tr>
<tr>
<td>Fire Protection Facilities 190,942</td>
</tr>
<tr>
<td>Law Enforcement Facilities 94,636</td>
</tr>
<tr>
<td>Community Centers/Public Use Facilities 756,708</td>
</tr>
<tr>
<td>Storm Drain Collections Facilities 852,912</td>
</tr>
<tr>
<td>(Storm Drain DIF Credit) (184,640)</td>
</tr>
<tr>
<td>Bridges, Signals, &amp; Thoroughfares Facilities 1,467,740</td>
</tr>
<tr>
<td>Open Space Amenities Facilities 287,338</td>
</tr>
<tr>
<td>Congestion Management Plan Facilities 93,304</td>
</tr>
<tr>
<td>Park Facilities 2,116,400</td>
</tr>
</tbody>
</table>

(1) Owner may receive DIF fee credits for the construction of certain improvements within the City’s Master Plan. Any DIF fee credits so received shall reduce the amount of DIF fees eligible to be financed through the District.
ACQUISITION AGREEMENT

EXHIBIT C

ADDITIONAL FACILITIES

[Intentionally Omitted]
ACQUISITION AGREEMENT

EXHIBIT D

FORM OF PAYMENT REQUEST

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 June 1, 2019 between the City of Chino (the “City”), with respect to the City of Chino Community Facilities District No. 2019-1 (The Landings) of the City of Chino and the Owner), or Discrete Components thereof (as described in Exhibit B 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. To the extent that this payment request is with respect to a completed Facility, the Owner has submitted or submits herewith to the City as-builts drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Discrete Component, the Owner has in his construction office a marked set of drawings or similar plans and specifications for the Discrete Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.

3. 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.

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

5. 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.

6. 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 the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Owner is in compliance with the terms and provisions of the Acquisition Agreement, including the award of contracts under which the construction for which this payment is requested.
8. 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 Section 5.6 of the Acquisition Agreement.

9. 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 or special assessments levied in the District (as defined in the Acquisition Agreement), except as follows:

___________________________________________.

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

Dated: ________________________________  LENNAR HOMES OF CALIFORNIA, INC., a California corporation

By: ____________________________________
    Name:
    Title:

Dated: ________________________________  CITY:

Payment Request Approved for Submission to Finance Director

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]

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Description (by reference to Exhibit B to the Acquisition Agreement) of the Facility or Discrete Component $</td>
</tr>
<tr>
<td>2.</td>
<td>Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): $</td>
</tr>
<tr>
<td>3.</td>
<td>Subtractions from Purchase Price: $</td>
</tr>
<tr>
<td></td>
<td>A. Holdback for Lien releases (see Section 5.6(C) of the Acquisition Agreement) $</td>
</tr>
<tr>
<td></td>
<td>B. Retention (see Section 5.6(D) of the Acquisition Agreement) $</td>
</tr>
<tr>
<td>4.</td>
<td>Total disbursement requested (Amount listed in 2, less amounts, if any, listed in 3) $</td>
</tr>
</tbody>
</table>

Payment shall be directed to following payee(s):

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. The undersigned (the “Owner”) hereby requests reimbursement from the City in the amount of $_____ (“Requested Amount”), which amount is on deposit in the Improvement Fund, or any applicable account of subaccount thereof, established by CFD No. 2019-1 for the DIFs (as defined in the Acquisition Agreement, dated as of June 1, 2019 relating to CFD No. 2019-1) specified below:

<table>
<thead>
<tr>
<th>Fee Category</th>
<th>Date Paid</th>
<th>Amount Requested</th>
<th>No. and Description of Lots/DUs for which Fees Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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 District (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 Director

Dated: _______________  By:__________________________

Director of Public Works

EXHIBIT D-1-2
ACQUISITION AGREEMENT

EXHIBIT E

BIDDING AND CONTRACT REQUIREMENTS FOR PUBLIC IMPROVEMENTS

The following rules and procedures ("Policies") have been adopted by the City Council in accordance with Section 3.40.130(B)(1) and Section 3.45.130(B)(1) of the Chino Municipal Code. All developers constructing public improvements in the City, and seeking reimbursement and/or credits therefor, shall comply with these Policies. The City Engineer is authorized to resolve any issues regarding the interpretation and implementation of these Policies.

POLICIES

When contracting for the construction of public improvements that will receive reimbursements or credits from the City, the developer is standing in place of the City and effectively spending the City’s money. Therefore, the developer shall comply with all laws governing the expenditures of public funds on public works projects, whether or not explicitly stated in these Policies, including, but not limited to:

- Division 2, Part 3, Chapter 1, Article 4 of the California Government Code (commencing with Section 20160), regarding the bidding and award of public works contracts;
- Division 2, Part 7, Chapter 1 of the California Labor Code (commencing with Section 1720), regarding labor and prevailing wage laws for public works projects; and
- Division 4, Part 6, Title 3 of the California Civil Code (commencing with Section 9000), regarding notices of completion, stop payment notices, and labor bonds for public works projects.

In the event of any conflict between these Policies and state laws applicable to the City, developers shall comply with state law applicable to the City.

BIDDING PHASE

A. **Bidding Documents.** Unless otherwise noted, the bidding documents shall conform to the following minimum requirements and shall be submitted to City for its prior written approval before release for bid. City shall review and approve, conditionally approve, or disapprove the bidding documents within fifteen (15) days after receipt.

1. The first publication or posting of the Notice Inviting Bids shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation, printed and published in the city (at minimum).
2. Unless impractical due to the nature of the public improvements, the bid proposal shall be unit-priced rather than lump sum or time and materials.

3. Bidders shall be required to submit a bid bond with their bid in the amount of at least 10% of the amount of the bid.

4. The bidding documents shall require the successful bidder to provide evidence of comprehensive general liability insurance in the amount of at least $2,000,000 prior to the award of the contract, which names the City of Chino as an additional insured.

5. The bidding documents shall provide for monthly progress payments to the contractor (with respect to the public improvements).

6. The contractor shall be required to pay prevailing wages, and comply with all state labor and wage laws applicable to cities, as listed above.

7. The bidding documents must clearly state the time, date, and place where bids are to be submitted and opened.

8. The bidding documents shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplementally bid, and are not eligible for reimbursement unless previously approved by the City Engineer.

9. The bid documents must require the contractor to provide 100% faithful performance, 100% labor/materials, and 10% warranty bonds. The warranty bond must guarantee the work and materials for 1 year following the completion of the work.

10. Conditioned bids, unless the bid proposal lists them for all to bid on, shall not be accepted.

B. **Prequalification.** Developer may pre-qualify bidders in accordance with Public Contract Code Section 20101, by requiring all persons interested in bidding on any portion of the public improvements to submit current financial statements and a pre-qualification questionnaire in a form approved by City, and by scoring each submission based on reasonable, objective criteria reasonably acceptable to City. Developer must implement an appeals procedure for responding to disputes in compliance with Public Contract Code Section 20101(d). If developer elects to pre-qualify bidders, only those bidders who have submitted complete pre-qualification packets and obtained the minimum required score based on the objective rating system adopted by developer (and approved by City) shall be permitted to bid on any portion of the construction work for the public improvements.

C. **Addenda.** Addenda shall be mailed by first class mail (or submitted by confirmed electronic transmission) to all bidding document holders and the City’s Management Analyst at the
same time. The last addendum shall be issued no later than three (3) business days prior to the date of opening bids.

D. **Receipt and Opening of Bids.**

1. Submitted bids shall be in sealed envelopes.

2. Bids shall not be accepted after the stated time for submission.

3. Bid opening shall be conducted by developer at developer’s place of business or other site acceptable to developer.

4. Sealed bids shall be opened and read aloud immediately following the submission time. The project engineer shall be invited to attend the bid opening.

E. **Contract Review and Award.**

1. All bids received shall be provided to the City’s Management Analyst. The City Engineer may, in his or her reasonable discretion, reject any and all bids that he or she determines to be nonresponsive.

2. The arithmetic of the lowest bid proposals received shall immediately be checked for errors.

3. Contracts shall be awarded to the lowest responsive and responsible bidder as defined by state law.

4. Award shall be made within 5 business days after the bid opening, unless more time is needed to determine if the lowest bidder is responsive and responsible.

**PRECONSTRUCTION AND NOTICE TO PROCEED**

A. **Preconstruction Meeting.** A preconstruction meeting shall be held with the contractor prior to beginning the work. The City’s project engineer shall be invited to attend the meeting.

B. **Notice of Proceed.** The Notice to Proceed shall be issued within a reasonable period of time following the contract execution.

**CONSTRUCTION PHASE**

A. **Schedule and Status Meetings.**

1. The City’s Management Analyst and City Engineer shall be provided a copy of the construction schedule.
2. Developer shall require the contractor to conduct weekly construction status meetings to which the City’s project engineer shall be invited.

**B. Extra Costs.**

1. Developer may approve change orders up to a combined total of 10% of the original cost of construction without prior City approval. Any change orders resulting in combined change to the original contract amount of more than 10% must be approved by the City Engineer.

2. Additional costs incurred solely for the benefit of developer, such as accelerating the construction schedule, regardless of the amount of such costs, shall not be eligible for reimbursement unless previously approved by the City Engineer. Any additional construction costs incurred due solely to unexcused delays caused by developer shall not be eligible for reimbursement.

**C. Records.** All contracts and construction related records shall be submitted to the Management Analyst throughout the duration of the project for the final determination of eligible costs for reimbursement.

**D. Payment, Stop Payment Notices, Notice of Completion.**

1. Developer shall make prompt payment to all contractors and subcontractors.

2. Developer must comply with all applicable laws applicable to cities regarding stop payment notices, as listed above.

3. Developer must file a Notice of Completion within 15 days of City’s approval of the public improvements (determining substantial completion), and shall submit a copy of the Notice of Completion to the Management Analyst.

**E. Inspection and Acceptance by City.**

1. All public improvements constructed by developer are subject to inspection by or on behalf of the City Engineer. Construction shall be scheduled to allow for periodic inspection by the Director of Development Services or his/her designee. The developer’s contractor will be required to provide adequate quality assurance and quality control measures to ensure all public improvements are constructed in accordance with the Standard Specifications for Public Works Construction or Caltrans Standard Specifications, as appropriate for the work to be constructed.

2. City may require any work to be redone or fixed, at no additional cost to City, if the City Engineer determines, in his or reasonable discretion, that the work does not conform to the plans and specifications approved by the City and/or the requirements of state and federal law.

EXHIBIT E-4