Meeting Date: **11/10/2015**

Report Type: Consent

Report ID: 2015-01010

02

City of SACRAMENTO

City Council Report

915 I Street, 1st Floor

www.CityofSacramento.org

Title: Standard Form Agreement for Use in Acquiring Developer-Constructed Public Improvements Funded by Community Facilities Districts

Location: Citywide

Recommendation: Pass a Resolution approving a new standard-form Acquisition and Shortfall Agreement for use in acquiring developer-constructed public infrastructure funded by Community Facilities Districts.

Contact: Mark Griffin, Special Districts Manager, (916) 808-8788, Department of Finance

Presenter: None

Department: Finance

Division: Public Improvement Finance

Dept ID: 06001321

Attachments:

1-Description/Analysis

2-Background

3-Resolution

4-Exhibit A

City Attorney Review

Approved as to Form

Joseph Cerullo

11/4/2015 4:13:14 PM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 11/2/2015 9:34:03 AM

Description/Analysis

Issue: Beginning in 2000, City Council approved a system of standard-form agreements for North Natomas (Ordinance No. 2000-018 and Resolution No. 2000-429), which allows for the efficient operation of routine development situations by delegating authority to the City Manager to enter into agreements made necessary by prior City Council approval of Finance Plans, Impact Fee programs, and Assessment and Mello-Roos Infrastructure Districts. One of these agreements, the Standard Form Acquisition and Shortfall Agreement (the Agreement), provides, as key features, for the following:

- Construction by developers of public infrastructure that the City then acquires using the proceeds of bonds secured with special taxes levied by a Mello-Roos Community Facilities District (CFD). The acquisition price reimburses the developers for the eligible costs of building the infrastructure.

- Reimbursement to developers of development-impact fees that fund the construction of public infrastructure.

- Payment by developers of all construction costs that exceed the acquisition price set out in the Agreement for the infrastructure.

Approval of the attached resolution will make several substantive changes to the Agreement. The substantive changes are listed below and explained in more detail in the Policy Considerations section of this report:

- The Agreement will now apply citywide.

- The Agreement now includes provisions for the use of direct (pay-as-you-go) reimbursement of construction costs from special taxes.

- The Agreement now caps the total reimbursements from special-tax revenues and bond proceeds.

The existing policy that requires the City Council's approval of any substantive changes will continue. Changes of a non-substantive nature may only be made by the City Attorney.

The proposed Agreement has been reviewed in its entirety and updated, with reviews by City staff, developers, and developers' attorneys. In addition to the substantive changes, many non-substantive changes are included reflecting reorganizations and revisions for clarity.

Policy Considerations: Almost all project-specific agreements specifying conditions for the use of Mello-Roos special taxes involve amounts in excess of the financial authority of the City Manager as specified in Sacramento City Code, necessitating City Council approval in each instance unless the City Manager has delegated authority to sign approved standard-form agreements.

The facilities, fees, special taxes, and bond amounts that are covered by the existing Agreement were approved by the City Council and by the qualified electors in the related CFD. The Agreement also includes requirements for competitive bidding and payment of prevailing wages as well as guidelines and procedures for reimbursement.

The existing Agreement has proven to be a very effective time saving tool in North Natomas for both developers and the City. The use of the Agreement citywide will streamline the implementation of new infrastructure CFDs, including the CFDs for Curtis Park, The Creamery, McKinley Village, The Railyards, Northwest Land Park, Delta Shores, and the Sacramento Center for Innovation Triangle.

Incorporation of the direct-reimbursement (pay-as-you-go) provisions into the Agreement allows reimbursement directly from available special taxes. Importantly, the decision to reimburse a developer from bond proceeds or directly from tax revenues—or from a combination of proceeds and revenues—rests solely in the City's sole discretion and is subject to a reimbursement cap.

The pay-as-you-go and reimbursement-cap provisions were first used in the Acquisition and Shortfall Agreement with the developer of the Natomas Central project, K. Hovnanian Forecast Homes (City Agreement No. 2008-0683-1). Both were in response to the City's inability to CFD issue bonds because of FEMA building restrictions and the "Great Recession." By authorizing direct reimbursement from taxes, the City was able to reimburse the developer for facilities that had been built and accepted. Staff proposes to include provisions into the standard form. That not only permits reimbursement to developers before bonds are sold but also avoids "rate shock" to homeowners if special taxes are not levied until bonds are issued.

The majority of policies in place in the existing Agreement remain unchanged. These are generally described in the Background section of this report and set out in full in the proposed Agreement, attached as Exhibit A to the resolution.

Projects with circumstances justifying a variation from the Agreement will be brought to City Council for individual approval.

Environmental Considerations: Under the California Environmental Quality Act Guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Rationale for Recommendation: Approval of the revised standard form Acquisition and Shortfall Agreement will update best practices and extend its streamlining effects citywide for the benefit of both the developer and the City.

Financial Considerations: The reimbursements under the Agreement are funded by CFD special taxes. Special taxes are collected solely within the boundaries of the CFD and can be used only for the purposes of the CFD. There are no impacts on other funds of the City.

The maximum special tax that can be levied within a CFD is limited by the lower of the value of the public infrastructure to be financed or the maximum special tax allowable under City policy. The allowable limit is a total tax burden of 2%, calculated to include all levies on a property: the ad valorem property tax, general-obligation bonds, parcel taxes, and assessments and special taxes for maintenance and infrastructure financing. The net remaining special-tax capacity under the 2% maximum is the maximum that can be used in a new CFD. Typically, however, a CFD has a significantly lower total rate of 1.7% or less. This is usually due to marketability considerations by a developer.

Local Business Enterprise (LBE): Not applicable.

BACKGROUND

The City Council is often asked to form CFDs, both to finance services such as maintenance of streetscapes and parks (Maintenance Districts) and to finance the acquisition and construction of public infrastructure of all types, such drainage basins, public lands, roadways, traffic signals, interchange improvements, parks, open spaces, and streetscapes (Infrastructure Districts). Infrastructure Districts can also fund the payment of development-impact fees of any jurisdiction if the fees are used to address the area-wide public-infrastructure impacts of a development. Examples are the City's Public Facilities Fee and Land Acquisition Fee in North Natomas, the Sacramento Metropolitan Air Quality Management District Air Quality Mitigation Fee, and the Sacramento Regional County Sanitation District Sewer Impact Fee.

Infrastructure Districts are typically formed at the request of a developer but can be Council initiated. Developer-initiated Infrastructure Districts are able to take advantage of the City's authority to issue tax-exempt debt backed only by special taxes levied on the properties within the CFD.

An Infrastructure District is formed when the "qualified electors," either registered voters or, for undeveloped property, the developers or landowners, vote by at a least two-thirds majority of the votes cast, decide to issue debt in an amount not to exceed a fixed amount and to levy an annual special tax to finance specific facilities and impact fees.

The maximum amount of debt, the maximum special-tax levies, and the specific facilities and fees to be funded are all approved by City Council in the formation process preceding the qualified elector vote. Key City Council approved documents include the following:

- The Resolution of Intention to establish the district, which includes the authorized facilities and fees, the tax allocation, and maximum levies (the Rate and Method of Apportionment, or the RMA), and establishes a Public Hearing date.
- The Resolution Declaring the Necessity for the City to issue debt to finance facilities and fees.

The above items are presented on the City Council's Consent Calendar, followed no less than 30 days later by the Public Hearing with—

- the Resolution of Formation establishing the district and authorizing the levies, facilities and fees,
- the Resolution of Necessity to incur bonded debt of the district, and
- the Resolution Calling for a Special Mailed-Ballot Election.

Staff returns to City Council twice more on the Consent Calendar with the results of the election and the adoption of the enabling ordinance.

Facilities in developer-initiated Infrastructure Districts are typically built by the developer. Reimbursable impact fees are incurred by the developer in the course of development. No funds can be reimbursed to a developer, no taxes levied, and no bonds issued without a fully executed Acquisition and Shortfall Agreement in place, which specifies the following:

- Eligible facilities and impact fees
- Bidding requirements
- Prevailing wages as mandatory
- Construction management requirements
- Reimbursement request documentation requirements
- Verification procedures
- Reimbursement contingent on funds availability in the Infrastructure District from the levy of special taxes or bond proceeds
- Requirement that developers use their own equity to complete eligible facilities
- The expenditure limit that can be reimbursed from the Infrastructure District.

RESOLUTION NO.

Adopted by the Sacramento City Council
November 10, 2015

AMENDING STANDARD-FORM AGREEMENT FOR THE ACQUISTION OF DEVELOPER-CONSTRUCTED PUBLIC IMPROVEMENTS

BACKGROUND

A. On July 18, 2000, by Resolution No. 2000-429, the City Council approved nine standard-form agreements for use by the City Manager within the North Natomas Community Plan Area. Resolution No. 2000-429 also authorized the City Manager (1) to execute the standard-form agreements for specific projects upon approval as to form by the City Attorney and (2) to make minor, non-substantive changes in the standard-form agreements, with the approval of the City Attorney, when required for specific development projects. On November 23, 2004, by Resolution No. 2004-890, the City Council amended Resolution No. 2000-429 by adding a tenth standard-form agreement. Subsequently, the City Attorney's Office revised the format of, and corrected assorted non-substantive errors in, several of the standard-form agreements. On December 12, 2006, by Resolution No. 2006-918, the City Council revised the standard-form agreements by adding a new substantive provision and incorporating various non-substantive changes made by the City Attorney; the City Council also repealed Resolutions Nos. 2000-429 and 2004-890.

B. The standard-form system allows the efficient operation of routine development situations by delegating to the City Manager the authority to enter into agreements made necessary by prior City Council approval of Finance Plans, Impact Fee programs, and construction bonds.

C. One of the standard form-agreements, the Acquisition and Shortfall Agreement (the "**A&S Agreement**"), provides, as key features, for the following:

- Construction by developers of public infrastructure that the City then acquires using the proceeds of bonds secured with special taxes levied by a Mello-Roos Community Facilities District (CFD). The acquisition price reimburses the developers for the eligible costs of building the infrastructure.
- Reimbursement to developers of development-impact fees that fund the construction of public infrastructure.
- Payment by developers of all construction costs that exceed the acquisition price set out in the Agreement for the infrastructure.

D. As last updated in 2006, the Agreement did not authorize the use of special-tax revenue to reimburse developers directly, so unless bonds were issued no reimbursement was possible. When, in December 2008, FEMA effectively prohibited new construction in North Natomas until flood-control improvements

were made, no CFD bonds could be issued to finance development in North Natomas. That was problematic for one developer, K. Hovnanian Forecast Homes ("**K. Hovnanian**"), which had already constructed extensive public infrastructure for its Natomas Central project and desired to be reimbursed. The City Council addressed this problem by adding new provisions to K. Hovnanian's Acquisition and Shortfall Agreement (City Agreement No. 2008-0683-1) that allowed for direct reimbursement from special taxes in the City's discretion. The new provisions also capped the total reimbursements allowed from both direct reimbursements and bond proceeds, thus prohibiting reimbursements that exceed the bond capacity of the CFD. Incorporating similar provisions into the Agreement will provide needed flexibility for dealing with the uncertainty inherent in the issuance of bonds.

E. Because of the effectiveness of the Agreement in North Natomas and the advent of development activity citywide that would benefit from the use of the Agreement, it is desired that the Agreement be available for use in the rest of the City.

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

Section 1. The standard-form Acquisition and Shortfall Agreement attached to this resolution as Exhibit A is hereby approved.

Section 2. Resolution No. 2006-918, adopted December 12, 2006, is hereby superseded insofar as it pertains to the standard-form Acquisition and Shortfall Agreement.

Section 3. The City Manager is authorized to sign the standard-form Acquisition and Shortfall Agreement upon approval for legal form by the City Attorney's Office.

Section 4. The City Manager is authorized, with the approval of the City Attorney's Office, to make non-substantive changes to the standard-form Acquisition and Shortfall Agreement, including non-substantive changes required for specific development projects. The City Council's approval is required for all substantive changes. The City Manager may, in his discretion, bring any individual Acquisition and Shortfall agreement to the City Council for consideration and possible approval.

ACQUISITION-AND-SHORTFALL AGREEMENT

Community Facilities District No. [Number]

This agreement, dated _____, 20__, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the "City"), and [DEVELOPER'S NAME and type of entity] (the "Developer").

Background

A. The Developer has requested that the City form a community facilities district under the Mello-Roos Community Facilities District Act of 1982, sections 53311 through 53368.3 of the California Government Code (the "Act"), to finance the acquisition and construction of the public improvements described in Exhibit A, which will be owned by the City or by other public agencies (collectively the "Improvements," and each an "Improvement"). The district will be named [Name] Community Facilities District No. [Number] (the "District").

B. Section 53313.5 of the Act provides that the District may finance the acquisition of facilities benefitting the District only if the facilities have been constructed as if under the direction and supervision of, or the authority of, the local agency that will own or operate the facilities. The purposes of this agreement are (1) to provide for the formation of the District; (2) to provide for the design, construction, and acquisition of facilities from the proceeds of special-tax bonds issued through the District (the "Bonds") or directly from special-tax revenues of the District; and (3) to specify the terms and conditions, including prices and timing, for any reimbursement or other payment to the Developer for the Improvements, and for payment of incidental expenses (e.g., the cost of issuing the Bonds and the expenses of administering the District), whether from the proceeds of the Bonds or special-tax revenues.

C. The parties contemplate that certain of the Improvements will be constructed under a contract or contracts to be awarded by the Developer. The parties further contemplate that the completed Improvements are to be conveyed to, and accepted by, the City (or by another public entity or a regulated public utility) upon full satisfaction of this agreement. The Developer acknowledges that there may be insufficient funds from the sale of the Bonds or from special-tax revenues to reimburse the Developer for the full cost of the Improvements and that the Developer must pay any funding shortfall in full and without reimbursement.

D. The parties contemplate that the Improvements to be constructed by the Developer may be constructed in phases and that the City may sell the Bonds in successive series to finance the acquisition of the completed phases from the Developer. The parties also contemplate that the City may reimburse the Developer from special-tax revenues whether or not the Bonds are issued.

With these background facts in mind, the parties agree as follows:

1. Formation of District. To the extent the City has not already done so, the City shall commence and complete proceedings under the Act for the formation of the District, and the Developer shall cooperate with the City in those proceedings, which may include elections under sections 53326 and 53353.5 of the Act on the following matters:

    (a) the issuance and sale of the Bonds;

    (b) the annual levy of special taxes on all taxable property within the District to raise revenues needed to pay principal and interest on the Bonds, to pay the formation costs (including City expenses and consultant expenses), to pay the annual administrative expenses that the City and the District incur in levying and collecting the special taxes and in paying the principal and interest on the Bonds (including the fees of fiscal agents and paying agents), to replenish the reserve fund for the Bonds, to accumulate funds for future Bond payments, and to otherwise reimburse the Developer for the cost of the Improvements; and

    (c) the establishment of an appropriations limit for the District.

2. Sale of Bonds. Upon completion of the proceedings specified in section 1, the City may initiate the issuance and sale of the Bonds, subject to the following: the Bonds will not be sold until this agreement is signed by all parties and all required security has been posted. The amount of the Bonds and any phasing of the Bonds will be as specified in Exhibit B. The City will determine, in its sole discretion, the timing of the issuance and sale of the Bonds, their aggregate principal amount, and the terms and conditions upon which they will be sold, in accordance with the proceedings specified in section 1.

3. Improvement Fund. As provided in the indenture under which the Bonds are issued and sold (the "Indenture"), the City shall deposit, hold, invest, and disburse the proceeds of the Bonds and shall set aside a portion of the proceeds in a separate fund for constructing and acquiring the Improvements (the "Improvement Fund"). The City may withdraw monies from the Improvement Fund in accordance with Indenture to pay for all or a portion of the costs of design, construction, and acquisition and to pay other costs, all as determined by the City and as provided in this agreement or in the Indenture.

4. Direct Funding. The City shall levy a special tax in accordance with the proceedings specified in section 1. If the City receives special-tax revenues before the Bonds are issued, or if it receives special-tax revenues in excess of what is necessary to pay principal and interest on the Bonds, then the City may, in its reasonable discretion, use special-tax revenues to pay Developer for acquisition of the Improvements. The City shall deposit funding for the payments in the Improvement Fund.

5. Acquisition.

(a) *Acquisition of Increments*. The City may acquire Improvements incrementally, as shown on Exhibit C.

(b) *Completion*. The City will not acquire an Improvement or portion of an Improvement unless, as required by the *Guidelines for Special District Acquisition Projects* attached as Exhibit D to this agreement (the "Guidelines"), the City Manager determines in writing, as part of the verification process and record, that the Improvement or portion of an Improvement has been completed in accordance with section 6 and is a functional, usable unit of infrastructure capable of being incorporated into the City's infrastructure system.

(c) *Acquisition Price*. When an Improvement or portion of an Improvement to be acquired by the City is completed, and when the Developer has given the City all documents, including lien releases, the City requires for the Improvement or portion of an Improvement, the City shall determine the acquisition price in accordance with the Guidelines. The acquisition price for each Improvement or portion of an Improvement will include the Developer's actually paid construction cost as determined by the amounts set forth in contracts, invoices, cancelled checks, and purchase orders entered into by the Developer with its contractors and suppliers in accordance with the Guidelines. The City may, in its reasonable discretion, calculate engineering costs using a percentage of project costs, up to a maximum of 15%. "Engineering costs" means engineering costs, surveying costs, construction-management costs, plan-check fees, and inspection fees. The City shall promptly notify the Developer in writing of the acquisition price once the City has determined it.

(d) *Payment by City*.

(1) Within 30 days after the City notifies the Developer of the acquisition price, the City shall pay the Developer, from the Improvement Fund, the amount of the acquisition price minus a retention equal to 150% of the value of punch-list work not yet completed. The City shall hold the retention amount on each acquired Improvement or portion of an Improvement until the punch-list work for the Improvement or portion of an Improvement is completed and the City has accepted the work.

(2) Notwithstanding section 5(d)(1), the Developer is not entitled under any circumstances to reimbursement for more than the cost of the Improvements, except as follows: the Developer may obtain both reimbursement under this agreement and fee credits available under an applicable development-impact-fee program (the "Program") if (A) the Improvement is eligible for fee credits under the Program; (B) the Developer has entered into all agreements required

for reimbursement by the Program; and (C) the Developer has met all other requirements of the Program.

(e) *Timing of Acquisition*. When construction of an Improvement or portion of an Improvement to be acquired by the City has been completed, the City shall accept and acquire it. When an Improvement or portion of an Improvement is to be to be conveyed to another public entity or a regulated public utility, the Developer shall convey it to the entity or utility in accordance with the entity's or utility's policies and procedures, and the City shall pay for it from the Improvement Fund, subject to the following: proceeds from the Bonds may not be used to finance Improvements to be owned or operated by an entity other than the City unless the City and the other entity have entered into a joint community facilities agreement or a joint exercise of powers agreement in accordance with section 53316.2 of the Act.

(f) *Payment from Improvement Fund*. The City's obligation to pay for the acquisition of the Improvements is limited to monies in the Improvement Fund after deducting other cash reimbursements. If the monies in the Improvement Fund that are available for the acquisition of the Improvements and the payment of incidental expenses are less than the total cost of the Improvements and expenses, then the Developer shall pay the shortfall. The Developer may carry forward any shortfall in anticipation of being reimbursed by the City from monies in the Improvement Fund that subsequently become available, and, subject to any applicable legal or other constraints or restrictions, the City shall pay the Developer the shortfall as and when monies become available in the Improvement Fund.

(g) *Expenditure Limit*. The total reimbursed from the District may not exceed an expenditure limit for the District equal to $[_____] minus all costs of issuing the Bonds, all costs of District formation when these costs have been reimbursed from the District, and all costs of District administration.

6. Construction Standards. The Developer shall design, bid, and construct the Improvements in accordance with those portions of the Guidelines that the City Manager determines in his or her sole discretion to be applicable to the particular Improvements. Among other things, the Guidelines specify the procedures for inspection of, approval of, application for, and manner of payment for the Land (defined below in section 7(a)) and Improvements. Compliance with the Guidelines is one way of satisfying the following provisions of the Act, and, so long as these provisions are satisfied, the City Manager may, in his or her reasonable discretion, waive the requirement for compliance with portions of the Guidelines:

(a) Under section 53313.5 of the Act, the District's special-tax revenues and proceeds from the Bonds may be used to finance the purchase of Improvements that are completed after adoption of the resolution of formation only if the Improvements

are constructed as if they had been constructed under the direction and supervision of, or the authority of, the public agency that will own or operate the Improvements.

(b) Under section 53314.9(a)(3) of the Act, the District's special-tax revenues and proceeds from the Bonds may be used to reimburse the Developer for advances of work in-kind, whether made before or after formation of the District, only if the work has been performed or constructed as if the work had been performed or constructed under the direction and supervision of, or the authority of, the local agency that accepts the work.

7. Ownership and Transfer of the Improvements. Improvements to be owned by a public entity or a regulated public utility rather than by the City must be conveyed to, and accepted by, the entity or utility in accordance with the entity's or utility's policies and procedures for acquiring the Improvements. For Improvements to be owned by the City, the following apply:

(a) *Real Property Interests*. As used in this agreement, "Land" means either of the following: the real-property interests required by a drainage-improvement agreement or other improvement agreement that covers the Improvement or portion of an Improvement to be acquired, including basin-site property to be held in fee by the City and any easements the City requires for ownership, operation, and maintenance of, and access to, the Improvements; or, if there is no such agreement, fee-simple title or such lesser real-property interest as the City determines to be necessary or convenient in conjunction with the Improvement or portion of an Improvement to be acquired. The Developer shall sign and deliver to the City (or shall cause to be signed and delivered) the documents required to complete the transfer of all Land, together with a policy of title insurance, provided at the Developer's expense, ensuring that each of the interests to be transferred is free and clear of all liens, taxes, assessments, easements, leases, or other encumbrances (recorded or not) except for the "Permitted Encumbrances" described in the applicable drainage-improvement agreement or other improvement agreement or, if there is no such agreement, the encumbrances that the City determines, in its sole discretion, will not interfere with the intended use of the Land or the related Improvement. Completion of the transfer of title to the Land must be evidenced by recordation of the City's acceptance of title.

(b) *Improvements*. The Developer shall transfer the Improvements to the City by grant deed, dedication under a subdivision map, irrevocable offer of dedication under a subdivision map, or such equivalent documents as the City determines in its reasonable discretion to be required for that purpose, consistent with any applicable subdivision-improvement agreement, drainage-improvement agreement, or other improvement agreement.

(c) *Maintenance Pending Transfer*. Pending transfer to the City of title to the Land and the Improvements, the Developer shall pay the entire cost of maintaining the Land and the Improvements in accordance with the Guidelines.

(d) *Entry upon City Property*. Where the Improvements or any portion of the Improvements is to be constructed upon City-owned property, the Developer must obtain from the City a written agreement authorizing entry and specifying the City's and the Developer's rights and liabilities, including insurance and indemnification requirements.

8. Warranties. The Guidelines specify the Developer's warranty and related obligations.

9. Payment for Incidental and Other Expenses Relating to the Improvements.

(a) *Incidental and Other Expenses*. If the Developer incurs incidental expenses pertaining to the Improvements (such as environmental studies and engineering), or if items the City or another public entity or a regulated public utility is to acquire from the Developer (such as Land) are acquired under this agreement before completion of any of the Improvements or any portion of the Improvements, then the City may use available monies in the Improvement Fund or from special taxes to reimburse the Developer for those expenses or items so long as (1) the reimbursement is in accordance with the Indenture and any applicable legal or other restrictions and (2) the Developer submits supporting documentation that the City Manager determines to be satisfactory.

(b) *Advance of Funds*. If the Developer advances funds to the City to pay for the City's incidental expenses, such as the costs of conducting the District formation proceedings and the costs of issuing and selling the Bonds, then the City may use available monies in the Improvement Fund to reimburse the Developer for the advanced funding so long as (1) the reimbursement is in accordance with the Indenture and any applicable legal or other restrictions and (2) the Developer submits supporting documentation that the City Treasurer determines to be satisfactory.

(c) *City Expenses*. To the extent that there are unfunded or unreimbursed City expenses for review, inspection, and project management pertaining to the Improvements, the City may reimburse itself for those expenses from proceeds of the Bonds or from special-tax revenues.

10. Limitation of Liability; Excess Costs. All City obligations arising out of, or related to, this agreement are special and limited obligations of the City, and the City's obligations to make any payments under this agreement are to be paid exclusively from the monies, if any, in the Improvement Fund. This agreement does not constitute a general debt or general liability of the City. The Developer's reimbursement under this agreement will be

solely from proceeds of the Bonds and from the District's special-tax revenues. The Developer is not entitled by this agreement or otherwise to reimbursement for sums advanced or expenditures made by the Developer under this agreement, whether for the Land, the Improvements, or the maintenance of the Land and Improvements, from any of the following: the City's general fund, any other City funds, the City's taxing power, or the City's other assets. Cost overruns on the Improvements or any portion of the Improvements will be the Developer's sole responsibility, except that the Developer may apply cost savings from any portion of the Improvements to another portion. The Developer is solely and fully liable for, and shall pay, all costs of the Improvements and all incidental expenses that are in excess of the available monies in the Improvement Fund. The City's elected officials, officers, employees, and agents (including contractors and consultants) are not liable in their individual capacities to the Developer or any other party by reason of their signing this agreement or acting or failing to act in connection with this agreement.

11. Indemnification; Waiver and Release.

(a) *Definitions.* The following definitions apply in sections 11(b), 11(c), 11(d), and 11(e):

(1) "Claim" means any liability, claim, demand, damage, or cost (including reasonable attorneys' fees, whether for outside counsel or the City Attorney) arising directly or indirectly from any actions or omissions by any of the following in connection with the design, construction, operation, maintenance, or repair of the Improvements: the Developer; any of the Developer's engineers, contractors, or subcontractors; any person or entity employed by the Developer; or other person or entity acting on behalf of, or as the authorized agent for, the Developer or any of the Developer's engineers, contractors, or subcontractors.

(2) "Hazardous Substance Claim" means any liability, claim, demand, damage, or cost (including reasonable attorneys' fees, whether for outside counsel or the City Attorney) arising from any death, bodily injury, personal injury, property damage, economic loss, damage to the environment, or violation of law that—

(A) relates to the use, storage, treatment, transportation, release, or disposal of any Hazardous Substances (defined in Exhibit E) by any person or entity (except persons or entities acting on the City's behalf or under the City's control) on, under, about, or around the portion of the Land on which the detention basin or any of the Improvements or the easements that are required to be or are transferred to City are located; and

(B) occurs on or before the date the Land or the Improvement are conveyed to City under this agreement.

(b) *Indemnification by the Developer*. The Developer shall fully indemnify, defend, protect, and hold harmless the City and the City's elected officials, officers, employees, and agents from and against each Claim that arises from any death, bodily injury, personal injury, property damage, economic loss, or violation of law, subject to the following: the Developer will not be liable under this section 11(b) for a Claim alleging the City's sole and active negligence while performing design review or approval or while inspecting construction in connection with the Improvements. Nothing in this agreement constitutes the City's waiver of any immunity or defense it may have relating to any Claim, including immunity or defenses relating to design review, design approval, or construction inspection.

(c) *Indemnification Regarding Hazardous Substances*. The Developer shall fully indemnify, defend, protect, and hold harmless the City and the City's elected officials, officers, employees, and agents from and against all Hazardous Substance Claims, subject to the following: the Developer's obligation under this section 11(c) does not apply to the incorporation of building materials as part of the Improvements so long as the incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws (defined in Exhibit E) in effect at the time of the incorporation.

(d) *Duration of Indemnification Obligations*. With respect to the Improvements and to each portion of the Improvements that the Developer constructs, the Developer's obligations under sections 11(b) and 11(c) will expire on a phase-by-phase basis, as follows:

(1) The Developer's obligations under section 11(b) will expire for a phase on the date that is one year after the City's written acceptance of the phase as complete, except that section 11(b) will remain in effect for any Claim made before that date and for any Claim that relates directly or indirectly to such a Claim.

(2) The Developer's obligations under section 11(c) will survive the termination of this agreement with respect to a phase until the date that is two years after the City's written acceptance of the phase as complete, except that section 11(c) will remain in effect with respect to any Claim made before that date and for Claims that relate directly or indirectly to such a Claim.

(3) This section 11(d) applies only to sections 11(b) and 11(c) of this agreement and does not affect any liability the Developer might have under applicable law to the extent the Developer is a contaminator of the Land.

(e) *Additional Provisions Regarding Indemnification Obligations*.

(1) The City does not waive any rights it has against the Developer under this section 11 because of any insurance coverage provided under this agreement.

(2) Except as expressly provided in section 11(b) for Claims based upon the City's sole and active negligence, the Developer's obligations under this section 11 will not be limited or waived in any way because the City prepared, supplied, or approved plans and specifications for the Improvements or inspected or failed to inspect construction of the Improvements.

(3) The Developer's obligations under this section 11 are to be interpreted and applied broadly so as to provide the City with the maximum coverage that accords with the language used.

(4) Except as expressly provided, nothing in this section 11 is to be interpreted as limiting the scope of the parties' indemnification and defense rights and obligations.

(5) The Developer shall cause all engineering and construction contracts relating to the Improvements to require that the engineer or contractor fully and without limitation indemnify, defend, protect, and hold harmless the City and the City's elected officials, officers, employees, and agents from and against any liability, claim, demand, damage, or cost (including reasonable attorneys' fees, whether for outside counsel or the City Attorney) that arises directly or indirectly from any death, bodily injury, personal injury, property damage, economic loss, or violation of law, but only to the extent that (A) the liability, claim, demand, damage, or cost arises from actions or omissions of the engineer or contractor, or of any person or entity employed by, or acting as the authorized agent for, the engineer or contractor, in connection with the design, construction, maintenance, operation, or repair of the Improvements; and (B) the engineer, contractor, or other party is contractually responsible for a portion or aspect of the Improvements (for example, a contractor responsible for constructing a portion of the Improvements would not be held responsible for the design, nor would an engineer who designed a portion of the Improvements be held responsible for construction not in accordance with the design). If an engineering or construction contract contains the language contained in Exhibit F or other language the City has approved in writing, and if the City is satisfied in its sole discretion with the adequacy of the engineer's or contractor's insurance, then the Developer will have satisfied its obligation under this section 11(e)(5).

(f) *Waiver by the Developer.* The Developer and its successors and assigns hereby waive and release all claims of whatever nature that may arise against the City or the City's elected officials, officers, employees, and agents in connection with the design or

construction of the Improvements. This waiver and release includes all claims arising under section 1542 of the California Civil Code, which provides as follows:

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

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

(g) *Disclaimer by the City Regarding Hazardous Substances*. The City has not conducted any review, examination, or assessment to assess, identify, or detect the presence of any Hazardous Substances (defined in Exhibit E) on, under, about, or around the Land (defined in section 7(a)). Between the City and the Developer, any liability associated with the presence of any Hazardous Substances on, under, about, or around the Land, including any interests in the Land dedicated to the City as provided in this agreement, will be governed by the indemnity provisions in this section 11 regardless of whether any such review, examination, or assessment was or is conducted.

(h) *Indemnification by City*. The City shall fully indemnify, defend, protect, and hold harmless the Developer and the Developer's officers, employees, and agents from and against any liability, claim, demand, damage, or cost (including reasonable attorneys' fees) arising from any death, bodily injury, personal injury, property damage, economic loss, damage to the environment, or violation of law to the extent arising from either of the following:

(1) the use, storage, treatment, transportation, release, or disposal of Hazardous Substances (defined in Exhibit E) by any person or entity (except persons or entities acting on the Developer's behalf or under the Developer's control) on, under, about, or around the portion of the Land on which the detention basin or any of the Improvements or the easements that are required to be or are transferred to City are located, and occurring after the Land or any of the Improvements or easements are conveyed to the City under this agreement; or

(2) any act (including those covered by section 11(h)(1)) by the City or the City's elected officials, officers, employees, and agents in the use and operation of the Improvements.

(i) The parties' rights and obligations under this section 11 will survive termination of this agreement, and section 11(h) does not limit, in any way, the City's obligations under any applicable drainage-improvement agreement or other improvement agreement.

12. Audit. The City is entitled, after giving 10-days' written notice to the Developer, to review during the Developer's normal business hours all of the Developer's books and records pertaining to costs and expenses the Developer incurred in constructing the Improvements, including any construction contracts, subcontracts, change orders, invoices, and payroll records.

13. Termination.

    (a) *Mutual Consent*. The City and the Developer may agree in writing to terminate this agreement, and upon termination—

        (1) the City may let contracts for any remaining work related to the Improvements not already acquired from the Developer and may use all or any portion of the monies in the Improvement Fund to pay for that work; and

        (2) the Developer will have no claim or right to any further payments for the Improvements except as otherwise may be provided in the written termination agreement.

    (b) *City Election for Cause*.

        (1) The City may terminate this agreement, without the Developer's consent, if any of the following events occurs:

            (A) The Developer voluntarily files for reorganization or other relief under any federal or state bankruptcy or insolvency law.

            (B) The Developer has any involuntary bankruptcy or insolvency action filed against it, or suffers a trustee in bankruptcy or insolvency proceedings or a receiver to take possession of its assets, or suffers an attachment or levy of execution to be made against the property it owns within the District, and the action, possession, attachment, or levy is not terminated or released within 60 days after occurring.

            (C) The Developer abandons the construction or acquisition of the Improvements.

            (D) The Developer breaches any material covenant or defaults in the performance of any material obligation of this agreement.

            (E) The Developer transfers any of its obligations under this agreement without the City's prior written consent.

(F) The Developer or any of its successors or assigns challenges the validity of the District, the Bonds, or the levy of the special tax within the District, except that the Developer may review the annual levy of the special tax for conformity with the special-tax formula.

(G) The Developer materially fails to complete the Improvements.

(2) The City shall give the Developer written notice when an event described in section 13(b)(1) occurs. As soon as is practicable after receiving the notice, the Developer shall meet and confer with the City Manager and with other appropriate City staff and consultants to discuss options available to assure timely completion of the Improvements, including the option of the City terminating this agreement. If the City elects to terminate this agreement, then the City shall notify the Developer in writing (and any mortgagee or trust beneficiary the Developer has identified to the City, in writing, as entitled to receive the notice) of the grounds for termination, and the Developer will have 60 days after receiving the notice to eliminate or mitigate the grounds for termination to the City's satisfaction. If the mitigation or elimination selected is such that, by its nature, it cannot be completed within 60 days, and if the Developer begins the mitigation or elimination within the 60-day period and diligently pursues completion, then the period for completion will be extended for as long as the City determines is reasonably necessary. If, at the end of the 60-day period and any extension, the Developer has not eliminated or completely mitigated the grounds for termination to the City's satisfaction, then—

(A) the City may terminate this agreement;

(B) the City may assume the Developer's contracts for, and may award new contracts for, any remaining work related to Improvements not already acquired from the Developer and continue with that work until it has been completed to the City's satisfaction;

(C) the City may use all or any portion of the monies in the Improvement Fund to pay for any remaining work related to Improvements not already acquired from the Developer; and

(D) the Developer will have no claim or right to any further payments for the Improvements.

(c) *Liability for taxes after termination*. After termination of this agreement, the Developer's land within the District will remain fully liable for payment of the special taxes required for debt service on the Bonds and for payment of the special taxes required to complete the Improvements that benefit the Developer's land.

14. Severability. If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

15. Successors and Assigns. This agreement binds and inures to the benefit of the parties' successors and assigns. The Developer may not assign or otherwise transfer this agreement or any interest in it without the City's prior written consent, which the City may not withhold or delay unreasonably. The City may condition its consent on any factor the City considers relevant in the circumstances, including the acceptability of the proposed assignee's financial condition.

16. Waiver. A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

17. Notices. Any notice, payment, or instrument required or permitted by this agreement to be given or delivered to either party will be considered properly given only when mailed or delivered in the manner provided by this section 17 to the persons identified below. A notice, payment, or instrument that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice, payment, or instrument sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section 17.

If to the City:	*If to the Developer:*
[Name of contact]	[Name of contact]
[Name of entity]	[Name of entity]
[Street address]	[Street address]
[City, state, zip code]	[City, state, zip code]
and	*with a copy to—*
[Name of contact]	[Name of contact]
[Name of entity]	[Name of entity]
[Street address]	[Street address]
[City, state, zip code]	[City, state, zip code]

18. Interpretation. This agreement is to be interpreted and applied in accordance with California law. Exhibits A, A-1, B, C, D, E, and F are part of this agreement. "Include" and its variants are terms of enlargement rather than of limitation. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to." "Sole Discretion" means that the party exercising discretion or judgment may do so based solely on its own, unfettered assessment of its own interests, without considering how its decision affects the other party, and without constraint by the implied covenant of good faith and fair dealing. "Reasonable Discretion" means that the party exercising discretion or judgment shall do so as a reasonable person in comparable circumstances and in accordance with commonly accepted industry principles and practices.

19. Counterparts. The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

20. Amendments. This agreement may be amended only by another written agreement signed by all of the parties.

21. Term of Agreement. This agreement is effective on the date all parties have signed it, as indicated by the dates in the signature blocks below, and will terminate one year after both of the following have occurred: the Developer has conveyed the Land to the City, and the City has accepted all of the Improvements as complete.

22. No Agency. Neither the Developer nor any of the Developer's agents, engineers, contractors, or subcontractors is an agent of the City in connection with the performance of any of the Developer's obligations under this agreement.

23. Other Agreements. This agreement does not cancel, supersede, modify, or otherwise affect the following: any other agreements that have been or may be made by the parties regarding the subject matter of this agreement, including any development agreements, credit-reimbursement agreement, subdivision-improvement agreements, drainage-improvement agreements, or other improvement agreements; or any approvals or permits that have been issued by any party regarding the subject matter of this agreement.

24. Consultation with Attorneys. The parties to this agreement have consulted with their own attorneys concerning this agreement and have been fully advised by their attorneys with respect to their rights and obligations under this agreement. Relying on that consultation and advice, each party voluntarily enters into this agreement.

25. Recording. Any party may record this agreement in the office of the Sacramento County Clerk/Recorder. Upon the Developer's request, and if the Developer is not then in default under this agreement, the City shall execute any documents required to remove this agreement from the title to a residential lot within the Developer's property at the time of closing to a residential purchaser. Upon the City's acceptance of a phase of the

Improvements, and if the Developer requests, the City shall take any action that is reasonably required to remove this agreement from the title to any of the Developer's land for which building permits were or could have been issued for the phase.

26. Entire Agreement. This agreement sets forth the parties' entire understanding regarding the matters set forth and is intended to be their final, complete, and exclusive expression of those matters except for any matters also covered by a development agreement, credit-reimbursement agreement, subdivision-improvement agreement, drainage-improvement agreement, or other improvement agreement entered into before or concurrently with this agreement.

(*Signature page follows*)

City of Sacramento

By: _____
John F. Shirey
City Manager

Date: _____, 20__

Attest
Sacramento City Clerk

By: _____

Approved for Financial Provisions
Finance Department
Public Improvement Financing

By: _____

Approved for Construction Provisions
[Utilities][Public Works] Department

By: _____

Approved as to Form
Sacramento City Attorney

By: _____
Senior Deputy City Attorney

[Developer's Name]

By: _____
[Name]
[Title]

Date: _____, 20__

Approved as to Form
[Name]

By: _____
[Name]
Attorney for [Name]

Acquisition-and-Shortfall Agreement

EXHIBIT A

Improvements and Budgeted Amounts

Phase No. ___ Improvements

Identified by Incremental Portions	Budgeted Amounts

Note: Budgeted amounts are estimates. Actual amounts subject to reimbursement will be determined by the acquisition price. Under no circumstances can the total reimbursement exceed the expenditure limit for the District equal to $_____ less all costs of issuing the Bonds, all costs of District formation, and all costs of District administration.

Acquisition-and-Shortfall Agreement

EXHIBIT B

Amount of Bonds and Phasing Thereof

Acquisition-and-Shortfall Agreement

EXHIBIT C

Increments of Improvements Eligible for Acquisition

Acquisition-and-Shortfall Agreement

EXHIBIT D

City of Sacramento
Departments of Utilities and Public Works

Guidelines for Special District Acquisition Projects

Introduction

The City of Sacramento Policies and Procedures Manual for Special Assessment and Community Facilities Districts provides for the use of acquisition districts. Listed in this exhibit are guidelines that must be followed to qualify improvement project costs for reimbursement by the contemplated community facilities or assessment district (the "District"). Reimbursement is dependent upon the City's actual receipt of special-tax proceeds or proceeds from assessment or special-tax bonds (the "Bonds") if the Bonds are issued and upon the legality of reimbursement for individual expense items under applicable law.

1.0 Definitions

1.1 Acquisition Agreement. An agreement between the Developer and the City allowing the District to acquire certain public facilities from the Developer.

1.2 Acquisition Facility or Acquisition Facilities. Those public-facility improvements described in Acquisition Agreements, an Engineer's Report, or a Hearing Report, as applicable, filed in the District proceedings.

1.3 Advertisement. A published public notice that solicits bids for a project in accordance with these guidelines and applicable law.

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

1.5 Completed Facility. A Facility that is eligible as an Acquisition Facility by virtue of its having been completed before transfer to the City and its being a functional, usable unit of infrastructure capable of being incorporated into the City's infrastructure system.

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

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

1.8 Design Engineer. A California-licensed professional civil engineer the Developer has retained for the purpose of designing and supervising construction of the Acquisition Facilities.

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

1.10 District Engineer. An engineer appointed by the City.

1.11 Engineer's Estimate. A cost estimate for the Acquisition Facilities prepared by the Design Engineer and approved by the District Engineer.

1.12 Engineer's Report. The report required by The Municipal Improvement Act of 1913 that identifies the specific improvements to be constructed, the cost of the improvements, the boundaries of the district, and the maximum assessment by parcel that may be imposed in any given tax year.

1.13 Facility. An element or increment of an entire Acquisition Facility. A Facility is eligible for acquisition when it is complete and available for public benefit (i.e., when it is a Completed Facility).

1.14 Plans. Final bid drawings prepared by the Design Engineer and its consultants and approved by the City for construction of the Acquisition Facilities.

1.15 Purchase Price. The amount the District is to pay for the Acquisition Facilities in accordance with the Acquisition Agreement.

1.16 Hearing Report. The report required by the Mello-Roos Act of 1982 that identifies the boundaries of the District, the specific improvements to be financed by the District and the maximum special tax rate each property owner will be responsible for paying in any given tax year.

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

2.0 Pre-Advertisement Procedures

2.1 The Developer shall submit project schedules to the District Engineer.

2.2 As and if required, the City shall endeavor to obtain necessary interests in real property, but only if the Developer has provided full and complete funding and has signed a funding agreement for this purpose in a form acceptable to the City Attorney. The Developer shall negotiate all utility relocations.

2.3 The Design Engineer shall prepare and submit Plans and Specifications to the City for review and approval. The Plans must indicate those portions of the Improvements that are Acquisition Facilities qualified for reimbursement from the District. These indications are not to be construed as the City's approval or disapproval of eligibility for cost reimbursement. The City will determine, independently of Plan notes and Plan approval, whether an Acquisition Facility qualifies for reimbursement through the District.

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

2.5 The Developer shall provide construction security in the same manner as is provided for normal City public-works projects.

2.6 The Design Engineer shall prepare bidding documents for the Acquisition Facilities and shall submit the documents to the District Engineer for review and approval. The bidding documents must be in conformance with all ordinances, laws, policies, rules, and regulations applicable to the City, including but not limited to the following:

(a) Compliance with all applicable City and State of California requirements for public-works contracts, including but not limited to prevailing-wage requirements.

(b) The invitation to bidders must be publicly advertised.

(c) The Developer must sign a non-collusion affidavit in a form acceptable to the City.

(d) The bid documents must comply with all other applicable City requirements.

(e) The Developer must sign a certificate affirming compliance with all of the requirements set forth in this section 2.6.

2.7 The District Engineer shall review the bidding documents to determine whether they meet the following requirements:

(a) The Design Engineer's estimate is reasonable and has been approved by the District Engineer.

(b) The bidding procedures are consistent with advertising and bid-opening procedures for public contracts, and the bid forms clearly describe each bid item and are in a format that is substantially similar to the format of the cost breakdown in the Acquisition Agreements, Engineer's Report, or Hearing Report, as applicable.

(c) The construction contract requires payment of prevailing wages.

(d) The bidding documents include a non-collusion affidavit in a form acceptable to the City.

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

(f) Any liquidated-damage clauses are consistent with City policy.

3.0 Advertisement and Bid Opening Procedures

3.1 The Developer may advertise the project only after the City has approved the Plans and the District Engineer has approved the Bid Documents. The City Manager, in his or her sole discretion, may waive this requirement and allow the Developer to advertise the project before City approval of the Plans. However, the final Bid Documents and final bids must include appropriate bid addendums and be approved by the District Engineer.

3.2 The Developer must advertise the project in a newspaper of general circulation published within the County of Sacramento, as follows: for a daily newspaper, the advertisement must be published at least 10 consecutive times; and for a weekly newspaper, the advertisement must be published at least two consecutive times. The Developer may use other advertising procedures in addition to the procedures specified in this section 3.2.

3.3 The Developer shall conduct a bid opening at a location open to the public. The bids must be sealed, must be submitted on or before the specified date and time, and must be publicly opened with each bidder's name and total bid announced at the opening in the presence of all interested parties.

3.4 The Developer shall notify the City and the District Engineer at least 10 days before the bid-opening date and shall provide the District Engineer with a copy of the public advertisement or advertisements and all final bid documents. Any addenda to the bid documents must be included in the final bid documents.

3.5 The District Engineer or the District Engineer's representative shall attend each pre-bid meeting (if any) and the public bid opening.

4.0 Construction Contract Award

4.1 The Developer shall provide the District Engineer with a summary of all bids and a copy of the lowest bid proposal submitted, together with a written evaluation of the bids and a recommendation for award. The Developer shall provide the following information with the evaluation and recommendation, in the form of a certificate stating the following:

(a) That there are no pending disputes over the bidding procedures.

(b) That all bidders received the same set of bid documents and all of the addenda issued.

(c) That all applicable City approvals required for the work have been obtained.

(d) That the bid proposal has not been conditioned in any way.

The Developer shall retain the original of all bids received for a minimum of four years after the date of the acceptance of the Acquisition Facility by the City.

4.2 Within five working days after receipt of the bid material specified in section 4.1, the District Engineer shall review the bid summary and a copy of the lowest bid and shall determine whether (a) to concur in the Developer's recommendation or (b) to notify the Developer that additional review time will be required, specifying the date by which review will be complete.

4.3 The District Engineer shall give the Developer written notification of the determination under section 4.2 within the time stated in that section.

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

4.5 The Developer may reject all bids but may not reject individual bids without the District Engineer's concurrence.

4.6 The Developer must obtain the District Engineer's written concurrence before awarding the construction contract.

4.7 The Developer shall award the contract, with the District Engineer's concurrence, within 60 days after the bid opening and shall authorize the Contractor to proceed with the work within 60 days after award.

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

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

(b) A written statement (1) that the contract award amount is within the Engineer's Estimate and does not exceed the overall funds available from the District; or (2) that the contract award amount exceeds the Engineer's Estimate or the overall funds available from the District, and the Developer will pay all amounts by which the contract exceeds the estimate and funds available.

5.0 Construction

5.1 Either the Developer or the Design Engineer shall schedule and conduct a pre-construction meeting before work on the Acquisition Facilities begins. The pre-construction meeting must be attended by the Developer, the Design Engineer, the District Engineer, the Contractor, representatives of each agency issuing permits, representatives of affected utilities, and other interested parties. The District Engineer and the City must receive written notice of the pre-construction meeting at least five days before the meeting, and the meeting date must be scheduled for a time, place, and date acceptable to the District Engineer and the City.

5.2 The District Engineer shall review the construction progress no less frequently than monthly and shall meet no less frequently than monthly with parties identified in section 5.1 of this exhibit to discuss project status.

5.3 The Contractor shall coordinate all inspections on Acquisition Facilities in accordance with City policy and the improvement agreement applicable to the Acquisition Facilities.

5.4 The Developer shall provide the District Engineer with copies of all progress payments to the Contractor.

5.5 If the Developer desires to be reimbursed for any contract change-order work, then before allowing the Contractor to undertake the work the Developer must obtain from the City Representative overseeing the work (as designated in the drainage or other improvement agreement) the representative's written acknowledgment of the need to perform the change-order work in order to complete the project satisfactorily. The District Engineer shall subsequently determine if any adjustments are be made to the Reimbursement Amount set forth in the Acquisition Agreement as a result of the change order.

5.6 The Contractor and all subcontractors shall pay prevailing wages for all work performed on the Acquisition Facilities. The Developer shall certify to the District Engineer, in writing, that the Contractor and all subcontractors have complied with prevailing-wage requirements. Upon request, the Developer shall provide copies of certified payrolls to the District Engineer.

5.7 The District Engineer must review and approve in advance any revisions to the Plans.

5.8 For the purposes of these guidelines, the construction will be considered complete when the Acquisition Facility is fully completed and available for public benefit, when the City has accepted the Acquisition Facility in accordance with the applicable drainage or other improvement agreement, and when the Developer has obtained the following, as applicable:

(a) Approval of the City if a grading permit is required.

(b) Approval of all facilities shown on the Plans or included in the Acquisition Facilities by the affected utility companies or other affected departments of the City or the County of Sacramento.

(c) Approval of the City of all erosion-control improvements required by the Plans or the grading permit.

(d) Approval by the City Surveyor of all monumentation.

(e) Approval of the City of all street improvements (e.g., storm drains, street lighting, traffic signals) shown on the Plans.

6.0 Reimbursement

6.1 The Developer shall submit to the District Engineer a finalized copy of Plans and Specifications that incorporates all approved changes, and a copy of any recorded tract map or maps. In addition, after completion of a Facility, the Developer shall submit a request for reimbursement to the District Engineer that follows the format provided in Schedule A to this exhibit (titled "Developer Reimbursement Request Format") and includes the following:

(a) Final quantities and final costs on each contract item, certified by the Design Engineer, and the total of all construction costs for the particular Facility accompanied by any other supporting documentation necessary to justify reimbursement.

(b) Approved contract change orders with final quantities and final costs.

(c) Certification that the Contractor and all subcontractors have complied with all applicable City and State of California public-works provisions, including payment of prevailing wages on the project.

(d) Itemized breakdown of other reimbursable costs as delineated in the applicable Acquisition Agreement.

(e) Copies of invoices, vouchers, canceled checks, and other available materials to support all of the Developer's expenditures claimed for reimbursement.

(f) Copies of all recorded notices of completion.

(g) Certification or proof of advertisement as required by these guidelines.

(h) Copies of final mechanics-lien releases for the Facility. If the Facility is an increment of a larger Acquisition Facility, the lien releases may be unconditional lien releases upon receipt of the progress payments applicable to the Facility.

(i) Documentation that all required easements have been transferred to the City or that other arrangements for such transfer, as required by the City, have been made.

(j) Documentation that all fee interests required for the Acquisition Facilities have been transferred to City or that other arrangements for such transfer, as required by the City, have been made.

(k) Submission of written certifications from other agencies or utilities involved in the reimbursement request, confirming that the Facility was inspected and completed according to approved Plans and Specifications and that any utilities or agency cost reimbursements are disclosed in the District reimbursement requests.

(l) Where applicable, all equipment manuals for the Acquisition Facilities.

(m) All warranties relating to the Acquisition Facilities.

In addition, the Developer shall submit to the District Engineer a finalized copy of Plans and Specifications that incorporates all approved changes, and copies of all recorded tract maps.

6.2 The District Engineer shall review the request for reimbursement and all supporting data and may rely on the authenticity of all supporting data, documents, representations, and certifications provided by the Developer and each Design Engineer without independent verification by the District Engineer. The Developer shall sign a certification on all submitted data. If additional information is required during the review process to comply with section 6.1, then the District Engineer may request in writing that the Developer supply the supplemental data, and the Developer shall promptly comply with such a request.

6.3 Upon review of the submitted information, if complete, the District Engineer shall determine whether and to what extent the costs and expenses claimed are reimbursable, and shall provide a written recommendation to the City Manager, who shall make a final determination of reimbursement eligibility.

City of Sacramento
[Name] Community Facilities District No. ___

REQUEST FOR PAYMENT

[NAME OF DEVELOPER] (the "Developer") hereby requests payment in accordance with the Acquisition and Shortfall Agreement between the Developer and the CITY OF SACRAMENTO (the "City"), which is dated as of _____, 20__, and designated as City Agreement No. 20__-___ (the "Agreement"), in the total amount of $_____, for the Improvement or Improvements or portions of the Improvement or Improvements identified in Exhibit A to the Agreement, all as more fully described in Exhibit A to this request. In connection with this request, the undersigned hereby represents to the City as follows:

1. I am an officer of the Developer, duly authorized to sign this request on the Developer's behalf, and am knowledgeable about the matters set forth in this request.

2. All costs of the Improvements or portions of Improvements for which payment is requested are actual costs and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.

3. Documentation that supports each cost for which payment is requested (e.g., third-party invoices) is attached as Exhibit A to this request.

4. The Improvements or portions of Improvements for which payment is requested were constructed in accordance with all applicable City standards.

I hereby declare under penalty of perjury under the laws of the State of California that the representations set out above are true.

Signed on _____, at _____.
(Print Date) (Print City and State)

[Name of Developer]

By: _____
(Signature)

_____
(Print Name)

_____
(Print Title)

Attached as Exhibit A is a list of all Improvements or portions of Improvements for which payment is requested, with supporting documentation.

Acquisition-and-Shortfall Agreement

EXHIBIT E

Hazardous Substances

1. As used this agreement, "Hazardous Substances" means any of the following:

   (a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, pollutant, or contaminant under any Environmental Law, as defined below.

   (b) Those substances listed in the United States Department of Transportation Table (49 C.F.R. § 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 C.F.R. Part 302).

   (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations.

   (d) Any material, waste, or substance that is—

      (1) a petroleum or refined petroleum product;

      (2) asbestos;

      (3) polychlorinated biphenyl;

      (4) designated as a hazardous substance pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317;

      (5) an inflammable explosive; or

      (6) a radioactive material.

2. As used this agreement, "Environmental Law" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, and requirements of any government authority regulating, relating to, imposing liability for, or establishing standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, about, or around the detention basin site or any of the easement areas which the Developer is required to convey to the City, and does convey to the City, in accordance with this agreement, as now or may at any later time be in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. § 6901 et seq.); the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. § 1251 et seq.); the Toxic Substances Control Act (TSCA) (15 U.S.C. §2601 et seq.); the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. § 1801 et seq.); the Insecticide, Fungicide,

Rodenticide Act (7 U.S.C. § 136 et seq.); the Superfund Amendments and Reauthorization Act (42 U.S.C. § 6901 et seq.); the Clean Air Act (42 U.S.C. §7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.); the Surface Mining Control and Reclamation Act (30 U.S.C. § 1201 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act (29 U.S.C. §§ 655 and 657); the California Underground Storage of Hazardous Substances Act (Cal. Health and Safety Code § 25280 et seq.); the California Hazardous Substances Account Act (Cal. Health and Safety Code § 25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (Cal. Health and Safety Code § 24249.5 et seq.); the Porter-Cologne Water Quality Act (Cal. Water Code § 13000 et seq.), together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, and land use.

Acquisition-and-Shortfall Agreement

EXHIBIT F

Construction Contract Language

Contractor shall fully indemnify, defend, protect, and hold harmless the City and the City's elected officials, officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees, whether for outside counsel or the City Attorney) that arise directly or indirectly from any death, bodily injury, personal injury, property damage, economic loss, or violation of law (collectively, "Claims"), but only to the extent the Claims result from actions or omissions by any of the following in connection with the design, construction, operation, maintenance, or repair of that portion of the Improvement designed or constructed by Contractor: Contractor; any of Contractor's engineers or subcontractors; any subcontractors of Contractor's engineers; or any other person or entity employed by Contractor or acting on behalf of, or as the authorized agent for, Contractor.