



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2019-01146

September 10, 2019

Consent Item 12

Title: Greenbriar Community Facilities District No. 2018-03 Acquisition and Shortfall Agreement and Agreement to Reimburse Fees

Location: District 1

Recommendation: Pass a Motion: 1) authorizing the City Manager or the City Manager's designee to execute an Acquisition and Shortfall Agreement with the Greenbriar Project Owner LP for improvements to be constructed as part of the Greenbriar Community Facilities District No. 2018-03; and 2) authorizing the City Manager or the City Manager's designee to execute an agreement with the Greenbriar Project Owner LP to reimburse certain development fees from bond and tax proceeds.

Contact: Arwen Wacht, Program Specialist, (916) 808-7535; Sheri Smith, Special Districts Manager, (916) 808-7204, Department of Finance

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Acquisition and Shortfall Agreement
- 4-Fee Reimbursement Agreement

Description/Analysis

Issue Detail: On November 27, 2018, City Council formed the “Greenbriar Community Facilities District No. 2018-03 (Improvements)” (CFD) to issue bonds supported exclusively by the special tax to partially reimburse the developer for the cost of public infrastructure. In connection with the acquisition of facilities, the City and The Greenbriar Project Owner, LLC (Developer) propose to enter into an Acquisition and Shortfall Agreement (A&S Agreement) that prescribes how the Developer is to construct the facilities and specify how the City will reimburse the Developer from special-tax revenues and bond proceeds.

On November 10, 2015, the City Council approved a standard-form A&S Agreement for the acquisition of developer-constructed public improvements (Resolution 2015-0343). The attached A&S Agreement differs from the standard A&S Agreement by allowing the project lender to assume the A&S Agreement automatically in certain circumstances, therefore the City Council’s approval is required for this A&S Agreement.

The Agreement to Reimburse Fees from Bond Proceeds (Fee Agreement) establishes compliance with the requirements of state law that parties declare intent to reimburse fees from bond proceeds issued or special tax revenue generated after payment of those fees. The Developer will commence development of the Greenbriar development (Project), pay the requisite fees, and construct improvements.

Through the issuance of bonds, the City will acquire certain public facilities constructed by the Developer and may reimburse certain development fees in accordance with the Fee Agreement. The debt issuance is anticipated in calendar year 2020.

Policy Considerations: Both the A&S Agreement and the Fee Agreement (collectively, the Agreements) are necessary to reimburse the Developer for construction of facilities or payment of infrastructure related fees. They do not bind the City to make any expenditure, to incur any indebtedness, or to proceed with the Project.

Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): The City prepared an environmental impact report (EIR) that evaluated the environmental effects of the Greenbriar Development Project (M05-046/P05-069). The EIR was certified by the City Council on January 29, 2008 (Resolution No. 2008-053). The City Council later certified the EIR and an addendum for modification to the previously approved project and next stage

entitlements for the Greenbriar Development Project (P11-093) on May 30, 2017 (Resolution 2017-0207).

The City Council's action in approving these agreements is solely for the purpose of providing funding and reimbursement mechanisms and does not affect the environmental review that was previously prepared for the Greenbriar Development Project. No additional CEQA review is required.

Sustainability: Not applicable.

Commission/Committee Action: None.

Rationale for Recommendation: Approval of the Agreements will support new development within the City. The Greenbriar development project will add approximately 2,753 residential units to the City's housing supply. Approval of the Agreements will allow for the acquisition of public infrastructure and provide greater flexibility for the reimbursement of certain fees associated with the Project.

Financial Considerations: The Developer will initially use its own funds to finance construction of the public improvements and to pay development fees associated with public improvements. Later, if and when sufficient bond proceeds and special taxes are available, the City will reimburse the Developer consistent with the City's Mello-Roos Policy and with associated Agreements. The bond proceeds and special taxes will be used for the sole purposes of: (a) funding construction-cost and development-fee reimbursements to the Developer and (b) paying the City's administrative expenses. The payment of principal and interest on the bonds would be secured by a special tax lien placed on each property within the CFD, without obligations placed on other funds of the City. The bond sale is anticipated to occur in the 2020, depending on market conditions. There are no impacts on other funds of the City.

Local Business Enterprise (LBE): Not applicable.

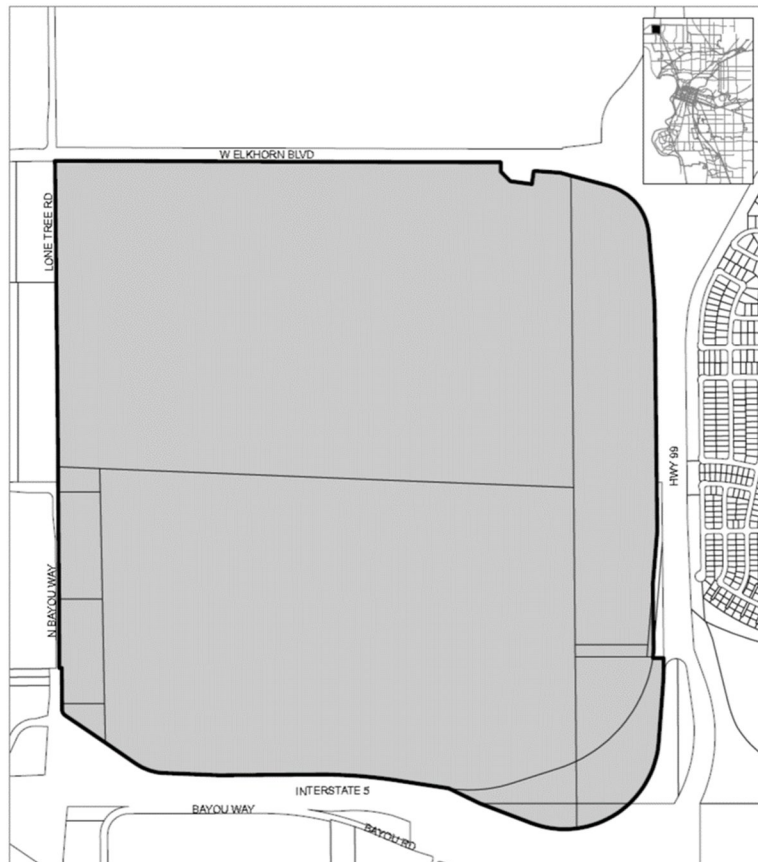
Background

The Greenbriar Project (Project) will be under construction on a site that was previously used for agricultural purposes. The Greenbriar Project was annexed into the City on April 2, 2008 and included the approval of high-level planning entitlements (M05-046 / P05-069 & LAFCo 02-08). On May 30, 2017, the City Council approved next stage entitlements to develop the 577± acres (P11-093), with several subsequent amendments (Z18-096 & P18-050). The Greenbriar Project currently is approved for development of 2,176± single-family units, 577± multi-family units, commercial, parks, open space, lakes/detention basins, light rail corridor and station, park and ride lot and school site. The Project area is generally bounded by Elkhorn Boulevard to the north, State Highway 99 to the east, Interstate 5 to the south, and the City of Sacramento jurisdictional boundary to the west and north.

Purpose of the Community Facilities District

The “City of Sacramento Greenbriar Community Facilities District No. 2018-03 (Improvements)” (CFD) will fund, through special tax revenue, or issuance of bonds or the incurrence of other debt for improvement area No. 1 and improvement area No. 2 (which are located north and south of the future Meister Way, respectively), certain development fees and public improvements for the Project.

Project Map



ACQUISITION-AND-SHORTFALL AGREEMENT

Greenbriar Community Facilities District No. 2018-03

This agreement, dated September 10, 2019, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the "**City**"), and THE GREENBRIAR PROJECT OWNER, LLC, a Delaware limited liability company (the "**Developer**").

Background

- A. The Developer has requested that the City form a community facilities district under the Mello-Roos Community Facilities 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 entities or regulated public utilities (collectively the "**Improvements**," and each an "**Improvement**"). The district will be named Greenbriar Community Facilities District No. 2018-03 (the "**District**").
- B. Section 53313.5 of the Act provides that the District may finance the acquisition of facilities authorized to be financed by 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) in accordance with 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 53325.7, 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 or trustees), 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: (a) the Bonds will not be sold until this agreement is signed by all parties and any required security has been posted; and (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, fiscal agent agreement or similar instrument 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, pay administrative costs of the District, and maintain the reserve fund, 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 B. The parties hereby agree that Exhibit B is preliminary and that final improvement increments and their associated costs are subject to change.
- (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 C 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 this agreement and the Guidelines. The acquisition price for each Improvement or portion of an Improvement will consist of the following: (1) 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; plus, (2) to compensate for engineering costs, an amount equal to 15% of the amount determined under clause (1). "**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 issued a notice of completion for 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 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 amount reimbursed from proceeds of the Bonds and special-tax revenues generated by the District, including amounts reimbursed under this agreement and amounts reimbursed under the Agreement to Reimburse Fees from Bond and Tax Proceeds between the City and the Developer, designated as City Agreement No. ____ - ____ (the “**Fee Agreement**”), may not exceed an expenditure limit for the District equal to \$38 million for Improvement Area No. 1 and \$32 million for Improvement Area No. 2 *plus* any interest earned on money in the Improvement Fund and *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.
- (h) Notwithstanding anything to the contrary in this agreement, for each payment made by the City hereunder, when paying the Developer the acquisition price of an Improvement at the times and subject to satisfaction of the conditions set forth in this agreement, at the written request of the Developer, the City shall make the payment payable to a third-party identified in the written notice. A separate notice

shall be required for each payment hereunder, and without such written notice prior to the payment hereunder, payment shall be made to the Developer.

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 will satisfy the following provisions of the Act:
 - (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 that pertain to the Improvements but are not reimbursed by the 15% allowance for engineering costs in section 5(c) (examples of incidental expenses are the costs of environmental studies and environmental remediation), 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 if (1) the reimbursement is in accordance with the Indenture and any applicable legal or other restrictions.

- (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. 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's Office) 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 any 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's Office) 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 D) 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 D) 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 the Developer's indemnification obligations under 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's Office) 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 E 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 D) 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 D) 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 and challenge the annual levy of the special tax for conformity with the special-tax formula and the application of the special tax.
 - (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 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 levied on such land in accordance with the special-tax formula for the District.

14. **Severability.** If a court with jurisdiction rules that any provision of this agreement is invalid, unenforceable, or contrary to law or public policy, then the parties want the court to interpret this agreement as follows: (a) by modifying the provision to the minimum necessary to make it enforceable or, if that modification is not permitted by law, by disregarding the provision; (b) by holding that the rest of the agreement will remain in effect as written; (c) by holding that the provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (d) by holding the entire agreement unenforceable if modifying or disregarding the unenforceable provision would result in the failure of an essential purpose of this agreement.

15. **Successors and Assigns.**

(a) 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.

(b) Notwithstanding subsection (a) above, in the event a lender to the Developer ("Lender"), or the Lender's nominee that is related to the Lender, as the case may be (each, a "Successor Owner"), takes title to the real property owned by Developer by foreclosure or by the acceptance of a deed in lieu thereof, or otherwise in connection with an exercise of remedies by such Lender in connection with its financing of the Improvements or any of them, the Successor Owner will be considered a party to this agreement and entitled to all of the rights and benefits of Developer under this agreement without obtaining the consent of the City if all of the following conditions are met: (i) the Successor Owner provides written notice and proof of title to such real property to the City; (ii) the Successor Owner provides a written assumption of

each of the provisions of this agreement (which may be in the form of an assignment and assumption executed by the Developer and the Successor Owner or an assumption agreement executed solely by the Successor Owner); and (iii) within sixty (60) days after providing the notice described in subsection (i) above, the Successor Owner either engages a Qualified Construction Manager (as defined herein) to complete the construction of the Improvements under this agreement or the Successor Owner provides the City with evidence reasonably satisfactory to the City that the Successor Owner is a Qualified Construction Manager and will complete the construction of the Improvements under this agreement. The term "Qualified Construction Manager" shall mean a construction manager which (i) is a reputable construction management company having at least five (5) years' of experience in the construction management of not less than five (5) completed construction projects similar to the Improvements and in the same geographical region in which the Improvements are to be located, including with respect to the construction of improvements similar to those that are intended to be constructed pursuant to this agreement and (ii) is not then and has not in the past been the subject of a bankruptcy or similar insolvency proceeding.

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. 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, or add a party for notification, by giving written notice of the change to the other party in the manner provided in this section 17.

If to the City:

City Manager
City of Sacramento
915 I Street
Sacramento, CA 95814

If to the Developer:

The Greenbriar Project Owner, LLC
888 San Clemente, Suite 100
Newport Beach, California 92660
Attention: John Stanek

18. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law. Exhibits A, B, C, D, and E 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, except as otherwise provided in sections 11 and 13, will terminate one year after the following have occurred: the Developer has conveyed the Land to the City, and the City has accepted all of the Improvements as complete, and the Developer has received all of the payments that it is entitled to under this agreement.
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 or in the construction of any improvement.
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 the Fee Agreement and 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. **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 the Fee Agreement, 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: _____

Howard Chan

City Manager

Date: _____, 20__

Attest

Sacramento City Clerk

By: _____

Approved as to Form

Sacramento City Attorney

By: _____

Jeffrey L. Massey

Senior Deputy City Attorney

The Greenbriar Project Owner, LLC
A Delaware limited liability company

By:  _____

Name: John Stanek

Title: Authorized Representative

Date: August 14, 2019

Acquisition-and-Shortfall Agreement

EXHIBIT A

Improvements and Budgeted Amounts

Phase No. 1&2 Improvements

Identified by Incremental Portions	Budgeted Amounts
Backbone Roadway Improvements	\$43,653,361
Backbone Sewer Improvements	\$4,940,4200
Backbone Water Improvements	\$8,953,322
Backbone Drainage Improvements	\$11,493,733
Backbone Landscape Walls and Trails	\$15,373,997
Backbone Public Utilities	\$2,085,050
Project Amenities	\$1,215,000
Turnkey Park Improvements	\$8,693,086
Greenbriar Lump Sum Payments	\$3,602,500
Greenbriar Fees	\$6,646,524
City of Sacramento Fees	\$24,635,845
Other Agency Fees	\$31,469,624
School Fees	\$32,721,188
CFD Formation Costs	\$200,000
Public Land Acquisition	\$14,440,000
Total	\$210,123,650

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 \$70 million *plus* any interest earned on money in the Improvement Fund and *minus* all costs of issuing the Bonds, all costs of District formation when those costs have been reimbursed from the District, and all costs of District administration.

Acquisition-and-Shortfall Agreement

EXHIBIT B

Increments of Improvements Eligible for Acquisition

Item		Total Project Costs	Phase 1 Project Cost	Phase 2 Project Cost
Backbone Infrastructure Improvements (Costs include Engineering and Staking, Plan Check and Contingencies at 35%)				
Backbone Roadway Improvements (Including Signalization)				
Phase 1 North				
Meister Way	(West Boundary to Street 35)	\$7,701,487	\$2,909,763	\$4,791,724
Street 1 Entry	(Elkhorn Blvd to Street 2)	\$1,830,463	\$1,830,463	\$0
Elkhorn Blvd	(West Boundary to SR 99)	\$6,038,610	\$5,996,247	\$42,363
Meister Way Overcrossing	(Street 35 to East Commerce)	\$12,502,802	\$0	\$12,502,802
Street 2	(Street 3 to Street 41)	\$2,960,000	\$2,960,000	\$0
Street 3	(Elkhorn Blvd to street 16)	\$880,000	\$880,000	\$0
Street 12	(Street 2 to Meister Way)	\$2,040,000	\$2,040,000	\$0
Street 19	(Street 16 to Meister Way)	\$1,360,000	\$1,360,000	\$0
Street 33	(Street 2 to Meister Way)	\$2,040,000	\$2,040,000	\$0
Street 41	(Street 2 to Meister Way)	\$1,360,000	\$1,360,000	\$0
Phase 2 South (Streets revised consistent with the Phase 2 TSM)				
Street 1 (Formally Street 47)	(Meister Way to Meister Way)	\$1,360,000	\$0	\$1,360,000
Street 10 (Formally Street 57)	(Street 15 to Street 16, Formally 62 to 63)	\$720,000	\$0	\$720,000
Street 15 (Formally Street 62)	(Street 1 to Street 10, Formally 47 to 57)	\$1,360,000	\$0	\$1,360,000
Street 16 (Formally Street 63)	(Street 1 to Street 10, Formally 47 to 57)	\$1,280,000	\$0	\$1,280,000
Street 34 (Formally Street 80)	(Meister Way to Street 31, Formally to 77)	\$220,000	\$0	\$220,000
Total Backbone Roadway		\$43,653,361	\$21,376,473	\$22,276,889
Backbone Sewer Improvements				
Sewer Lift Station		\$3,582,925	\$3,582,925	\$0
Trunk Sewer		\$1,357,495	\$1,357,495	\$0
Total Backbone Sewer		\$4,940,420	\$4,940,420	\$0
Backbone Water Improvements				
On-site Water T-Main Improvements		\$4,329,011	\$4,329,011	\$0
Off-site Water T-Main Improvements		\$4,624,310	\$2,633,735	\$1,990,575
Total Backbone Water		\$8,953,322	\$6,962,747	\$1,990,575

Item	Total Project Costs	Phase 1 Project Cost	Phase 2 Project Cost
Backbone Drainage Improvements			
Phase 1 Common Drainage	\$7,313,079	\$7,313,079	\$0
Phase 2 Common Drainage	\$4,180,654	\$0	\$4,180,654
Total Backbone Drainage	\$11,493,733	\$7,313,079	\$4,180,654
Backbone Landscape, Walls and Trails			
Landscaping	\$10,871,281	\$5,555,967	\$5,315,315
Soundwalls	\$3,540,841	\$2,227,061	\$1,313,780
Trail System	\$961,875	\$425,250	\$536,625
Landscape Backbone Total	\$15,373,997	\$8,208,278	\$7,165,719
Backbone Public Utilities			
Backbone Joint Trench	\$1,572,750	\$847,125	\$725,625
SMUD Facilities	\$362,300	\$362,300	\$0
PG&E Engineering Fees	\$50,000	\$50,000	\$0
Communication and CATV Fees	\$100,000	\$100,000	\$0
Total Project Amenities	\$2,085,050	\$1,359,425	\$725,625
Project Amenities (Entry Features, Monuments, etc.)			
Project Amenities	\$1,215,000	\$945,000	\$270,000
Total Project Amenities	\$1,215,000	\$945,000	\$270,000
Turnkey Park Improvements			
Turnkey Park Improvements	\$8,693,086	\$4,382,894	\$4,310,192
Total Turnkey Park Improvements	\$8,693,086	\$4,382,894	\$4,310,192
Subtotal Backbone Infrastructure Imps.	\$96,407,969	\$55,488,315	\$40,919,654

Item	Total Project Costs	Phase 1 Project Cost	Phase 2 Project Cost
Greenbriar Lump Sum Payments			
SAQMD Air Quality Off-Site Construction Mitigation Fund	\$1,612,500	\$837,500	\$775,000
City Traffic Congestion Relief Fund	\$900,000	\$900,000	\$0
Police Repeater Payment	\$120,000	\$120,000	\$0
Turnkey Park Construction Shortfall	\$970,000	\$970,000	\$0
Subtotal Greenbriar Lump Sum Payments	\$3,602,500	\$2,827,500	\$775,000
Greenbriar Fees			
NN-Regional Park	\$3,178,316	\$1,710,036	\$1,468,280
NN-Fire	\$880,264	\$469,766	\$410,498
NN-Community Center	\$1,169,752	\$622,766	\$546,986
Transit	\$1,418,192	\$750,228	\$667,964
Subtotal Greenbriar Fees	\$6,646,524	\$3,552,796	\$3,093,728
City of Sacramento Fees			
Major Street Construction Excise Tax	\$5,263,777	\$2,841,792	\$2,421,985
Water Development Fee	\$6,683,244	\$3,501,626	\$3,181,618
Water Meter Fee	\$1,220,664	\$639,556	\$581,108
Park Fees -Local and Community Turnkey	\$7,602,000	\$3,983,000	\$3,619,000
Park Fees -Citywide Regional	\$3,866,160	\$2,025,640	\$1,840,520
Subtotal City Fees	\$24,635,845	\$12,991,614	\$11,644,231
Other Agency Fees			
SAFCA Levee Development Impact Fee	\$11,323,099	\$6,124,380	\$5,198,719
SASD Sewer Fee	\$3,994,882	\$2,182,657	\$1,812,225
SRCSO Sewer Fee	\$13,349,112	\$6,994,148	\$6,354,964
Sacto. Trans. Authority (STA) Mitigation Fee	\$2,747,580	\$1,439,570	\$1,308,010
Sacto. Trans. Authority (STA) Administration Fee	\$54,951	\$28,791	\$26,160
Subtotal Other Agency Fees	\$31,469,624	\$16,769,546	\$14,700,078

Item	Total Project Costs	Phase 1 Project Cost	Phase 2 Project Cost
School Fees			
Twin Rivers School Impact Fee	\$17,829,280	\$11,267,670	\$6,561,610
Proposed Supplemental Fee	\$14,891,908	\$5,327,274	\$9,564,634
Subtotal School Fees	\$32,721,188	\$16,594,944	\$16,126,244
Other			
CFD Formation Costs	\$200,000	\$200,000	\$0
Subtotal Other Items	\$200,000	\$200,000	\$0
Public Land Acquisition			
Detention Basin	\$8,560,000	\$4,060,000	\$4,500,000
Freeway Open Space Buffer	\$5,880,000	\$2,160,000	\$3,720,000
Subtotal Public Land Acquisition	\$14,440,000	\$6,220,000	\$8,220,000
Grand Total	\$210,123,650	\$114,644,715	\$95,478,935

Acquisition-and-Shortfall Agreement
EXHIBIT C
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 City through the contemplated community facilities district (the “**District**”). Reimbursement is dependent upon the City’s actual receipt of special-tax proceeds or proceeds from 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 or a Hearing Report, as applicable, filed in the proceedings undertaken in connection with the formation of the District.
- 1.3 **Acquisition Price.** The amount the District is to pay for the Acquisition Facilities in accordance with the Acquisition Agreement.
- 1.4 **Advertisement.** A published public notice that solicits bids for a project in accordance with these guidelines and applicable law.
- 1.5 **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.
- 1.6 **City Engineer.** The Engineering Division Manager of the City’s Department of Public Works or his or her designee.

- 1.7 **Construction Manager.** Individual responsible for project oversight and management of Facility construction. Developer will be responsible for a Construction Manager onsite during all construction operations.
- 1.8 **Construction Security.** Performance bonds and labor-and-material payment bonds or other security, provided by the Developer or by the Contractor to the Developer in a form assignable to the City, which guarantee that the Contractor will meet all contractual obligations.
- 1.9 **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 Facility work.
- 1.10 **Design Engineer.** A California-licensed professional civil engineer the Developer has retained for the purpose of designing and supervising construction of the Acquisition Facilities. Supervision of the construction of the Acquisition Facilities shall be by the Design Engineer or specified Developer representative.
- 1.11 **The Developer.** The person or entity identified as the "Developer" in the Acquisition Agreement to which these guidelines are attached as an exhibit.
- 1.12 **District Administrator.** The Public Improvement Financing Unit of the City's Department of Finance, or its successor.
- 1.13 **Engineer's Estimate.** A cost estimate for the Acquisition Facilities prepared by the Design Engineer and approved by the City Engineer.
- 1.14 **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 functional, usable unit of infrastructure capable of being incorporated into the City's infrastructure system).
- 1.15 **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.
- 1.16 **Owner/Builder.** The person or entity acting as Developer who is responsible for the completion of the Facility improvements.
- 1.17 **Plans.** Final bid drawings prepared by the Design Engineer and its consultants and approved by the City for construction of the Acquisition Facilities.

- 1.18 **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 City 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 Engineer 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 Engineer and the District Administrator will jointly determine, independently of the Plans and the City Engineer's approval of the Plans, 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 Construction Security shall be provided in the same manner as is provided for normal City public-works projects.
- 2.6 The Design Engineer shall prepare the Bid Documents for the Acquisition Facilities and shall submit the documents to the City Engineer for review, and the City Engineer shall, in writing, either approve or disapprove the Bid Documents. The Bid Documents must be in conformance with all ordinances, laws, policies, rules, and regulations applicable to the City, including but not limited to the following:
- (a) Compliance with all applicable City and State of California requirements for public-works contracts, including but not limited to Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).
 - (b) The invitation to bidders must be publicly advertised.
 - (c) The Bid Documents must include a non-collusion affidavit in a form acceptable to the City, to be signed by an authorized representative of the bidder.

- (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 City Engineer shall review the Bid Documents to determine whether they meet the following requirements:

- (a) The Engineer's Estimate is reasonable and has been approved by the City Engineer.
- (b) The bidding procedures are consistent with 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 or Hearing Report, as applicable.
- (c) The construction contract requires the Contractor and its subcontractors to comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).
- (d) The Bid Documents include a non-collusion affidavit in a form acceptable to the City to be signed by an authorized representative of the bidder.
- (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.
- (g) A detailed schedule of work tasks per contract outlining trade licensing required to perform Facility work identified.

2.8 The Developer may be excused from complying with some or all of this section 2.0, other than sections 2.6(a) and 2.7(c), if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

3.0 Advertisement and Bid-Opening Procedures

- 3.1 The Developer shall provide the City Engineer with complete copy of all final Bid Documents, including any addenda, and may advertise the project only after the City has approved the Plans and the City Engineer has approved the final Bid Documents.
- 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 Engineer at least 10 days before the bid-opening date and location and shall provide the City Engineer with a copy of the Advertisement or Advertisements.
- 3.5 The City Engineer or the City Engineer's representative shall attend each pre-bid meeting (if any) and the public bid opening. The Developer shall have a sign-in sheet for attendees if a pre-bid meeting is held and shall provide a copy of the sheet to the City.
- 3.6 If the Developer requests, the City may, in the City Engineer's sole discretion, advertise the project on the Developer's behalf using the City's procedures for advertising contracts for public projects.
- 3.7 The Developer may be excused from complying with this section 3.0, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

4.0 Construction Contract Award

- 4.1 The Developer shall provide the City 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 City Engineer shall review the bid summary and a copy of the lowest bid and shall determine whether (a) to concur in the Developer's recommendation or (b) to notify the Developer that additional review time will be required, specifying the date by which review will be complete.
- 4.3 The City 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 City Engineer does not concur with the Developer's recommendation, or if the City Engineer is aware of any irregularities or possible disputes over the bidding procedure, then the Developer or the City Engineer shall notify the 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 received and re-advertise for bids in accordance with these guidelines or, with the City Engineer's concurrence, may dispense with further competitive bidding. The Developer may not reject individual bids without the City Engineer's concurrence.
- 4.6 The Developer must obtain the City Engineer's formal written concurrence before awarding the construction contract.
- 4.7 The Developer shall award the contract, with the City Engineer's concurrence in the form of a letter or memorandum on City letterhead, 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 City Engineer within 30 days after the Developer has authorized the Contractor to proceed:
- (a) A copy of the signed contract with the Contractor, specifying the award date.
 - (b) A written statement (1) that the contract award amount is within the Engineer's Estimate 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.

- 4.9 The Developer may be excused from complying with this section 4.0, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

5.0 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 and or Construction Manager, the Design Engineer, the City Engineer, the Contractor, representatives of each agency issuing permits, representatives of affected utilities, and other interested parties. The City 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 City Engineer and the City.
- 5.2 The Developer and/or the Contractor shall coordinate all inspections of Acquisition Facilities in accordance with City policy and the improvement agreement applicable to the Acquisition Facilities.
- 5.3 The Developer shall hire a labor-compliance consultant to certify to the City that all requirements of Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices) have been satisfied. The consultant's certification must be submitted to the City Engineer when the Developer submits a request for reimbursement in accordance with section 7.0.
- 5.4 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 City Engineer shall subsequently determine if any adjustments are to be made to the Acquisition Price as a result of the change order.
- 5.5 The Developer shall hire a Construction Manager to be responsible for the project schedules, change orders, contract administration, overlap of contractor trades and general project oversight.
- 5.6 The City Engineer must review and approve in advance any revisions to the Plans, and each change order must be submitted to, and approved by, the City Engineer as a condition for reimbursement of costs associated with the change order.
- 5.7 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's Licensed Land 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 through issuance of an inspection-completion report.

6.0 Prevailing Wages and Apprentices

- 6.1 The Contractor and all subcontractors shall comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices) for all work performed on the Acquisition Facilities. The Developer shall certify to the City Engineer, in writing, that the Contractor and all subcontractors have complied with the requirements of Sacramento City Code sections 3.60.180 and 3.60.190. Upon request, the Developer shall provide copies of certified payrolls to the City Engineer.
- 6.2 Consistent with California Labor Code section 1720, subdivision (c)(2), work performed on the Acquisition Facilities will be eligible for reimbursement from the District's special-tax proceeds or the District's Bond proceeds only if it has been performed in compliance with Sacramento City Code sections 3.60.180 and 3.60.190.

7.0 Reimbursement

- 7.1 The Developer shall submit to the City 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 Administrator 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 all the contractors and all subcontractors have complied on the project with all applicable City and State of California public-works provisions, including Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).
- (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 City Engineer a finalized copy of Plans and Specifications that incorporates all approved changes, and copies of all recorded tract maps.

- 7.2 The District Administrator shall have the request for reimbursement and all supporting data reviewed by a professional engineer licensed in California, who may rely on the authenticity of all supporting data, documents, representations, and certifications provided by the Developer and each Design Engineer. The Developer shall sign a certification on all submitted data. If additional information is required during the review process to comply with section 7.1, then the District Administrator may request in writing that the Developer supply the supplemental data, and the Developer shall promptly comply with such a request.
- 7.3 Upon review of the submitted information, if complete, the District Administrator 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.

**Acquisition-and-Shortfall Agreement
SCHEDULE A TO EXHIBIT C
Developer Reimbursement Request Format**

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 D

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 E

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's Office) 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.

AGREEMENT TO REIMBURSE FEES FROM BOND AND TAX PROCEEDS
Greenbriar Community Facilities District No. 2018-03

This *Agreement to Reimburse Fees from Bond and Tax Proceeds*, dated September 10, 2019 for identification (this "**Agreement**"), is between the CITY OF SACRAMENTO, a California municipal corporation (the "**City**"), and THE GREENBRIAR PROJECT OWNER, LLC, a Delaware limited liability company (the "**Developer**").

Background

A. The Developer is developing the real property described in Exhibit A (the "**Property**") and asked the City to form a community facilities district.¹ The City formed "Greenbriar Community Facilities District No. 2018-03, City of Sacramento, County of Sacramento, State of California" (the "**CFD**") and designated two improvement areas in the CFD: Improvement Area No. 1 and Improvement Area No. 2 (individually, an "**Improvement Area**" and, collectively, the "**Improvement Areas**"). The CFD and the two Improvement Areas cover the Property and will be used to finance both of the following from any combination of special taxes levied by the CFD and the proceeds of bonds issued through the CFD within each Improvement Area: the City's acquisition of certain public facilities constructed by the Developer and certain fees that the Developer or a Builder (as defined herein) must pay to develop the Property.

B. As the master developer of the Property, the Developer is implementing a portion of its development plan through a combination of (1) paying the fees described in Section 1 (the "**Eligible Fees**"), and seeking reimbursement from the CFD for such Eligible Fees; (2) prepaying the Eligible Fees that are payable from the Property at some point in the future and being provided credits against those Eligible Fees by the City to the extent consistent with City policy, which credits may be transferred to one or more Builders as described herein; and (3) seeking reimbursement for Eligible Fees that were paid by one or more merchant builders to whom the Developer has sold all or part of the Property (each a "**Builder**") at some point in the future, subject to an assignment from the Builder to the Developer as described herein.

C. With this Agreement, the City and the Developer memorialize their intent that special taxes levied by the CFD within each Improvement Area (the "**Special Taxes**") and the proceeds of bonds ("**Bonds**") issued through the CFD for each Improvement Area ("**Bond Proceeds**") will be available to finance the Eligible Fees in the manner set forth in this Agreement if the criteria described in section 3 or 4 below, as appropriate, are satisfied.

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

1. **Eligible Fees.** The following fees are Eligible Fees for financing with Special Taxes and Bond Proceeds if, in the City's sole judgment, the criteria set forth in either section 3 (for Special Taxes) or section 4 (for Bond Proceeds) are satisfied:

¹ Community facilities districts are established under the Mello-Roos Community Facilities Act of 1982, set out at Government Code sections 53311 through 53368.3.

- (a) The City's Construction Excise Tax (Sacramento City Code, chapter 3.36).
 - (b) The City's Water Development Fee.
 - (c) The City's Park Development Impact Fee (Sacramento City Code, chapter 18.44):
 - (1) Local and Community Turnkey.
 - (2) Citywide Regional.
 - (d) Fees imposed by school districts:
 - (1) Twin Rivers School Impact Fee.
 - (2) Proposed Supplemental Fee.
 - (e) Fees imposed by the Sacramento Regional County Sanitation District.
 - (f) Fees imposed by Sacramento Area Sewer District.
 - (g) Fees imposed by the Sacramento Metropolitan Air Quality Management District – Greenbriar Lump Sum Payment – Air Quality Off-Site Mitigation Fund.
 - (h) Greenbriar Lump Sum Payments:
 - (1) City Traffic Congestion Relief Fund.
 - (2) Turney Park Construction Shortfall.
 - (i) Other Agency Fees:
 - (1) SAFCA Levee Development Impact Fee.
 - (2) Sacramento Transportation Authority (STA) Mitigation Fee.
 - (3) Sacramento Transportation Authority (STA) Administration Fee.
 - (j) Any other fees the City Attorney, the City Treasurer, and bond counsel for the CFD ("**Bond Counsel**") determine to meet the criteria for reimbursement specified in section 3 or section 4.
2. **Fee Financing.** Financing of Eligible Fees that meet the criteria for reimbursement specified in section 3 or section 4 will occur at the direction of the Developer in one of the following ways:
- (a) For Eligible Fees that Developer has paid, the City will reimburse Developer from available Special Taxes and Bond Proceeds.
 - (b) For Eligible Fees that a Builder has paid, the City will reimburse Developer from available Special Taxes and Bond Proceeds provided that the Builder that paid the Eligible Fees assigns in writing the reimbursement of such Eligible Fees to the Developer (herein, a "**Builder Assignment**").
 - (c) For Eligible Fees that are due from the Property but have not been paid by either the Developer or a Builder, the City will use available Special Taxes and Bond Proceeds to prepay the Eligible Fees on the Developer's behalf and provide the Developer with a credit equal to such prepayment. The Developer may at any time

thereafter transfer some or all of the credits to one or more Builders by completing a credit transfer agreement (in a form approved by the City) for the benefit of a Builder (herein, a **"Builder Transfer"**).

3. **Criteria for Reimbursement from Special Taxes.** An Eligible Fee will be eligible for payment with Special Taxes only if the City determines that all of the following criteria have been met:
 - (a) The Eligible Fee is payable in connection with development of the Property. An Eligible Fee that the Developer or a Builder pays itself will be eligible for financing only if (i) it is a Traffic Congestion Relief Fund fee paid after July 31, 2018, (ii) it is a SAQMD Air Quality Off-Site Construction Mitigation fee paid after July 31, 2019, or (iii) it is a fee paid on or after the effective date of this Agreement.
 - (b) The resolution of formation that was adopted for the CFD identifies the Eligible Fee as eligible for funding by the CFD.
 - (c) The City Treasurer's Office has determined, in its sole discretion and after consulting with the City Attorney's Office, that financing the Eligible Fee with Special Taxes is appropriate.
 - (d) For an Eligible Fee imposed by a government agency other than the City, the City and the other agency have entered into an agreement, such as a joint community facilities agreement, that to the satisfaction of the City Attorney and Bond Counsel obligates the agency (1) to use the Eligible Fee solely for public facilities in accordance with law; and (2) to allow the City to inspect the agency's records of spending that Eligible Fee.
4. **Criteria for Reimbursement from Bond Proceeds.** An Eligible Fee will be eligible for payment with Bond Proceeds only if the City determines that all of the following criteria have been met:
 - (a) The Eligible Fee is payable in connection with development of the Property. Subject in all cases to the remainder of this Section 4, including clause (c), an Eligible Fee that the Developer or a Builder pays itself will be eligible for financing only if (i) it is a Traffic Congestion Relief Fund fee paid after July 31, 2018, (ii) it is a SAQMD Air Quality Off-Site Construction Mitigation fee paid after July 31, 2019, or (iii) it is a fee paid on or after the effective date of this Agreement.
 - (b) The resolution of formation that is adopted for the CFD identifies the Eligible Fee as eligible for funding by the CFD.
 - (c) In the opinion of the City Attorney and Bond Counsel, reimbursement is permitted by law and will not jeopardize the tax-exempt status of the Bonds.
 - (d) For an Eligible Fee imposed by a government agency other than the City, the City and the other agency have entered into an agreement, such as a joint community facilities agreement, that to the satisfaction of the City Attorney and Bond Counsel

obligates the agency (1) to use the Eligible Fee solely for public facilities in accordance with law; and (2) to allow the City to inspect the agency's records of spending that Eligible Fee.

5. Assignment.

(a) The Developer may assign this Agreement or any right to receive reimbursement hereunder, subject to the City's consent, which the City may not withhold unreasonably. The City Treasurer is authorized to approve any assignment on the City's behalf. To be effective, both an assignment and the City's consent to an assignment must be in writing, approved as to legal form by the City Attorney, and approved and executed by the City Treasurer. This provision does not apply to a Builder Assignment or a Builder Transfer.

(b) Notwithstanding anything to the contrary in this Agreement, for any reimbursement payable to the Developer hereunder, at the written request of the Developer, the City shall make the payment payable to a third-party identified in the written notice. A separate notice shall be required for each reimbursement of the Developer hereunder, and without such written notice prior to the reimbursement hereunder, payment shall be made to the Developer.

(c) Notwithstanding subsection (a) above, in the event a lender to the Developer ("**Lender**"), or the Lender's nominee that is related to the Lender, as the case may be (each, a "**Successor Owner**"), takes title to the real property owned by Developer by foreclosure or by the acceptance of a deed in lieu thereof, or otherwise in connection with an exercise of remedies by such Lender in connection with its financing, the Successor Owner will be considered a party to this Agreement and entitled to all of the rights and benefits of Developer under this Agreement without obtaining the consent of the City if all of the following conditions are met: (i) the Successor Owner provides written notice and proof of title to such real property to the City; (ii) the Successor Owner provides a written assumption of each of the provisions of this Agreement (which may be in the form of an assignment and assumption executed by the Developer and the Successor Owner or an assumption agreement executed solely by the Successor Owner); and (iii) within sixty (60) days after providing the notice described in subsection (i) above, the Successor Owner either engages a Qualified Construction Manager (as defined herein) or the Successor Owner provides the City with evidence reasonably satisfactory to the City that the Successor Owner is a Qualified Construction Manager and will complete the construction of the improvements under the Acquisition Agreement. The term "Qualified Construction Manager" shall mean a construction manager which (i) is a reputable construction management company having at least five (5) years' of experience in the construction management of not less than five (5) completed construction projects similar to the development of the Property and in the same geographical region in which the Property is located, including with respect to the construction of improvements similar to those that are intended to be constructed pursuant to Acquisition Agreement and (ii) is

not then and has not in the past been the subject of a bankruptcy or similar insolvency proceeding.

6. **The City's Obligation is Limited.** Neither the City's general fund nor any of the City's other funds, accounts, or monies, other than the Special Taxes and Bond Proceeds, will be liable for payment of any obligations arising under this Agreement. Those obligations are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, revenues, or other assets, other than the Special Taxes and Bond Proceeds. **The total amount that the City pays to the Developer under this Agreement and the Acquisition-And-Shortfall Agreement between the City and the Developer related to the CFD (the "Acquisition Agreement"), from any combination of Special Taxes and Bond Proceeds generated through the CFD, may not exceed \$38 million for Improvement Area No. 1 and \$32 million for Improvement Area No. 2, less any costs of issuing Bonds of the applicable Improvement Area.** This Agreement embodies all of the Developer's rights to reimbursement with respect to the Eligible Fees. This section is not to be interpreted as limiting the City's exercise of discretion under any other section of this Agreement.
7. **Notices.** Any notice or other communication under this Agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 7 to the persons identified below. A notice or other communication 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 or other communication 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 7.

If to the City:

City of Sacramento
Finance Department
915 I Street, Fifth Floor
Sacramento, California 95814
Attention: Public Improvement Finance

If to the Developer:

The Greenbriar Project Owner, LLC
888 San Clemente, Suite 100
Newport Beach, California 92660
Attention: John Stanek

8. **Attorneys' Fees.** The parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.
9. **Successors and Assigns.** This Agreement binds and inures to the benefit of the parties' (i) successors and (ii) assigns permitted by section 5.

10. **Interpretation.** This Agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibit A is part of this Agreement.
11. **Waiver.** A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon another party's 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 term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.
12. **Effective Date.** This Agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
13. **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. Delivery of signed counterparts may be accomplished email transmission of a pdf document.
14. **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. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

(Signature Page Follows)

City of Sacramento

By: _____

Howard Chan
City Manager

Date: _____, 20__

Attest

Sacramento City Clerk

By: _____

Signature

Print Name and Title

Approved as to Form
Sacramento City Attorney

By: _____

Jeffrey L. Massey
Senior Deputy City Attorney

**The Greenbriar Project Owner, LLC,
A Delaware limited liability company**

By: _____

Name: John Stanek

Title: Authorized Representative

Date: August 14, 2019

EXHIBIT A

DESCRIPTION OF THE PROPERTY

The property consists of and is described by the following Assessor Parcel Numbers:

201-0300-049	201-0300-081	201-0300-080
201-0300-155	201-0300-083	201-0300-085
201-0300-156	201-0300-079	201-0300-087

Property Map:

