

1 **RESOLUTION NO. \_\_\_\_\_**

2 **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF**  
3 **RIALTO APPROVING AND AUTHORIZING EXECUTION OF**  
4 **A JOINT COMMUNITY FACILITIES AGREEMENT AND A**  
5 **FUNDING, CONSTRUCTION AND ACQUISITION**  
6 **AGREEMENT IN CONNECTION WITH THE FORMATION**  
7 **OF COMMUNITY FACILITIES DISTRICT NO. 2020-1 (EL**  
8 **RANCHO VERDE); AND MAKING FINDINGS AND**  
9 **DETERMINATIONS IN CONNECTION THEREWITH.**

10 **WHEREAS**, the City of Rialto (the “City”) is taking proceedings pursuant to the  
11 Mello-Roos Community Facilities Act of 1982 (constituting Sections 53311 et. seq. of the  
12 Government Code of the State of California) for the formation of City of Rialto Community  
13 Facilities District No. 2020-1 (El Rancho Verde) (“District”) and for the issuance of bonds by the  
14 District and the funding of facilities by the proceeds of the bonds and special taxes levied within  
15 the District; and

16 **WHEREAS**, the owners and developers of all of the property within said District  
17 are El Rancho Verde Golf, LLC, a Delaware limited liability company and Lytle Development  
18 Company, a California corporation (collectively referred to herein as the “Owner”); and

19 **WHEREAS**, pursuant to Section 53316.2 of the Act, a community facilities district  
20 is authorized to finance facilities to be owned or operated by an entity other than the agency that  
21 created the community facilities district pursuant to a joint community facilities agreement; and

22 **WHEREAS**, there is presented at this meeting and on file in the office of the City  
23 Clerk a Joint Community Facilities Agreement (the “WVWD Agreement”), dated as of July 14,  
24 2020, among the Owner, the City and West Valley Water District (“WVWD”) relating to facilities  
25 and fees of WVWD, attached as Exhibit “A” hereto and by this reference incorporated herein; and

26 **WHEREAS**, pursuant to Section 53113.5 and 53113.51, a District may finance the  
27 purchase of facilities and discrete components thereof; and

28 **WHEREAS**, there is presented at this meeting and on file in the office of the City  
Clerk a Funding, Construction and Acquisition Agreement, dated as of July 14, 2020 (the  
“Acquisition Agreement”), by and between the Owner and the City relating to facilities and fees

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1 to be acquired and funded by the District, attached as Exhibit “B” hereto and by this reference  
2 incorporated herein; and

3 **WHEREAS**, the governing board of WVWD has approved the WVWD Agreement  
4 presented at this meeting; and

5 **WHEREAS**, the Owner has approved the WVWD Agreement and the Acquisition  
6 Agreement; and

7 **WHEREAS**, the City has determined that it is necessary and desirable to enter into  
8 the WVWD Agreement and the Acquisition Agreement and that these agreements will be  
9 beneficial to the residents of the City.

10 **NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of  
11 Rialto, California, as follows:

12 **Section 1.** That the recitals set forth hereinabove are true and correct in all  
13 respects.

14 **Section 2.** That said form of WVWD Agreement presented at this meeting and  
15 on file with the City Clerk be and is hereby approved, with such changes as may be approved by  
16 the Mayor, City Manager or Finance Director, said officer’s execution thereof to evidence approval  
17 of the changes. The Mayor, City Manager or Finance Director is hereby authorized and directed  
18 to execute the WVWD Agreement on behalf of the City with such execution to be attested to by  
19 the City Clerk.

20 **Section 3.** That said form of Acquisition Agreement presented at this meeting  
21 and on file with the City Clerk be and is hereby approved, with such changes as may be approved  
22 by the Mayor, City Manager or Finance Director, said officer’s execution thereof to evidence  
23 approval of the changes. The Mayor, City Manager or Finance Director is hereby authorized and  
24 directed to execute the Acquisition Agreement on behalf of the City with such execution to be  
25 attested to by the City Clerk.

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**WHEREFORE**, this Resolution is passed, approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
DEBORAH ROBERTSON, Mayor

**ATTEST:**

\_\_\_\_\_  
BARBARA McGEE, City Clerk

**APPROVED AS TO FORM**

\_\_\_\_\_  
ERIC S. VAIL, Interim City Attorney  
Burke, Williams & Sorensen, LLP

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1 **STATE OF CALIFORNIA** )  
2 **COUNTY OF SAN BERNARDINO** ) ss  
3 **CITY OF RIALTO** )

4 I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing  
5 Resolution No. \_\_\_\_\_ was duly passed and adopted at a regular meeting of the City Council of the  
6 City of Rialto held on the \_\_\_\_ day of \_\_\_\_\_, 2020.

7 Upon motion of Councilmember \_\_\_\_\_, seconded by Councilmember  
8 \_\_\_\_\_, the foregoing Resolution No. \_\_\_\_\_ was duly passed and adopted.

9 Vote on the motion:

10 AYES:

11 NOES:

12 ABSENT:

13 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of  
14 Rialto this \_\_\_\_ day of \_\_\_\_\_, 2020.

15 \_\_\_\_\_  
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17 BARBARA A. McGEE, City Clerk

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**EXHIBIT A**

**CITY OF RIALTO  
COMMUNITY FACILITIES DISTRICT NO. 2020-1  
(EL RANCHO VERDE)**

**Form of**

**JOINT COMMUNITY FACILITIES AGREEMENT, DATED AS OF July 14, 2020  
AMONG THE OWNER, THE CITY AND WEST VALLEY WATER DISTRICT**

**[See Attached]**

**JOINT COMMUNITY FACILITIES AGREEMENT  
(WEST VALLEY WATER DISTRICT)**

THIS JOINT COMMUNITY FACILITIES AGREEMENT (the “Facilities Agreement”) is made and entered into as of July 14, 2020 by and among the City of Rialto, for and on behalf of City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde) (the “City”), the West Valley Water District (the “Water District”), El Rancho Verde Golf, LLC (“El Rancho”) and Lytle Development Company (“Lytle” and with El Rancho, the “Owner”).

**WITNESSETH:**

**WHEREAS**, the City Council of the City of Rialto (the “City Council”) has initiated proceedings under the Mello-Roos Community Facilities Act of 1982 (the “Act”) to create City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde) (the “Community Facilities District”), to authorize the levy of special taxes (the “Special Taxes”) upon the land within each of two improvement areas of the Community Facilities District (each, an “Improvement Area”) and to issue bonds (the “Bonds”) secured by the Special Taxes, the proceeds of which are to be used to finance certain public facilities;

**WHEREAS**, the Owner is the owner of all of the property (the “Property”) within the proposed boundaries of the Community Facilities District, which Property and Community Facilities District are depicted on Exhibit “E” attached hereto;

**WHEREAS**, the facilities proposed to be financed by the Community Facilities District include certain facilities to be owned, operated and maintained by the Water District (the “Water District Facilities”), as well as facilities to be owned, operated or maintained by the City (the “City Facilities”);

**WHEREAS**, the Water District Facilities include (i) certain fees and charges included in the Water District’s capacity and connection fee program and used to fund master plan water facilities necessary to provide service to the Property (the “Water District Fees”), which fees, as of the date of this Facilities Agreement, are estimated to total \$5,834,744 and (ii) certain other master planned facilities to be constructed by or on behalf of Owner and acquired by Water District for their actual cost, together with appurtenances and appurtenant work, and incidental expenses related thereto (each, a “Water District Acquisition Facility,” and collectively, the “Water District Acquisition Facilities”);

**WHEREAS**, upon the construction of the Water District Acquisition Facilities by or on behalf of Owner and the inspection and acceptance thereof by Water District, the Water District Acquisition Facilities will be conveyed to and accepted by Water District;

**WHEREAS**, Section 53316.2 of the Act provides that a community facilities district may finance facilities to be owned or operated by an entity other than the agency that created the community facilities district only pursuant to a joint community facilities agreement or a joint exercise of powers agreement adopted pursuant to said Section;

**WHEREAS**, Section 53316.2 of the Act further provides that at any time prior to the adoption of the resolution of formation creating a community facilities district or resolution of issuance, the legislative bodies of two or more local agencies may enter into a joint community facilities agreement pursuant to said Section and Sections 53316.4 and 53316.6 of the Act to exercise any power authorized by the Act with respect to the community facilities district being created if the legislative body of each entity adopts a resolution declaring that such a joint agreement would be beneficial to the residents of that entity;

**WHEREAS**, the City Council and the Board of the Water District have each adopted such a resolution;

**WHEREAS**, subsection (e) of Section 53316.2 of the Act permits the City to have primary responsibility for formation of a community facilities district;

**WHEREAS**, the City, the Water District and the Owner desire to enter into this Facilities Agreement in accordance with Sections 53316.2, 53316.4 and 53316.6 of the Act in order to provide for the financing of the Water District Facilities through the levy of Special Taxes and issuance of Bonds by the Community Facilities District;

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

**Section 1. Water District Facilities.** The Water District Facilities, including any real or tangible property which is to be purchased, constructed, expanded or rehabilitated, are described in Exhibit "A" attached hereto.

**Section 2. Financing of Water District Facilities.** It is anticipated that the Community Facilities District will levy Special Taxes to pay directly for City Facilities and Water District Facilities and issue Bonds in one or more series secured by Special Taxes in each Improvement Area to finance the acquisition, construction and installation of the Water District Facilities and the City Facilities. The proceeds of such Special Taxes and Bonds available for City Facilities and Water District Facilities shall be referred to as "CFD Proceeds." Under the terms set forth herein, the Community Facilities District will provide CFD Proceeds to finance the acquisition, construction and installation of all or a portion of the Water District Facilities. Notwithstanding any other provision of this Facilities Agreement, the fact that there may not be sufficient CFD Proceeds available to pay for the Water District Facilities shall not relieve Owner, or its successors and assigns, of its obligation to pay to Water District the Water District Fees described in Exhibit "A" hereto required to be paid in connection with the development of the Property or to otherwise construct any Water District Facilities that are required as a condition to development of the Property. The purpose of this Facilities Agreement is to provide a mechanism by which the Community Facilities District may levy Special Taxes and issue Bonds to provide a source of funds to finance, in whole or in part, the Water District Fees and the acquisition prices of Water District Acquisition Facilities.

The Community Facilities District shall proceed with the levy of Special Taxes and the issuance and sale of Bonds of each Improvement Area at such time and in such amounts as are determined by the City to be appropriate to finance the acquisition, construction and installation of the Water District Facilities and the City Facilities. Upon the receipt by the City of a written requisition executed by the Water District and Owner in the form attached here to Exhibit "D-2," the City shall cause the Community Facilities District to disburse and deliver to the Water District the amount of CFD Proceeds requested in the requisition to fund Water District Fees, not to exceed the amount determined to be available for financing Water District Fees by the Community Facilities District. As CFD Proceeds of the Bonds are transferred to Water District to fund Water District Fees,

Owner shall receive a credit, in an amount equal to the amount of such CFD Proceeds so received, against the Water District Fees required to be paid by the Owner in connection with the development of the Property. Nothing herein shall supersede the obligation of any owner of the Property to pay Water District Fees to Water District when due or to pay any increase in the amount of fees when due.

Owner may advance Water District Fees to the Water District prior to the availability of sufficient CFD Proceeds. Each such cash advance shall be referred to as a "Deposit." In the event Owner makes a Deposit with the Water District, the full amount of such Deposit shall be reimbursed to Owner by Water District from available CFD Proceeds, including the proceeds of the Bonds requisitioned if and when Bonds are issued. Notwithstanding the foregoing, if CFD Proceeds are insufficient to fund the entire amount of Water District Fees for any Improvement Area and Owner is required to provide one or more Deposits pursuant to this Section 2, such Deposits shall be retained by the Water District and the Water District shall have no obligation to reimburse them except to the extent CFD Proceeds subsequently become available. Notwithstanding the preceding sentence, to the extent the City and the CFD is no longer required to provide funding or levy special taxes under the provisions of the acquisition and funding agreement with the City, the City will notify Owner and the Water District and the Deposits shall be applied to the payment of Water District Fees or as otherwise determined by the Owner and the Water District.

The City shall cause the Community Facilities District to maintain or cause, to be maintained records relating to the disbursements of proceeds of the sale of the Bonds, including all amounts expended from the Acquisition and Construction Fund of the Acquisition and Construction Fund (defined below). The City or the Community Facilities District will, upon request, provide Water District and Owner with access to such records during regular office hours.

**Section 3. Use of Bond Proceeds; Investment Earnings; Records.** The Water District shall deposit any Bond proceeds and other CFD Proceeds received from the Community Facilities District pursuant hereto in an account of the Water District and shall use such proceeds only for the costs of the acquisition, construction and installation of the Water District Facilities.

The Water District shall keep accurate records of the investment earnings on investments made by the Water District with any portion of the Bond proceeds or the CFD Proceeds received from the Community Facilities District pursuant hereto. In addition Water District shall keep records of all expenditures related to Bond proceeds, Advances or Deposits, and provide such information to the City upon request within a reasonable time. No later than sixty (60) days after the end of each fiscal year, the Water District shall provide to the City such records and documents with respect to such investments as the City may reasonably request in order to enable the City to determine the nature of any such investment; and the interest earnings thereon for purposes of determining whether any amounts are required to be paid to the United States Treasury as rebatable arbitrage earnings under the Internal Revenue Code of 1986 and the Treasury Regulations promulgated thereunder. The Water District shall have no responsibility or obligation to make any such rebate payments to the United States Treasury or to any other entity. Water District shall submit an invoice to Owner for its actual costs and expenses incurred by Water District to provide such records and documents with respect to such investments. Owner shall reimburse Water District for such costs and expenses within fifteen (15) days of receipt of such invoice and such amounts may be included in the administrative costs paid by the Community Facilities District and reimbursed to Owner from Special Taxes collected for such administrative costs.

**Section 4. Water District Acquisition Facilities.** The parties acknowledge that Water District may require Owner, pursuant to its rules and regulations, to design, construct and dedicate to Water District the Water District Acquisition Facilities as a condition to development of the Property. Except as otherwise provided herein, City, Water District and the Community



Facilities District shall have no responsibility whatsoever for the bidding, contracting the construction of the Water District Acquisition Facilities. The Owner shall construct and install all Water District Acquisition Facilities in accordance with the provisions of this Section 4.

In the event CFD Proceeds are available to finance Water District Acquisition Facilities, such proceeds shall be held or transferred by the Community Facilities District as determined by the Community Facilities District to a special account (together or separate from other CFD Proceeds) (the "Acquisition and Construction Fund"). City shall make disbursements from the Acquisition and Construction Fund in accordance with the terms of this Section 4. The following provisions of this Section 4 shall apply solely with respect to those Water District Acquisition Facilities to be constructed by Owner that are acquired by Water District with CFD Proceeds.

**(a) Construction and Acquisition of Water District Acquisition Facilities.**

(i) Owner shall, at no cost to Water District, be responsible for the preparation of the plans and specifications for the construction of the Water District Acquisition Facilities (the "Plans and Specifications"). The Plans and Specifications shall conform to the requirements of Water District for such facilities and shall be subject to the review and approval by Water District. All cost and expense of Water District review (including, but not limited to, Water District's agents, employees and independent contractors) shall be paid by Owner and shall be deemed eligible costs available for reimbursement from the Acquisition and Construction Fund of the Acquisition and Construction Fund to the extent reasonable. Owner represents that the Plans and Specifications will conform to all applicable federal, state and local governmental rules, ordinances and regulations and all applicable environmental protection laws. Owner's submission of the Plans and Specifications to Water District shall evidence Owner's representation and warranty to Water District that the Plans and Specifications are complete, accurate, workable and in compliance with all governmental requirements with respect thereto. Owner, at its cost and expense, shall, except as otherwise provided herein, pay all permit fees, connection fees and other fees customarily charged by Water District as may now exist or may be charged in the future arising out of the planning, engineering or construction of the Water District Acquisition Facilities, and such fees shall be deemed eligible costs available for reimbursement from amounts deposited in the Acquisition and Construction Fund of the Acquisition and Construction Fund.

(ii) The Water District Acquisition Facilities must be constructed in strict accordance with the Plans and Specifications as approved by Water District. Any deviations from the approved Plans and Specifications must be approved by the Water District, in writing. Owner shall be solely responsible for the bidding, contracting and construction of the Water District Acquisition Facilities to be acquired with Bond proceeds in accordance with the requirements set forth in Exhibit "B" hereto. Except as otherwise provided herein, the City, Water District and the Community Facilities District shall have no responsibility whatsoever for the bidding, contracting the construction of the Water District Acquisition Facilities. The Owner shall construct and install all Water District Acquisition Facilities on the following terms and conditions:

(A) The Owner shall construct and complete the Water District Acquisition Facilities (or subject portion thereof) at no cost or expense to Water District and in accordance with the laws, rules and regulations of all governmental bodies and agencies having jurisdiction over the Water District Acquisition Facilities (or subject portion thereof).

(B) The Owner shall be required to furnish labor and material payment bonds and contract performance bonds in an amount equal to one hundred percent (100%) of the contract price for the Water District Acquisition Facilities (or such portion thereof) naming the Owner, City, Community Facilities District and Water District as obligees and issued by insurance or surety companies approved by the Water District. All such bonds shall be in a form

approved by the Water District.

(C) The Owner shall deliver to Water District a Certificate of Insurance evidencing coverage for “builder’s risk,” evidence of employer liability insurance with limits of at least One Million Dollars per occurrence and evidence of comprehensive liability insurance (automobile and general liability) with limits of at least Five Million Dollars per occurrence. The Owner shall maintain, keep in force and pay all premiums required to maintain and keep in force all insurance at all times during which such work is in progress. The general liability insurance to be obtained by the Owner shall name City, Community Facilities District and Water District as additional insureds. The Owner shall further maintain and provide evidence of workers’ compensation insurance coverage as provided by law.

(D) The Owner shall comply with such other requirements relating to the construction of the Water District Acquisition Facilities (or subject portion thereof) which Water District may impose by written notification delivered to the Owner at any time, either prior to the receipt of bids by the Owner for the construction of the Water District Acquisition Facilities (or subject portion thereof) or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof. As set forth above, the Owner shall be deemed the awarding body and shall be solely responsible for compliance and enforcement of the provisions of the Labor Code, Government Code and Public Contract Code to the extent expressly applicable to a non-governmental entity constructing infrastructure to be acquired by a public entity. Owner shall pay or cause its construction contractors to pay prevailing wages with respect to the Water District Acquisition Facilities and any other facilities constructed by Owner as required by the Labor Code.

(E) Water District shall have access to inspect the Water District Acquisition Facilities during normal business hours by making reasonable advance arrangements with Owner. It is understood and agreed that Water District’s inspection personnel shall have the authority to enforce the Plans and Specifications, which authority shall include requiring that all unacceptable material, workmanship installation be replaced, repaired or corrected by the Owner. All cost and expense of Water District’s inspection (including, but not limited to, Water District’s agents, employees and independent contractors) shall be paid by Owner and be eligible for reimbursement with Bond proceeds. Other than the final inspection and approval of the Water District Acquisition Facilities (or subject portion thereof), any inspection completed by Water District shall be for the sole use and benefit of Water District and neither the Owner nor any third party shall be entitled to rely thereon for any purpose. Water District does not undertake or assume any responsibility for or owe a duty to select, review or supervise the creation of the Water District Acquisition Facilities (or subject portion thereof). Upon completion of the construction of the Water District Acquisition Facilities (or subject portion thereof) to the satisfaction of Water District’s inspectors, the Owner shall notify Water District in writing that the construction of the Water District Acquisition Facilities (or subject portion thereof) has been completed in accordance with the Plans and Specifications.

(F) Upon satisfactory completion of the Water District Acquisition Facilities (or subject portion thereof) in accordance with the Plans and Specifications and Water District’s standard requirements, in accordance with the terms thereof, the Owner shall forthwith file with the County Recorder of the County of San Bernardino, a Notice of Completion pursuant to the provisions of the Civil Code. The Owner shall furnish to Water District a duplicate copy of each such Notice of Completion showing thereon the date of filing with the County Recorder. Any actual costs reasonably incurred by Water District in inspecting and approving the construction of the Water District Acquisition Facilities (or subject portion thereof) not previously paid by the Owner or funded with proceeds of the Bonds of the Community Facilities District shall be paid by Owner.

(G) The Owner shall provide to Water District such evidence as Water District shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the Water District Acquisition Facilities (or subject portion thereof) have been paid, and that no claims on behalf of any such person, firm or corporation are outstanding.

(H) The Owner shall, at the time Water District acquires the Water District Acquisition Facilities (or subject portion thereof), grant to Water District, by appropriate instruments prescribed by Water District, all easements across private property, fee title, ownership deeds, public access or rights-of-way which may be necessary for the proper operation and maintenance of the Water District Acquisition Facilities (or subject portion thereof), or any part thereof. The Owner shall insure that all deeds of trust and mortgages are subordinated to the easements and reconveyed as to the fee title ownership.

(I) Upon completion of the Water District Acquisition Facilities (or subject portion thereof) and completion of the final inspection, testing and written assurance thereof by Water District, the Owner shall execute and deliver a Bill of Sale in the form and content acceptable to Water District. The Bill of Sale shall convey title of the Water District Acquisition Facilities (or subject portion thereof) to Water District. The Water District Acquisition Facilities (or subject portion thereof) shall be transferred to Water District free of all liens and encumbrances.

(J) Prior to the transfer of ownership of the Water District Acquisition Facilities (or subject portion thereof) by the Owner to Water District, the Owner shall be responsible for the maintenance thereof and shall maintain and transfer the Water District Acquisition Facilities (or subject portion thereof) to Water District in as good condition as the Water District Acquisition Facilities (or subject portion thereof) were in at the time the Owner notified Water District that construction of same had been completed in accordance with the Plans and Specifications. The Owner shall provide to Water District, a two-year performance bond (following date of final acceptance by Water District of the Water District Acquisition Facilities (or subject portion thereof)) for materials and workmanship guarantee providing that Owner will repair, at its expense, all failures of or to the Water District Acquisition Facilities (or subject portion thereof) which was furnished, installed and/or constructed due to faulty materials or installation, within said two-year period. In the event Owner or the surety fails to cause satisfactory repair, as determined by Water District, within ten (10) business days following written notice or such longer period of time as Water District may reasonably determine, Water District may cause such repairs to be completed at Owner's surety's cost and expense. Notwithstanding the above-referenced ten (10) business day or other specified repair period, Water District shall have the unqualified right to immediately make any emergency repairs necessary to eliminate any threat to the public's health, safety or welfare, at Owner's and/or surety's cost and expense. Nothing in this subparagraph shall limit or abrogate any other claims, demands or actions Water District may have against Owner and/or Owner's surety on account of damages sustained by reason of such defect, nor shall the provisions of this subparagraph limit, abrogate or affect any warranties in favor of Water District which are expressed or implied by law.

(K) Water District shall have the right to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner for the design and construction of the Water District Acquisition Facilities (or subject portion thereof) during normal business hours by making reasonable advance arrangements with Owner.

(L) Upon the written request of Owner, Water District shall notify City and Owner in writing when a Water District Acquisition Facility has been substantially completed in accordance with its Plans and Specifications and when a Water District Acquisition Facility has been finally completed and is ready for acceptance by Water District.

(iii) For purposes of this Agreement, a Water District Acquisition Facility shall be deemed “substantially completed” when Owner has notified Water District that the Water District Acquisition Facility has been completed in accordance with its Plans and Specifications, Water District’s inspector has inspected the facility, prepared a final “punch list” and has determined that the only punch list items required to be completed are items not required for the safe operation of the Water District Acquisition Facility and can therefore be completed after the Water District Acquisition Facility has been opened to or made available for public use. For purposes of this Agreement, a Water District Acquisition Facility shall be deemed “finally completed” when all punch list items have been completed to the satisfaction of Water District, and Water District has accepted the Water District Acquisition Facilities pursuant to subparagraph (a) above.

**(b) Acquisition and Ownership of Water District Acquisition Facilities.**

(i) For purposes of determining the acquisition price to be paid by the Community Facilities District for the acquisition of each Water District Acquisition Facility, the value of such facility shall be based on the “Actual Costs” submitted by the Owner, as that term is defined in Exhibit “C” attached hereto and incorporated herein by reference. Upon the transfer of ownership of the Water District Acquisition Facilities to Water District, Water District shall be responsible for the maintenance of the Water District Acquisition Facilities.

(ii) Upon acceptance of the Water District Acquisition Facilities by Water District, Water District shall incorporate the Water District Acquisition Facilities in Water District’s system. Following the expiration of any warranty period applicable to the construction of the Water District Acquisition Facilities during which time Owner shall be responsible for the maintenance of the Water District Acquisition Facilities, Water District shall thereafter be responsible for maintenance of the Water District Acquisition Facilities in accordance with all applicable Water District procedures and practices.

**(c) Payment Requests.**

(i) Notwithstanding the timing of substantial completion or final completion and acceptance of the Water District Acquisition Facilities, Owner may submit a payment request upon substantial or final completion of a Water District Acquisition Facility. The form of payment request to be submitted to Water District by Owner in requesting payment by the Community Facilities District of the acquisition price of the Water District Acquisition Facility, shall be substantially in the form of Exhibit “D-1” hereto. Within ten (10) business days of Owner’s submission to Water District of a payment request, Water District shall determine if the Water District Acquisition Facility has been substantially completed and shall either deny or approve the payment request, which approval shall not be unreasonably withheld. If Water District denies any payment request it shall provide Owner a detailed written explanation describing the reasons or rational for such denial. All denied payment requests may be resubmitted for approval. Owner shall reimburse Water District for its actual costs incurred in connection with the processing of such payment requests, including the inspection of the Water District Acquisition Facilities and such amounts shall be included in the acquisition price paid by the Community Facilities District.

(ii) In connection with Water District’s approval of a payment request, Water District and Owner shall authorize the Community Facilities District to disburse the acquisition price with respect to the approved Water District Acquisition Facilities pursuant to a disbursement request, which shall be substantially in the of Exhibit “D-2” hereto. The sole source of funds for payment of the acquisition price or funding with respect to the approved Water District Acquisition Facilities shall be the CFD Proceeds made available by the Community Facilities District for Water District Facilities. Within a reasonable time of City’s receipt of a signed

disbursement request, City shall authorize payment of the disbursement request by the trustee or fiscal agent for the Bonds.

**Section 5. Construction, Ownership and Maintenance of City Facilities and Water District Acquisition Facilities.** The Owner and the City, as applicable, shall be solely responsible for the design, acquisition, construction and installation of the City Facilities, and the Water District shall have no responsibility therefor or liability with respect thereto. The City Facilities shall be and remain the sole and separate property of the City and shall be operated, maintained and utilized by the City. The Water District shall not have any ownership interest in the City Facilities, and the Water District shall have no responsibility for the operation or maintenance of the City Facilities or any liability with respect thereto.

The Owner shall be solely responsible for the design, acquisition, construction and installation of the Water District Acquisition Facilities, and the City and Water District shall have no responsibility therefor or liability with respect thereto. Upon acquisition of the Water District Acquisition Facilities by the Water District, the Water District Acquisition Facilities shall be and remain the sole and separate property of the Water District and, except as otherwise provided herein, shall be operated, maintained and utilized by the Water District. The City shall not have any ownership interest in the Water District Acquisition Facilities, and the City shall have no responsibility for the operation or maintenance of the Water Acquisition District Facilities or any liability with respect thereto.

**Section 6. No Water District Liability.** The City, the Water District and the Owner acknowledge and agree that the Water District shall have no responsibility or liability to the City or the Owner for the establishment of the Community Facilities District, the levy of the Special Taxes, the issuance of the Bonds, the financing, acquisition, construction and installation of the City Facilities, the financing, construction and installation of the Water District Acquisition Facilities, any disclosure made in connection with the offering and sale of the Bonds or any continuing disclosure made at any time with respect to the Bonds.

**Section 7. Indemnification.** The Owner shall assume the defense of, and hold harmless the Water District and the City and the Community Facilities District and their officers, directors, officials, employees and agents, and each of them, from and against all actions, damages, claims, losses or expenses, including reasonable attorneys' fees and costs, of every type and description to which they may be subjected or put, by reason of, or resulting from, (i) any act or omission of Owner under this Facilities Agreement, (ii) the design, engineering, construction and installation of the Water District Acquisition Facilities to be constructed by Owner, including its consultants, contractors, subcontractors, and anyone directly or indirectly employed by Owner or anyone for whose acts any of them may be liable in connection with the construction of the Water District Acquisition Facilities, the establishment of the Community Facilities District, (iii) the levy of Special Taxes, the issuance of the Bonds, (iv) the financing of all or a portion of the City Facilities and Water District Acquisition Facilities from Bond proceeds or special taxes, and (v) any disclosure made by Owner in connection with the offering and sale of the Bonds or any continuing disclosure made at any time by Owner with respect to the Bonds, or any matters relating thereto. If the Owner fails to do so, the Water District and City shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including any fees or costs, to, and recover the same from, the Owner.

**Section 8. Nature of Allocation of Special Taxes.** This Facilities Agreement shall constitute a joint community facilities agreement entered into pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Act. The entire amount of the proceeds of the Special Taxes shall be allocated and distributed to the City.

**Section 9. Notices.** All Written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the parties in writing time to time, namely:

**If to the City:**

City of Rialto  
150 South Palm Avenue  
Rialto, California 92376  
Attention: City Manager

**If to the Water District:**

West Valley Water District  
Post Office Box 920  
Rialto, California 92377-0920  
Attention: General Manager

**If to the Owner:**

Lytle Development Company and El Rancho Verde Golf, LLC  
285 W. Rialto Avenue, Suite B  
Rialto, CA 92376  
Attention: Kevin Lynch

Each such notice, statement, demand, consent, authorization, offer, designation, request or other hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram, electronic mail or telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

**Section 10. California Law.** This Facilities Agreement shall be governed and construed in accordance with the laws of the State of California.

**Section 11. Attorney Fees.** In the event of any legal action or proceeding arising from or related in any way to a breach of or enforcement or interpretation of this Facilities Agreement, the prevailing party shall be entitled to recover from the opposing party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

**Section 12. Severability.** If any part of this Facilities Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Facilities Agreement shall be given effect to the fullest extent reasonably possible.

**Section 13. Successors and Assigns.** This Facilities Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**Section 14. No Third Party Beneficiaries.** Except as provided explicitly in this Facilities Agreement, no person or entity shall be deemed to be a third-party beneficiary hereof, and nothing in this Facilities Agreement (either express or implied) is intended to confer upon any person or entity other than the Water District, City, Community Facilities District and Owner any rights, remedies, obligations or liabilities under or by reason of this Facilities Agreement. Owner expects to assign this Facilities Agreement, in whole or in part, to one or more merchant builders that acquires property within each Improvement Area. This Facilities Agreement may be assigned by Owner to a third party upon the consent of Water District and City, which consent shall not be

unreasonably withheld or delayed.

**Section 15. Counterparts.** This Facilities Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

**Section 16. Independent Contractor.** In performing this Facilities Agreement, Owner is an independent contractor and not the agent of Water District or City. Except as provided herein, Water District and City shall have no responsibility for payment to any contractor or supplier of Owner. It is not intended by the parties that this Facilities Agreement create a partnership or joint venture among them and this Facilities Agreement shall not otherwise be construed.

**IN WITNESS WHEREOF**, the parties hereto have executed this Facilities Agreement as of the date first written above.

**CITY OF RIALTO**, a municipal corporation

By: \_\_\_\_\_  
Deborah Robertson, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Barbara A. McGhee, City Clerk

By: \_\_\_\_\_  
Rod Foster, City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Eric S. Vail, Interim City Attorney  
Burke, Williams & Sorensen, LLP

**WEST VALLEY WATER DISTRICT**, a public agency of the State of California

By: \_\_\_\_\_  
Clarence C. Mansell, Jr., General Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Robert Tafoya  
Tafoya & Garcia LLP

By: \_\_\_\_\_  
Changing Hawkins  
President of the Board of Directors

**LYTLE DEVELOPMENT COMPANY**, a California corporation

By: \_\_\_\_\_  
Ronald Pharris, Chairman

**EL RANCHO VERDE GOLF, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Ronald Pharris, Managing Member



## EXHIBIT “A”

### DESCRIPTION OF WATER DISTRICT FACILITIES

#### **Water District Fees<sup>1</sup>**

- |    |                     |                |
|----|---------------------|----------------|
| 1. | Capacity Charge     | \$7,009 per DU |
| 2. | Fire Service Charge | \$510 per DU   |

#### **Water District Acquisition Facilities**

The type of Water District Acquisition Facilities eligible to be financed by Community Facilities District under the Act are as follows:

1. El Rancho Verde Parkway (Tract 20092) approximately 7200 linear feet of Water improvements (including 12” ductile iron pipeline, appurtenances etc.)
2. Tract 20204 Water improvements approximately 5200 linear feet (including ductile iron water line, manholes etc.)
3. Tract 20205 Water improvements approximately 6300 linear feet (including ductile iron water line, manholes etc.)
4. Tract 20206 Water improvements approximately 3600 linear feet (including ductile iron water line, manholes etc.)
5. Tract 20207 Water improvements approximately 3300 linear feet (including ductile iron water line, manholes etc.)
6. Tract 20208 Water improvements approximately 3400 linear feet (including ductile iron water line, manholes etc.)
7. Tract 20209 Water improvements approximately 4800 linear feet (including ductile iron water line, manholes, etc.)
8. Transmission line from groundwater extraction wells, approximately 4150 linear feet, mixed 18” and 24” steel pipe and appurtenances.
9. Water Quality Basins 1 & 2 and all related appurtenances.

The description of the Water District Acquisition Facilities are preliminary. The final location, scope, nature and specification, of the Water District Acquisition Facilities shall be determined by reference to the final Water District-approved Plans and Specifications for each facility.

---

<sup>1</sup> Amounts stated for each fee are as of the date of this Facilities Agreement. The amounts eligible to be financed shall be the current amounts payable whenever payment is required pursuant to Water District policies.

## **EXHIBIT "B"**

### **BIDDING, CONTRACTING AND CONSTRUCTION REQUIREMENTS**

1. Bids shall be solicited at least three (3) qualified contractors, provided at least three (3) qualified contractors are reasonably available. Owner may also directly solicit bids.
2. The bidding response time shall be not less than ten (10) working days.
3. An authorized representative of Water District shall be provided a copy of the tabulation of bid results.
4. Contract(s) the construction of the Water District Acquisition Facilities shall be awarded to the qualified bidder submitting the lowest responsible bid, as determined by Owner.
5. The contractor to whom a contract is awarded shall be required to pay not less than the prevailing rates of wages pursuant to Labor Code Sections 1770,1773 and 1773.1. A current copy of applicable wage rates shall be on file in the Office of the Water District Engineer, as required by Labor Code Section 1773.2.

## EXHIBIT “C”

### ACTUAL COSTS

The eligible costs for the Water District Acquisition Facilities shall include all of the actual costs and expenses, directly or indirectly related to the design, planning, engineering, construction, installation and testing of the Water District Acquisition Facilities (the “Actual Costs”). Actual Costs shall include without limitation, the following:

1. Costs for the construction of the Water District Acquisition Facilities, including, without limitation, costs incurred in the employment of licensed contractors to construct, install, complete and test the Water District Acquisition Facilities.

2. Allocated grading costs based upon the square footage of grading area for the Water District Acquisition Facilities and the grading of slope areas relating to the Water District Acquisition Facilities as a percentage of the total graded area under the applicable grading contract, if separable.

3. All permit fees, inspection fees and other fees actually charged by governmental agencies or other entities, including Water District, arising out of or in connection with the design, planning, engineering, construction, installation or testing of the Water District Acquisition Facilities.

4. Costs of tests, inspections, studies, reports and surveys, including, without limitation, any environmental, archaeological, biological or cultural studies or any mitigation requirements that may be requested by federal, state or local agencies evaluations attributable to the Water District Acquisition Facilities.

5. Professional costs and fees associated with design, engineering, accounting, inspection, construction staking, materials testing, legal and accounting and other similar services.

6. Costs of labor and material payment bonds and contract performance and maintenance bonds.

7. Builder’s risk insurance, employer’s liability insurance and comprehensive liability insurance obtained with respect to the Water District Acquisition Facilities.

8. Costs of acquiring from unrelated third parties any fee or easement interest in real property or licenses or encroachment permits to install the Water District Acquisition Facilities, including, without limitation, temporary construction easements, haul road and maintenance easements, the cost to prepare surveys, deeds and easement documents, and professional and escrow fees.

9. Construction and project management and supervision not to exceed 5% of the costs of construction of the related Water District Acquisition Facilities.

10. Costs and expenses of Water District in connection with the performance of its obligations under this Facilities Agreement, including, but not limited to, (i) attorneys, accountants

and other professionals retained in connection with Water District's compliance with this Facilities Agreement or any matter related to the design, planning, engineering, construction, installation or testing of the Water District Acquisition Facilities, and (ii) employee time to review the Plans and Specifications, inspect the construction and installation of the Water District Acquisition Facilities and process payment requests. All costs must be properly documented and reasonable to be reimbursed.

**EXHIBIT “D-1”**

**FORM OF PAYMENT REQUEST**

The undersigned hereby requests payment from the Acquisition and Construction Fund of the Acquisition and Construction Fund, or any applicable account or subaccount thereof, established by City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde) (the “CFD”), an amount equal to \$\_\_\_\_\_ for the Water District Acquisition Facilities (as defined in the Joint Community Facilities Agreement by and among the City of Rialto (“City”), West Valley Water District (“Water District”) and Lytle Development Company and El Rancho Verde Golf, LLC (“Owner”), dated \_\_\_\_\_, 2019 (the “Facilities Agreement”)), all as more fully described in Attachment 1 hereto. In connection with this Payment the undersigned hereby represents and warrants to Water District as follows:

1. He(she) is a duly authorized officer or representative of the undersigned, qualified to execute this Payment Request for payment on behalf of the undersigned and is knowledgeable as to the matters set forth herein.
2. All costs of the Water District Acquisition Facilities for which payment is requested hereby are those Actual Costs (as described in Exhibit “C” to the Facilities Agreement) and have not been inflated in any respect. The Eligible Costs for which payment is requested have not been the subject of any prior disbursement request submitted to the CFD.
3. Supporting documentation (such as third party invoices, lien releases and cancelled checks or other evidence of payment) is attached with respect to each cost for which payment is requested.
4. The Water District Acquisition Facilities for which payment is requested was constructed in accordance with the requirements of the Facilities Agreement.
5. The undersigned is in compliance with the terms and provisions of the Facilities Agreement and no portion of the amount being requested to be paid was previously paid.
6. The acquisition price for the Water District Acquisition Facilities (a detailed calculation of which is shown in Attachment 1 hereto) has been calculated in conformance with the terms of the Facilities Agreement.
7. The Water District Acquisition Facilities have been transferred to the Water District or provision for transfer has been made for \_\_\_\_.
8. All provisions of the Facilities Agreement have been complied with.
9. Please authorize payment of the acquisition price by the CFD to the following if other than the undersigned, in the amounts or percentages indicated:

[Insert names of payees and amounts or percentages]

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

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

[OWNER]

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

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

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

ACCEPTED AND APPROVED BY  
WEST VALLEY WATER DISTRICT

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

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

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

**ATTACHMENT 1**

**SUMMARY OF WATER DISTRICT ACQUISITION FACILITIES  
TO BE ACQUIRED AS PART OF PAYMENT REQUEST**

Water District  
Acquisition Facilities

Eligible Costs

Disbursement  
Requested

[List here Water District Acquisition Facilities which payment is requested, and attach support documentation]

**EXHIBIT "D-2"  
DISBURSEMENT REQUEST FORM**

**(Acquisition Facilities/Water District Fees)  
Community Facilities District No. 2020-1**

City of Rialto Community Facilities District No. 2020-1 (the "CFD") is hereby requested to pay from the Acquisition and Construction Fund of the Acquisition and Construction Fund, or any applicable account or subaccount thereof, established by the CFD, the sum set forth below and as set forth in the attached payment request:

\$ \_\_\_\_\_ (the "Requested Amount")

The undersigned certifies that the amount requested hereunder has been expended or encumbered for capital costs related to the construction and acquisition of the following [Water District Acquisition Facilities/Water District Fees]:

<b>Water District Acquisition Facilities/Water District Fees</b>	<b>Disbursement Requested</b>

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

The Requested Amount is authorized and payable pursuant to the terms of the Joint Community Facilities Agreement by and among the City of Rialto, the West Valley Water District ("Water District") and Lytle Development Company and El Rancho Verde Golf, LLC ("Owner"), dated \_\_\_\_\_, 2019 (the "Facilities Agreement").

The Requested Amount shall be paid to the following Payee:

**[Insert name and wire instruction for Payee]**

Capitalized terms not defined herein shall have the meaning set forth in the Facilities Agreement.

OWNER

WEST VALLEY WATER DISTRICT

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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



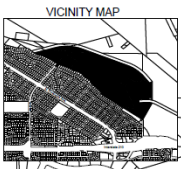
**EXHIBIT "E"**  
**CFD BOUNDARY MAP**

**[Attached]**

**PROPOSED BOUNDARIES OF THE  
CITY OF RIALTO  
COMMUNITY FACILITIES DISTRICT NO. 2019-1  
(EL RANCHO VERDE)**

SHEET 1 OF 3

CITY OF RIALTO  
COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA



Improvement Area No. 1*	
Assessor's Parcel Number	Map Reference Number
0264-421-17-000 (Portion)	2
0264-421-18-000 (Portion)	3
0264-421-34-000	NAP
0264-421-35-000 (Portion)	6
0264-421-36-000	7

\*The proposed boundary of Improvement Area No. 1 of Community Facilities District No. 2019-1 coincides with the boundaries of Lot 2, Lot 3, Lot 6, Lot C, Lot D, Lot E, Lot F, Lot G, Lot H, Lot J, and portion of Lot N of Tentative Tract Map No. 20982 approved by the City of Rialto on September 10, 2019 pursuant to Resolution No. ....

Improvement Area No. 2*	
Assessor's Parcel Number	Map Reference Number
0264-421-12-000	1
0264-421-17-000 (Portion)	2
0264-421-18-000 (Portion)	3
0264-421-30-000	4
0264-421-35-000 (Portion)	6
0264-482-12-000	8
0264-482-13-000	9

\*The proposed boundary of Improvement Area No. 2 of Community Facilities District No. 2019-1 coincides with the boundaries of Lot 1, Lot 4, Lot 5, Lot A, Lot B, Lot K, Lot L, Lot M, portion of Lot N, and Remainder Parcel of Tentative Tract Map No. 20982 approved by the City of Rialto on September 10, 2019 pursuant to Resolution No. ....



**LEGEND**

- Community Facilities District Boundary
- Improvement Area No. 1
- Improvement Area No. 2

Filed in the office of the City Clerk of City of Rialto this \_\_\_\_ day of \_\_\_\_ 20\_\_.

\_\_\_\_\_  
City Clerk  
City of Rialto

I hereby certify that the within map showing the proposed boundaries of Community Facilities District No. 2019-1 (El Rancho Verde) of the City of Rialto, County of San Bernardino, State of California, was approved by the City Council of City of Rialto at a regular meeting thereof, held on this day of \_\_\_\_ 20\_\_, by its Resolution No. \_\_\_\_\_.

\_\_\_\_\_  
City Clerk  
City of Rialto

Reference is hereby made to the Assessor Maps of the County of San Bernardino for an exact description of the lines and dimensions of each lot and parcel.

**San Bernardino County Recorder's Certificate**

This map has been filed under Document Number \_\_\_\_\_ this day of \_\_\_\_\_, 201\_\_ at \_\_\_\_\_ m. in Book \_\_\_\_\_ of \_\_\_\_\_ 44 page \_\_\_\_\_ at the Request of \_\_\_\_\_ in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
Bob Dutton  
Assessor-Recorder-Clerk  
County of San Bernardino

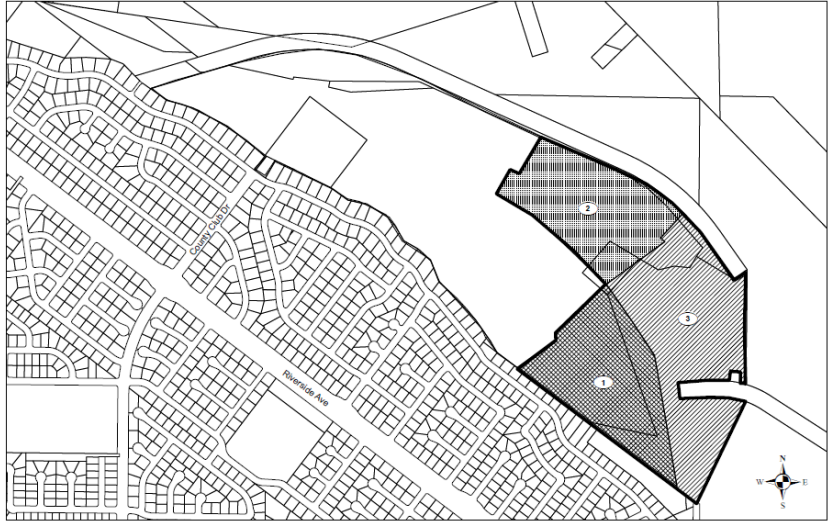
By: \_\_\_\_\_  
Deputy Recorder



**PROPOSED BOUNDARIES OF THE  
CITY OF RIALTO  
COMMUNITY FACILITIES DISTRICT NO. 2019-1  
(EL RANCHO VERDE)  
IMPROVEMENT AREA 1 - TAX ZONES**

SHEET 2 OF 3

CITY OF RIALTO  
COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA



**Improvement Area No. 1 - Tax Zones**

Tax Zone	Applicable Lots*
1	Lot G, Lot H, Lot J, Lot N (Portion)
2	Lot 2, Lot C, Lot D
3	Lot 3, Lot E, Lot F

\*The proposed boundary of Improvement Area No. 1 of Community Facilities District No. 2019-1 coincides with the boundaries of the above referenced lots shown on Tentative Tract Map No. 20092.

**LEGEND**

- Community Facilities District Boundary
- Improvement Area No. 1

**Tax Zones**

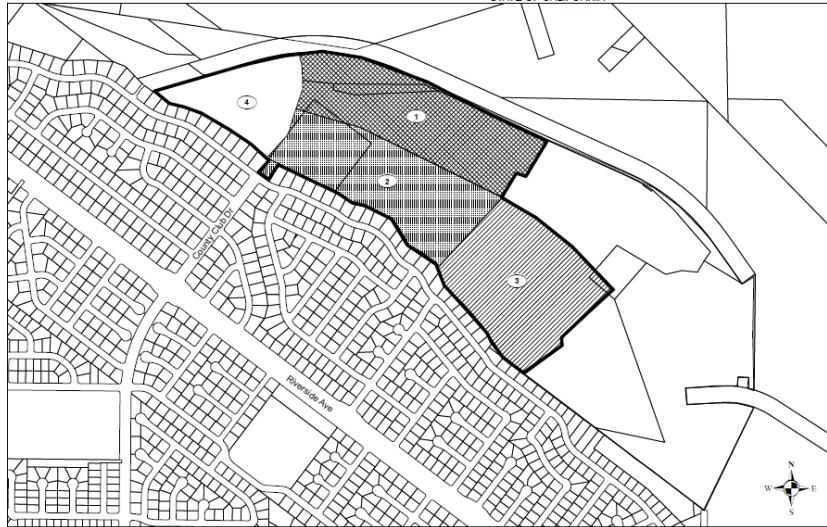
- 1
- 2
- 3



**PROPOSED BOUNDARIES OF THE  
CITY OF RIALTO  
COMMUNITY FACILITIES DISTRICT NO. 2019-1  
(EL RANCHO VERDE)  
IMPROVEMENT AREA 2 - TAX ZONES**

Sheet 3 of 3

CITY OF RIALTO  
COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA



**Improvement Area No. 2 - Tax Zones**

Tax Zone	Applicable Lots*
1	Lot 1, Lot A, Lot B
2	Lot 4, Lot M
3	Lot 5, Lot L, Lot K, Lot N
4	Remainder Parcel

\*The proposed boundary of Improvement Area No. 2 of Community Facilities District No 2019-1 coincides with the boundaries of the above referenced lots shown on Tentative Tract Map No. 20092.

**LEGEND**

Community Facilities District Boundary

Improvement Area No. 2

**Tax Zones**

1 2 3 4



**EXHIBIT B**

**CITY OF RIALTO  
COMMUNITY FACILITIES DISTRICT NO. 2020-1  
(EL RANCHO VERDE)**

**Form of**

**FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT,  
DATED AS OF JULY 14, 2020, BY AND BETWEEN THE OWNER AND THE CITY**

**[See Attached]**

**FUNDING, CONSTRUCTION AND  
ACQUISITION AGREEMENT  
City of Rialto CFD No. 2020-1 (El Rancho Verde)**

THIS FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT, dated as of July 14 , 2020, is by and between the City of Rialto, California (the “City”), acting on behalf of City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde) (the “District”), El Rancho Verde Golf, LLC, a Delaware limited liability company (“El Rancho”), and Lytle Development Company, a California corporation (“Lytle Development” and, with El Rancho, the “Owner”), the owners and developers of the land within the District.

**RECITALS**

**WHEREAS**, the City is undertaking proceedings to form the District, authorize the levy of special taxes for facilities (the “Special Taxes”) and special taxes for services (the “Services Special Taxes”) within two designated improvement areas (each, an “Improvement Area”) of the District and authorize the issuance of Bonds secured by Special Taxes levied within each Improvement Area pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”) to fund the acquisition and construction of the Public Facilities and related costs and the payment of Fees. The City will use the Special Taxes and the proceeds of the Bonds to, among other things, finance the payment of Fees and the Purchase Price of the Public Facilities (all capitalized terms shall be as defined herein).

**WHEREAS**, the City and El Rancho entered into a Pre-Annexation and Development Agreement recorded on August 27, 2012 as Document No. 2012-0346185 (the “Development Agreement”) with respect to the property within the District pursuant to which, among other things, Owner agreed to authorize the City to establish a community facilities district over the land subject to the Development Agreement with a special tax for services of \$104 per year, escalating yearly in accordance with a consumer price index. In consideration for the City’s agreement to issue Bonds of the District with a term of up to thirty-five (35) years and to make available to finance Public Facilities and Fees the Surplus Special Taxes collected within each Improvement Area for at least thirty (30) years, Owner has agreed to a higher annual Services Special Tax of \$311.68 per dwelling unit escalating by up to the lesser of the annual percentage change in the consumer price index or 3% per year.

**WHEREAS**, the Public Facilities are within the vicinity of or of benefit to the City and West Valley Water District (“WVWD”), and the City and the Owner will benefit from a coordinated plan of financing, design, engineering and construction of the Public Facilities and the development of the land within the District.

**WHEREAS**, the Public Facilities and Fees consist of facilities to be owned, operated or maintained by the City (“City Facilities”), development impact fees of the City (“City Fees”), facilities to be owned, operated or maintained by the WVWD (“WVWD Facilities”) and water and sewer capacity and connection fees of WVWD (“WVWD Fees”). The City Facilities and City Fees are described in greater detail in Exhibit A-1 and Exhibit A-2 attached hereto. The WVWD Facilities and WVWD Fees are described in greater detail in the Joint Community Facilities

Agreement dated July 14, 2020 by and between the City, WVWD and Owner (the “WVWD JCFA”).

**WHEREAS**, the Owner and the City wish to finance the acquisition and construction of the City Facilities, the payment of City Fees and the reimbursement therefor with funds in the Acquisition and Construction Fund by entering into this Agreement.

**WHEREAS**, except as described herein the funding of WVWD Facilities and WVWD Fees are governed by the WVWD JCFA.

**WHEREAS**, the City and WVWD have determined that they will obtain no advantage from undertaking the construction of the Public Facilities, and that the provisions of this Agreement require that the Public Facilities constructed by the Owner and completed after formation of the District be constructed as if they had been constructed under the direction and supervision of the City or WVWD, as applicable. Notwithstanding the foregoing, upon mutual agreement of the City and the Owner, the City may construct any of the City Facilities with funds in the Acquisition and Construction Fund, as set forth in Articles III and IV.

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

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS**

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

“Acceptance Date” means the date the City approves a Payment Request for a City Facility.

“Acceptable Title” means title to land or interest therein, in form acceptable to the City, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, other than exceptions that do not materially interfere with the actual or intended use of the land or interest therein and acceptable to the City or as shall have otherwise been approved by the City.

“Acquisition and Construction Fund” means the Acquisition and Construction Fund, and any accounts established therein, established by a Fiscal Agent Agreement relating to the issuance of a series of the Bonds, from which Fees may be paid or reimbursed, the Purchase Price of the Public Facilities shall be paid and from which the costs of the Public Facilities may be financed in accordance with the Construction Election in accordance with requirements applicable to the City. “Acquisition and Construction Fund” shall also mean the fund held by the City into which Surplus

Special Taxes are deposited to fund the Public Facilities and Fees.

“Act” means The Mello-Roos Community Facilities Act of 1982, being Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code.

“Actual Cost” means the cost of a Public Facility or a Discrete Component, which cost may include: (i) the actual hard costs for the construction of such Public Facility or Discrete Component, including labor, materials and equipment costs, (ii) the costs incurred in preparing the Plans for such Public Facility or Discrete Component and the related costs of environmental evaluations of the Public Facility or Discrete Component, (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Public Facility or Discrete Component, and other costs incurred in connection therewith, (iv) professional costs associated with such Public Facility or Discrete Component, such as engineering, planning, legal, accounting, inspection, construction staking, materials testing and similar professional services; (v) costs directly related to the construction and/or acquisition of a Public Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder); (v) costs of construction management and supervision equal to five percent (5%) of the amount set forth in (i) above for a Public Facility or Discrete Component; but only if incurred and (vi) the value of any real property or interests therein (“Real Estate”) that (1) are required for the development of any Public Facility such as temporary construction easements, haul roads, etc., and (2) are required to be conveyed with the Public Facility for the use and operation thereof, in an amount equal to the actual cost of the Real Estate purchased from an independent third party, but only if incurred. Actual Cost shall not include any internal or overhead costs of Owner other than the amount for construction management and supervision set forth in (v) above.

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

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

“Bonds” means the bonds, notes or other indebtedness of the District that are secured by the Special Taxes in an Improvement Area and that are issued to generate proceeds for the Acquisition and Construction Fund.

“City” means the City of Rialto, California.

“City Facility” or “City Facilities” means one or more of the public facilities described in Exhibit A-1 hereto, as it may be amended or supplemented, which are to be owned, operated, and maintained by the City and are eligible to be financed out of the Acquisition and Construction Fund.

“City Facilities Account” means a separate account within the Acquisition and Construction Fund from which funds may be disbursed to finance City Facilities and City Fees.



“City Fees” means development impact fees, environmental mitigation fees or other capital improvement fees or charges imposed or collected by the City as described in Exhibit A-2 hereto. To the extent the City Fees fund anything other than public capital improvements, bond counsel may limit the funding of such fees to a lesser amount from tax-exempt bonds or taxable bonds, if applicable, to take into account such ineligible costs determined by such counsel.

“Construction Election” shall have the meaning set forth in Section 3.6 below.

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

“Deposit” means a deposit of City Fees, as further described in Section 4.9 below.

“Developed Property” shall have the meaning ascribed to it in the Rate and Method.

“Development Agreement” means the Pre-Annexation and Development Agreement between the City of Rialto and Lytle Development Company, El Rancho Verde Golf, LLC and Pharris Sycamore Flats LLC, as it may be amended.

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

“Discrete Component” means (i) a component of a City Facility that the City has agreed can be separately identified, inspected and completed, and can be the subject of a Payment Request hereunder, and (ii) categories of costs relating to each City Facility as generally described in Exhibit A-1 hereto.

“District” means City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde), a community facilities district organized and existing under the laws of the State of California.

“District Representative” means the City Manager or his designee.

“Fees” means City Fees and WVWD Fees.

“Fee Facilities” means the capital facilities funded as part of the City’s development impact fee program or other applicable program, which facilities will be funded in part by the Fees listed on Exhibit A-2 hereto.

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

“Fiscal Agent Agreement” means a fiscal agent agreement between the City (or the District) and the Fiscal Agent, providing for, among other matters, the issuance of the Bonds and the establishment of an Acquisition and Construction Fund, as it may be amended or supplemented from time to time.

“Improvement Agreement” shall have the meaning set forth in Section 2.3 below.

“Improvement Area” means an improvement area of the District including Improvement Area No. 1 and/ or Improvement Area No. 2, as applicable.

“Operating Memorandum” means the Operating Memorandum entered into between the City and the Owner pursuant to Section 15 of the Development Agreement.

“Owner” means both El Rancho Verde Golf, LLC, a Delaware limited liability company and Lytle Development Company, a California corporation, or either of them, and their successors and assigns pursuant to this Agreement.

“Party” means either the City or the Owner; “Parties” mean the Owner and the City.

“Payment Request” means a document, substantially in the form of Exhibit B-1 hereto, to be used in requesting a payment of a Purchase Price for a City Facility or Discrete Component, a document, substantially in the form of Exhibit B-2 hereto, to be used in requesting payment of City Fees, and any document which constitutes a payment request or reimbursement request under the WVWD JCFA.

“Plans” means the plans, specifications, schedules and related construction contracts for a City Facility and/or any Discrete Components thereof approved pursuant to applicable standards of the City, inclusive of all change orders, if any.

“Project” means the development within the District commonly known as “El Rancho Verde.”

“Public Facilities” means the City Facilities and WVWD Facilities.

“Purchase Price” means the amount paid by the District for a City Facility and/or any Discrete Components thereof in an amount equal to the lesser of the Actual Cost or the value of such City Facility or Discrete Component, as determined in accordance with the terms hereof and any payment made for a WVWD Facility under the WVWD JCFA, where applicable.

“Pre-Surplus Special Tax Requirement” means that amount required in any Fiscal Year or bond year, as the case may be, to: (i) pay regularly scheduled debt service and pledged obligations on all outstanding Bonds; (ii) pay periodic costs on the Bonds, including but not limited to, credit enhancement, rebate payments and other requirements of the Bonds under the Fiscal Agent Agreement; (iii) pay administrative expenses, including the surplus special tax administrative fees; (iv) pay any amounts required to establish or replenish any reserve funds for all Bonds; and (v) pay other costs of the applicable Improvement Area and/or District, as applicable, including but not limited to litigation and/or extraordinary costs and providing a necessary reserve therefor, and (vi) pay any amounts required in the case of any event of default under the Fiscal Agent Agreements, the Acquisition Agreement, the Improvement Agreements or any other agreement and/or liability related to the District.

“Rate and Method” means the rate and method of apportionment of special taxes approved for each Improvement Area of the District.

“Special Taxes” means the special taxes of an Improvement Area that are authorized to be

levied for Public Facilities pursuant to the Rate and Method.

“Supplement” means a written document amending, supplementing or otherwise modifying this Agreement and any exhibit hereto, including any amendments to the list of City Facilities and Discrete Components in Exhibit A-1, and/or the addition to Exhibit A-1 or Exhibit A-2 of additional City Facilities and Discrete Components and City Fees to be financed with the proceeds of the Surplus Special Taxes and Bonds deposited in the Acquisition and Construction Fund as approved in writing by the Owner and Director.

“Surplus Special Tax Account” means an account established pursuant to Section 2.3 hereof in the Acquisition and Construction Fund.

“Surplus Special Taxes” means, prior to the issuance of Bonds of an Improvement Area, annually in any period determined by the City (most likely fiscal year), and following the issuance of Bonds, in every bond year or fiscal year, as may be determined by bond counsel, the Special Taxes remaining following payment of the Pre-Surplus Special Tax Requirement. Surplus Special Taxes does not include any County penalties, interest or proceeds of foreclosure.

“WVWD” means West Valley Water District, its successors and assigns.

“WVWD Facilities” means the WVWD Facilities described in the WVWD JCFA.

“WVWD Facilities Account” means a separate account within the Acquisition and Construction Fund from which funds may be disbursed to finance WVWD Facilities and WVWD Fees.

“WVWD Fees” means the WVWD Fees described in the WVWD JCFA.

“WVWD JCFA” means the Joint Community Facilities Agreement dated as of July 14, 2020 by and among the City, WVWD and Owner, as it may be amended.

## **ARTICLE II FUNDING**

**Section 2.1. Proceedings.** The City shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of each series of Bonds. Bonds may not be issued unless and until the City receives an executed notice from Owner requesting such issuance. Upon City’s receipt of such issuance notice, the Owner and the City staff will meet regarding the amount, timing and other material aspects of each series of the Bonds, but the legal proceedings and the series, principal amounts, rates, terms and conditions and timing of the sale of the Bonds shall in all respects be solely determined by the City Council of the City, acting as the governing body of the District. Subject to the foregoing discretion of the governing body of the District, the District may issue one or more series of Bonds for each Improvement Area in coordination with Owner’s timing of development within the Improvement Area for which the Bonds are being issued and subject to sound municipal finance practices, the City’s policies and then current industry standards. Notwithstanding anything in this Agreement to the contrary, the term of each series of Bonds shall be the lesser of (i) thirty-five (35) years, (ii) the remaining term of the Special Taxes in the Improvement Area for which Bonds are being issued or (iii) a term equal to 120% of the average

reasonably expected economic life of the Public Facilities and Fee Facilities to be financed with the proceeds of the Bonds as required by federal tax law for tax-exempt bonds. If the term of any series of Bonds would be shorter than the term permitted by clauses (i) and (ii) in the preceding sentence due to the application of clause (iii) of the preceding sentence, all or a portion of the Bonds may be issued on a taxable basis in order to maximize the term. Upon the CFD Representative's request, Owner shall deposit funds with the City to pay for reasonable costs to be incurred by the City related to the issuance of such Bonds including, without limitation, appraisal, market absorption study, special tax consultant, bond and issuer's counsel, financial advisor, and City attorney and staff costs. Any funds deposited by Owner and expended by City for costs of issuance of the Bonds shall be reimbursed out of the proceeds of the applicable Bonds or Surplus Special Taxes, as determined by the City.

**Section 2.2. Sufficiency of Bond Proceeds and Special Taxes.** The City shall not be obligated to pay Fees and the Purchase Price of any Public Facility or any Discrete Components thereof, except from amounts on deposit in the Acquisition and Construction Fund. The City makes no warranty, express or implied, that the proceeds of the Bonds or Surplus Special Taxes deposited and held in the Acquisition and Construction Fund will be sufficient to pay the Purchase Price of all of the Public Facilities and Fees as provided herein and in the WVWD JCFA. Notwithstanding anything herein to the contrary, the City may require that the City Fees for an Improvement Area are funded as a first priority for the use or reservation of proceeds of Bonds and Surplus Special Taxes of the Improvement Area. Prior to each issuance of Bonds, the City and the Owner will work cooperatively to determine which Public Facilities and Fees are funded from the issuance of the Bonds.

**Section 2.3. Proceeds and Special Taxes.** The proceeds of each series of Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds will be set aside in the Acquisition and Construction Fund and further allocated between the City Facilities Account and the WVWD Facilities Account. Subject to the City's discretion to fund City Fees as a first priority, funds within the City Facilities Account and WVWD Facilities Account may be transferred from one account to the other at the Owner's written request. Moneys in the Acquisition and Construction Fund shall be deposited, held, invested, reinvested and disbursed therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the Purchase Price of the Public Facilities and Fees (including payment of the Purchase Price of Discrete Components thereof), all as herein provided. Notwithstanding anything herein to the contrary, the prepayment of City Fees via a Deposit (as described herein), Surplus Special Taxes or the proceeds of one or more series of Bonds at a lower rate prior to the requirement for such payment of City Fees under the City's regulations and ordinances, shall not absolve the Owner from paying any increase in City Fees at the time such City Fees are regularly due. Such increase may be funded as an additional Deposit, or from Surplus Special Taxes or the proceeds of Bonds.

The City agrees that Special Taxes shall be levied on each Assessor's Parcel classified as Developed Property in each Improvement Area at the maximum assigned special tax rate permissible under the Rate and Method to pay directly for the Purchase Price of Public Facilities and Fees for a period of thirty (30) years beginning in the first year in which the Special Taxes are levied in the Improvement Area. The foregoing requirement (including the requirement to reimburse the Owner or any Assignee from Surplus Special Taxes) is subject to termination with

respect to an Improvement Area should any Owner or its Assignee (as defined in Section 9.4 below) fail to pay its County property taxes or Special Taxes within the Improvement Area at the time they are due, which failure shall be considered a Default under this Agreement that is subject to the timing, notice and opportunity to cure provisions of Section 8.1 below. Surplus Special Taxes collected during such thirty-year period shall be deposited by the City in an account at the City (prior to the issuance of the Bonds for an Improvement Area) and, following the issuance of the Bonds, in an account within the Acquisition and Construction Fund, which may be entitled the "Surplus Special Tax Account" ("Surplus Special Tax Account"), and disbursed to pay the Purchase Price of Public Facilities, or any Discrete Component thereof, and Fees all as provided herein. Following the earlier of (a) completion and payment of all Payment Requests for the Public Facilities and Fees, (b) the expiration of the 30-year levy period with respect to an Improvement Area, or (c) a Default in the payment of Special Taxes and/or County property taxes with respect to an Improvement Area that is not cured in accordance with the 30-day period specified in Section 8.1 below, Surplus Special Taxes shall be transferred to the City to be used for any lawful purpose. The City shall not be required to levy at the maximum assigned special tax permissible under the Rate and Method with respect to an Improvement Area following the termination of its obligation to pay Surplus Special Taxes for the Public Facilities and Fees as long as the City is in compliance with its covenants in the Fiscal Agent Agreement. The Owner shall submit Payment Requests for each Public Facility and Fees in a diligent manner hereunder and under the WVWD JCFA and within the time periods specified in Section 4.6(b) for Public Facilities (i.e., within two years of acceptance) and Section 4.9 for Fees (i.e., within two years of final certificate of occupancy).

At least annually in any year in which Owner has approved Payment Requests for Public Facilities or Fees for which an amount remains outstanding, Owner shall submit an invoice to the City stating the remaining unpaid amount for purposes of assisting the City in administering payments from the Acquisition and Construction Fund and the Surplus Special Tax Account therein and enclosing summaries of the applicable approved Payment Requests, or providing copies of the approved Payment Requests if requested by the City. Within ninety (90) days following receipt of such invoice, and not more often than once each year, the City shall provide Owner with a simple accounting of the following information updated for the period since the previous accounting provided to Owner: (1) amounts deposited in and disbursed from the Acquisition and Construction Fund and/or Surplus Special Tax Account, (2) the total levy of Special Taxes in the prior fiscal year and (3) the amount of Surplus Special Taxes received in the prior fiscal year. Any costs of administering these requirements shall be paid from Surplus Special Taxes prior to any distribution thereof

The Owner acknowledges that any lack of availability of amounts in the Acquisition and Construction Fund and Surplus Special Tax Account to pay the Purchase Price of Public Facilities and Fees shall in no way diminish any obligation of the Owner with respect to the construction of or contributions for public facilities and mitigation measures required in connection with the Project by the Development Agreement or any other agreement to which the Owner is a party, or any governmental approval to which the Owner is subject by any entity (collectively, the "Improvement Agreements").

**Section 2.4. Continuing Disclosure Agreement.** Upon City’s request prior to Owner’s completion of the development of an Improvement Area, the Owner agrees to provide to the City, and to require each transferee or assignee to provide to the City all information regarding the Owner’s development within the Improvement Area for which Bonds are issued, including the financing plan for such development, which is necessary to ensure that the City complies with its continuing disclosure obligations under the applicable continuing disclosure agreement for the Bonds of the Improvement Area and all other applicable federal and state securities laws.

### **ARTICLE III CONSTRUCTION OF CITY FACILITIES**

**Section 3.1. Plans.** To the extent and at the time required by the Improvement Agreements, the Owner shall cause Plans to be prepared for the City Facilities. The Owner shall obtain the written approval of the Plans in accordance with applicable ordinances and regulations of the City. Plans for City Facilities to be acquired by the District shall be shown on a separate set of drawings from other public or private facilities not to be acquired, in the same area.

**Section 3.2. Construction.** This Agreement shall not expand, limit or otherwise affect any obligation of the Owner under any Improvement Agreements. All City Facilities shall be constructed in accordance with the Improvement Agreements and the approved Plans.

**Section 3.3. Relationship to City Works.** This Agreement is for the acquisition of and payment for the City Facilities and Discrete Components thereof by the City from moneys in the City Facilities Account and is not intended to be a public works contract. The City and the Owner agree that the Owner shall award all contracts for the construction of the City Facilities and the Discrete Components thereof to be constructed by the Owner in accordance with the City’s bidding requirements for public projects, and that this Agreement is necessary to assure the timely and satisfactory completion of such City Facilities and the Discrete Components thereof. The City Facilities to be acquired or constructed shall be constructed with funds in the City Facilities Account in accordance with this Agreement, including the payment of prevailing wages, in addition to all conditions of approval and requirements of the City.

From time to time at the request of the District Representative or the Owner, the Owner and the District Representative shall meet and confer regarding matters arising hereunder with respect to the City Facilities, Discrete Components and the progress in constructing and acquiring the same, and as to any other matter related to the City Facilities or this Agreement.

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

**Section 3.5. Contracts and Change Orders.** The Owner shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as “change orders”) required for the construction of the City Facilities, or any Discrete Components thereof, to be constructed by the Owner, and all such contracts and supplemental agreements shall be submitted to the Director. The Owner shall be required to provide evidence that Owner solicited,

or caused to be solicited, at least three (3) bids for the construction of each City Facility for which the Owner submits a Payment Request and that the contract for the construction of each such City Facility was awarded to the lowest responsible bidder for such City Facility. Owner construction, bidding, contracts and change orders shall comply with the requirements set forth in Exhibit “D” of the Agreement and Owner shall provide evidence of compliance therewith.

**Section 3.6. Construction Election.** The Owner and City may mutually elect (the “Construction Election”) to cause any or all of the applicable City Facilities or a Discrete Component thereof to be constructed by the City and financed out of the City Facilities Account and the Surplus Special Tax Account in accordance with the terms and conditions described in this Section 3.6 and the Improvement Agreements and subject to the availability of sufficient funds, including the proceeds of the Bonds and any Special Taxes necessary for such construction, including Surplus Special Taxes.

If the Owner and City make the Construction Election with respect to a City Facility, or any Discrete Component thereof, the Owner shall transfer Acceptable Title to the land or right-of-ways then owned by the Owner on and over such real property on which the City Facility, or Discrete Component thereof, is to be constructed.

Upon completion of a City Facility or Discrete Component thereof for which a Construction Election has been made, payment shall be made pursuant to Article IV below for the Purchase Price thereof incurred by the Owner prior to the Construction Election and subject to the availability of sufficient funds in the Acquisition and Construction Fund following payment of the City’s costs. Notwithstanding anything herein to the contrary, to the extent the Owner is required to provide such Public Facilities, any costs in excess of funds paid or reimbursed under this Agreement, shall be paid by Owner.

**Section 3.7. Notice of Completion and Lien Releases.** Upon completion of the construction of a City Facility, the Owner shall notify the Director in writing of such completion and shall prepare and execute a Notice of Completion for such City Facility in the form prescribed by the California Civil Code and shall record such notice in the Official Records of the County of San Bernardino. The Owner shall cause its contractors to provide unconditional lien releases for such City Facility or all Discrete Components in accordance with the Civil Code prior to the payment for those Public Facilities.

## **ARTICLE IV ACQUISITION AND PAYMENT**

**Section 4.1. Inspection.** No payment hereunder shall be made by the City to the Owner for a City Facility or Discrete Component thereof until the City Facility or Discrete Component thereof, if applicable, has been inspected by the City. Unless otherwise provided in a Supplement, the City may make or cause to be made regular on-going site inspections of the City Facilities to be acquired hereunder.

**Section 4.2. Agreement to Sell and Purchase Public Facilities.** The Owner hereby agrees to sell to the City, and the City hereby agrees to purchase from the Owner, the City Facilities, including the Discrete Components thereof, constructed by the Owner for their

respective Purchase Prices, subject to the terms and conditions hereof. The City shall not be obligated to purchase any City Facility until the City Facility is completed and the acceptance by the City for such City Facility has occurred; provided that the City has agreed hereunder to make payments to the Owner for Discrete Components of City Facilities prior to the completion of such City Facilities in certain circumstances to the extent the Discrete Components are described herein. The Owner acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not accept a City Facility of which a Discrete Component is a part until the entire City Facility has been completed. The City acknowledges that a Discrete Component does not have to be accepted by the City as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been completed in accordance with the Plans therefor, and such completion is acknowledged in writing by the Director.

(a) **Requests.** In order to receive the Purchase Price, inspection thereof under Section 4.1, if applicable, shall have been made and the Owner shall deliver to the District Representative and the Director: (i) a Payment Request in the form of Exhibit B-1 hereto for such City Facility or Discrete Component, and (ii) evidence that all requirements of this Agreement have been complied with, including Exhibit D hereof; and (iii) if payment is requested for a completed City Facility, (a) if the property on which the City Facility is located is not owned by the City at the time of the request, a copy of the recorded documents conveying to the City Acceptable Title to the real property on, in or over which such City Facility is located, as described in Section 5.1 hereof, (b) a copy of the recorded notice of completion of such City Facility (if applicable), and (c) an assignment of the warranties and guaranties for such City Facility, as described in Section 5.5 hereof and Exhibit D hereto and (d) proof that the property is free and clear of all liens or other encumbrances not acceptable to the City. If payment is requested for a Discrete Component, the Owner shall provide evidence that the cost of the entire Public Facility for which the Discrete Component is part of is greater than \$1,000,000 and that said Discrete Component and Public Facility will be transferred to the City upon completion of the Public Facility.

**Section 4.3. Determination of Value for a City Facility.** The value of a City Facility shall be equal to the Actual Cost of construction of such City Facility, less such portion of such cost of construction which the Director has, in his or her reasonable professional opinion, determined would not have been incurred had such City Facility been constructed pursuant to a public works contract awarded by the City. The Actual Cost is also subject to any limitations in Exhibit D hereto.

**Section 4.4. Payment Requests.** Upon receipt of a Payment Request (and all accompanying documentation), the Director shall conduct a review in order to confirm that such request is complete, that such Discrete Component or City Facility identified therein was constructed substantially in accordance with the Plans therefor, and to verify and approve the Purchase Price of such Discrete Component or City Facility specified in such Payment Request. The Director shall conduct each such review in an expeditious manner and the Owner agrees to reasonably cooperate with the Director in conducting each such review and to provide the Director with such additional information and documentation as is reasonably necessary for the Director to conclude each such review. Within a reasonable time of any Payment Request, the Director shall notify the Owner whether such Payment Request is complete, and, if not, what additional



documentation must be provided. If such Payment Request is complete, the Director will provide a written approval or denial of the request within ninety (90) days of its submittal. If the Director disapproves any Payment Request, it shall provide written notice of disapproval to the Owner within such ninety (90) day period stating in reasonable detail the reasons for such disapproval and the changes to the Payment Request necessary to obtain the Director's approval. The Director's review of any Payment Request shall be made on a City Facility and/or Discrete Component basis such that the Director shall approve for payment any City Facilities and/or Discrete Components covered by a Payment Request that comply with the requirements of this Agreement even if the Director disapproves other City Facilities and Discrete Components included as part of the same Payment Request. However, the Director may request that separate Payment Requests be submitted. The Director will provide a written notice of approval or denial to the Owner within ninety (90) days after receipt of the revised Payment Request, which notice shall describe in reasonable detail the reason for the denial, if applicable.

The Director shall be entitled to withhold approval for payment of a Discrete Component or City Facility (other than the final Discrete Component of any City Facility) to be owned by the City that is the subject of a Payment Request if (i) the Owner has not provided conditional lien releases for labor and materials provided in connection with such Discrete Components and/or City Facility (provided the Director may accept security provided by the Owner and approved by the Director to protect against such liens), (ii) the City Facility or Discrete Component has not been constructed substantially in accordance with the Plans or has failed the inspection, (iii) the Director disputes the Actual Cost of the Discrete Component stated in the Payment Request, or (iv) the Owner is delinquent in paying its special taxes and/or County property taxes, or (v) the Owner is otherwise in default or non-compliance hereunder or under the Improvement Agreements, or (vi) the payment request is incomplete, incorrect or unclear in the opinion of the Director or the Director disputes the Actual Cost specified in the Payment Request, or (vii) the City Facility or Discrete Component has been reimbursed or paid by some other source of City funds or agreement with the City, or (viii) the City has not accepted the City Facility or has not received transfer of title, if applicable. The intent of Section (vii) is to ensure there is no double reimbursement to the Owner or credits against City Fees beyond the fair share obligation of the applicable property of the Owner being developed, provided, however, nothing herein shall preclude Owner from receiving credit against City Fees for a City Facility for which the Purchase Price has been paid if the amount of such City Fees that may be funded pursuant to Section 4.9 is reduced by the amount of such credit.

Nothing in this Agreement shall be deemed to prohibit the Owner from contesting in good faith the validity or amount of any mechanics' or materialman's lien nor limit the remedies available to the Owner with respect thereto so long as such delay in performance shall not subject the City Facilities or any Discrete Component thereof to foreclosure, forfeiture or sale.

**Section 4.5. Payment.** Upon approval of the Payment Request (or any portion thereof) by the Director, the Director shall sign the Payment Request and forward the same to the District Representative. Upon receipt of the approved Payment Request, the District Representative shall, within five (5) business days of receipt of the approved Payment Request, cause the same to be paid, to the extent of funds then on deposit in the City Facilities Account, however, the Purchase Price for any City Facility shall not be paid earlier than thirty-five (35) days after the recording of a Notice of Completion for such City Facility. Any approved Payment Request not paid due to an

insufficiency of funds in the City Facilities Account shall be paid promptly following the deposit into the City Facilities Account of additional proceeds of the Bonds or Surplus Special Taxes. Notwithstanding anything herein, payments from Surplus Special Taxes shall be paid to Owner at least once annually or periodically at the discretion of the City so long as the City accounts for payment of the Pre-Surplus Special Tax Requirement prior to payment of such Surplus Special Taxes, including complying with requirements and covenants of the Fiscal Agent Agreement.

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

**Section 4.6. Restrictions on Payments.** Notwithstanding any other provisions of this Agreement, the following restrictions shall apply to any payments made to the Owner under Section 4.5 hereof with respect to City Fees and City Facilities and under the WWWD JCFA, where applicable:

(a) Amounts of Payments. Payments for each Discrete Component or City Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or City Facility. The City agrees that the Purchase Price of a Discrete Component or City Facility may fluctuate from the estimated amounts herein. The City agrees that the Owner has the latitude to increase or decrease the reimbursement of a Discrete Component or City Facility from the estimated amount, as the Purchase Price is determined. In no case will the total amount paid for all Public Facilities and Fees exceed the total amount of funds available in the Acquisition and Construction Fund.

Nothing herein shall require the City in any event (i) to pay more than the Purchase Price of a City Facility or Discrete Component; or (ii) to make any payment beyond the available funds in the City Facilities Account or the Surplus Special Tax Account for such City Facility or Discrete Components or City Fees; or (ii) to make more than one payment per year from Surplus Special Taxes. The parties hereto acknowledge and agree that all payments to the Owner for the Purchase Prices of City Facilities or Discrete Components are intended to be reimbursed to the Owner for costs incurred by the Owner or moneys already expended or incurred by the Owner to third parties in respect of such City Facilities and/or Discrete Components.

Nothing in the WWWD JCFA shall require City to (i) to make any payment beyond the available funds in the WWWD Facilities Account or the Surplus Special Tax Account for such WWWD Facilities or WWWD Fees; or (ii) to make more than one payment per year from Surplus Special Taxes.

(b) Frequency. Subject to Subsection (a) hereof, no more than one Payment Request shall be submitted in any three month period although a Payment Request may relate to more than one City Facility or Discrete Component. In addition, a Payment Request for a completed City Facility or WWWD Facility must be submitted no later than two (2) years following its acceptance by the City or WWWD, respectively. The costs of processing such a request by the City may be paid from Special Taxes or by Owner.

Notwithstanding anything herein, payments from Surplus Special Taxes shall be paid to Owner at least once annually or periodically at the discretion of the City so long as the City accounts for payment of the Pre-Surplus Special Tax Requirement prior to payment of such Surplus Special Taxes, including complying with the requirements and covenants of the Fiscal Agent Agreement.

**Section 4.7. Defective or Nonconforming Work.** If any of the work done or materials furnished for a City Facility or Discrete Component are found by the Director to be defective or not in substantial accordance with the applicable Plans: (i) if such finding is made prior to payment for the Purchase Price of such City Facility or Discrete Component hereunder, the Director may withhold payment therefor until such defect or nonconformance is corrected, or (ii) if such finding is made after payment of the Purchase Price of such City Facility or Discrete Component, the Owner shall act in accordance with the applicable Improvement Agreement, if any, or directions of the Director to correct such defective work or refund the moneys paid for such work.

**Section 4.8. Modification of Discrete Components.** Upon written request of the Owner, the Director shall consider modification of the description of any Discrete Component. Any such modification shall be subject to the written approval of the Director, which approval the Director may withhold in his sole discretion, and shall not diminish the overall Public Facilities to be provided pursuant to the Improvement Agreements.

**Section 4.9. Funding of City Fees.** In conjunction with the recording of the final subdivision map(s) for the Project and/or the condominium plans, in phases for the Project, the issuance of building permits for the construction of homes within the Project and/or the issuance of occupancy permits for such homes, it may be necessary for an Owner, or its successors or assigns, to make deposits (the "Deposits") equal to the amount of City Fees then required prior to the issuance of Bonds or the deposit of sufficient funds in the Acquisition and Construction Fund. Owner may periodically execute and submit a Payment Request in the form attached hereto as Exhibit B-2 to the City requesting payment of such City Fees to the City of an amount equal to the Deposits made by the Owner from funds in the Acquisition and Construction Fund. Except as provided with respect to the payment period for Surplus Special Taxes, within ninety (90) days of the City's receipt of funds pursuant to such Payment Request, the City shall return the Deposits to Owner. No such Payment Request relating to City Fees paid within an Improvement Area shall be submitted by the Owner later than two (2) years following the issuance of a certificate of occupancy for the final home constructed within the Improvement Area at build-out. In the event Bonds are not issued within thirty-six (36) months of the date of a Deposit, as determined by the City, such Deposit may at the written discretion of the City no longer be reflected as a deposit on the accounts of City but shall remain eligible for reimbursement from the proceeds of taxable Bonds or Surplus Special Taxes deposited in the Acquisition and Construction Fund. The City shall not be limited in the use of the Deposits as an advance to pay for the City Fees for Fee Facilities. Owner may also submit a Payment Request in the form attached as Exhibit B-2 to allow the City to requisition from the Acquisition and Construction Fund all or a portion of the City Fees that are then estimated to be due and payable in the future with respect to any portion of the Project. The City shall grant Owner a credit against City Fees in the amount of money disbursed pursuant to such Payment Request. Notwithstanding anything herein to the contrary, Owner shall remain responsible for the payment of the City Fees at the rate in effect at the time the City Fees are normally required to be paid pursuant to the requirements of the City and the Development

Agreement. The City shall have a minimum of 90 days to process requests for City Fees and for Deposits. City Fees are also subject to Section 4.5 hereof.

The City may expend such Deposits and City Fees paid with the proceeds of the Bonds in the manner consistently applied by the City with respect to City Fees funded with the proceeds of the bonds.

Notwithstanding anything herein, payments from Surplus Special Taxes shall be paid to Owner periodically at the City's discretion as specified herein so long as the City accounts for the payment of the Bond debt service, administrative expenses and other costs related to the District (including establishing reserves for such costs if necessary), in the order of priority required under the Fiscal Agent Agreement and complies with other covenants under the Fiscal Agent Agreement.

**Section 4.10. WVWD Facilities and Fees.** Subject to the provisions hereof, WVWD Facilities and WVWD Fees shall be financed with funds on deposit in the WVWD Facilities Account in accordance with the WVWD JCFA.

**Section 4.11. Credits/Other Reimbursements.** Notwithstanding anything herein to the contrary, Owner shall not request to be reimbursed or paid (or be paid or reimbursed) for any Public Facilities or Fees for which it is receiving reimbursement or payment from some other Improvement Agreement, reimbursement agreement or other agreement with the City or the WVWD. Owner shall not request to be or be reimbursed for any City Fees that are subject to a credit by the City for facilities constructed by the Owner.

**Section 4.12. Funding by Additional Series.** The City may in its discretion fund any additional series of Bonds in any Improvement Area. The City will not fund any additional series of bonds based on the capacity of Surplus Special Taxes.

**Section 4.13. Limitation on Surplus Special Taxes.** Surplus Special Taxes to be paid to the Owner or any Assignee hereunder and under the WVWD JCFA terminates with respect to an Improvement Area on the earlier of (a) the date 30 days following a notice provided to Owner pursuant to Section 8.1 that the Owner and/or any Assignee has failed to pay its county property taxes or the Special Taxes with respect to any property owned in the Improvement Area if such failure is not cured within such 30-day period, (b) thirty (30) years from the initial levy of Special Taxes within the Improvement Area or (c) completion and payment of all Payment Requests for Public Facilities and Fees.

In connection herewith, the Owner agrees to the following: (i) Owner agrees to pay its Special Taxes and cause all Assignees to pay its Special Taxes in a diligent manner, (ii) Owner shall submit all Payment Requests hereunder and any Payment Requests under the WVWD JCFA in a diligent manner, and (a) with respect to each City Facility and WVWD Facility, within two (2) years following its acceptance and (b) with respect to Fees, no later than two (2) years following the issuance of a certificate of occupancy for the final home constructed within the Improvement Area at build-out. The City may in its discretion determine not to accept any Payment Requests for a Public Facility and Fees following the respective two-year period described in (ii) above. After the applicable two-year period, the City may in its discretion no longer accept any Payment Requests for the applicable Public Facilities and Fees but shall continue to make payment on all previously-approved Payment Requests.

**ARTICLE V**  
**OWNERSHIP AND TRANSFER OF PUBLIC FACILITIES**

**Section 5.1. Conveyance of Land and Easements for City.** Acceptable Title to all property on, in or over which each City Facility will be located shall be conveyed to the City by way of grant deed, quitclaim, or dedication or irrevocable offer of dedication of such property, or easement thereon, in accordance with the applicable Improvement Agreement, if any, or as required by the City. The Owner agrees to provide the City such documents as are required to obtain Acceptable Title with respect to the City Facilities funded pursuant to this Agreement. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a City Facility (or the last Discrete Component thereof) and shall be evidenced by recordation of the acceptance thereof by the City.

**Section 5.2. Evidence and Title Insurance.** The Owner shall furnish to the City a preliminary title report for such land not previously dedicated or otherwise conveyed to the City, for review and approval prior to the transfer of Acceptable Title to a City Facility to the City. Within thirty (30) business days, the Director shall approve the preliminary title report unless it reveals a matter which, in the judgment of the Director, could materially affect the City's use of any part of the property or easement covered by the preliminary title report for the purpose for which such property or easement is being conveyed. In the event the Director does not approve the preliminary title report, the City shall not be obligated to accept title to such City Facility or pay the Purchase Price for such City Facility (or the last Discrete Component thereof) until such objections to title have been cured to the satisfaction of the Director. The failure of the Director to provide written approval to the Owner shall be deemed to be a disapproval. The Owner shall provide concurrently with such transfer such title insurance as requested by the Director.

**Section 5.3. Facilities Constructed on Private Lands.** If any City Facilities to be acquired are located on privately-owned land, the Owner thereof shall retain title to the land and the completed City Facilities until acquisition of the City Facilities under Article V hereof. Pending the completion of such transfer and where the Owner has received any payment for any such City Facility or a Discrete Component thereof, the Owner shall be responsible for maintaining the land and any City Facilities or Discrete Components in good and safe condition. Notwithstanding the foregoing, subject to the terms of the applicable Improvement Agreement, upon written request of the City before payment for the last Discrete Component of a City Facility, the Owner shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Section 5.1 and 5.2 hereof.

**Section 5.4. Facilities Constructed on City Land.** If the City Facility to be acquired is on land owned by the City, the City hereby grants to the Owner a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the City Facility subject to the written authorization of the Director. The provisions for inspection and acceptance of City Facilities otherwise provided herein shall apply.

**Section 5.5. Maintenance and Warranties.** The Owner shall maintain each Discrete Component of any City Facility constructed by the Owner in good and safe condition until the Acceptance Date of the City Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Owner shall be responsible for performing any required maintenance on any

completed Discrete Component or City Facility constructed by the Owner. On or before the Acceptance Date of the City Facility, the Owner shall assign to the City, to the extent assignable, all of Owner's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such City Facility. The Owner shall maintain or cause to be maintained each City Facility constructed by the Owner for such period and for such purpose, all in accordance with the applicable Improvement Agreement. After the Acceptance Date, the Owner shall not be responsible for maintaining such City Facility. Any warranties, guarantees or other evidences of contingent obligations of third parties with respect to the City Facilities to be acquired by the City shall be delivered to the Director as part of the transfer of title.

## **ARTICLE VI INSURANCE**

**Section 6.1. Requirements.** The Owner shall, at all times prior to the final Acceptance Date of all City Facilities, maintain, deliver to the City evidence of and keep in full force and effect, or cause to be maintained, delivered to the City evidence of and kept in full force and effect, the insurance policies required pursuant to the Improvement Agreements. To the extent, no insurance is required pursuant to the Improvement Agreements or if there is no Improvement Agreement, the Owner shall maintain and deliver to City the insurance requested by the City's risk manager and the Director, which shall be of a similar nature and amount required under the City's public works contracts and public works requirements, including payment and performance bonds, builders risk insurance, workers compensation, automobile insurance. Certain of the insurance which is required is described in Exhibit D hereto and by this reference incorporated herein.

All of the Owner's insurance policies shall contain an endorsement providing that written notice shall be given to the City at least 30 calendar days prior to termination, cancellation, or reduction of coverage in the policy and an endorsement extending coverage to the City, its employees, officials, appointees and its agents as an additional insured, in the same manner as the named insured as respects liabilities arising out of the performance of any work related to the City Facilities. Such insurance shall be primary insurance as respects the interest of the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the insurance required hereunder.

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

**Section 6.2. Evidence of Insurance.** The Owner shall furnish to the City, from time to time upon request, a certificate of insurance regarding each insurance policy required to be maintained by the Owner hereunder.

## **ARTICLE VII REPRESENTATIONS, WARRANTIES AND COVENANTS**

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

- A. Organization. El Rancho is a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware and is in good standing under the laws of the State of California, and has the limited liability company power and authority to own its property and assets and to carry on its business as now being conducted and as now contemplated within the District and the City. Lytle Development is a California corporation, duly organized and validly existing and in good standing under the laws of the State of California, and has the corporate power and authority to own its property and assets and to carry on its business as now being conducted and as now contemplated within the District and the City.
- B. Authority. El Rancho and Lytle Development have the power and authority to enter into this Agreement, and have taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Owner.
- C. Binding Obligation. This Agreement is a legal, valid and binding obligation of the Owner, enforceable against the Owner in accordance with its terms subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights in general and by general equity principles.
- D. Financial Records. Until three years after the final acceptance and payment of all the Public Facilities and Fees, the Owner covenants to maintain proper books of record and account for the construction of the Public Facilities and the payment of Deposits and/or Fees and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.
- E. Plans. The Owner represents that it has obtained or will obtain approval of the Plans for the City Facilities and Discrete Components constructed by the Owner from all appropriate departments of the City and would, as applicable, from any other public entity or public utility from which such approval must be obtained. The Owner further agrees that the City Facilities constructed by the Owner have been or will be constructed in compliance with such approved Plans and any supplemental agreements (change orders) thereto, as approved in the same manner.
- F. Proceedings. The Owner represents that it has reviewed the Rate and Method for each Improvement Area and the initial resolutions of intention and proceedings in connection with the District on or prior to the date hereof, and agrees to the terms thereof and agrees that the terms are consistent with this Agreement. The Owner understands and agrees that the City may in its discretion reduce the special tax rates for an Improvement Area as provided in Section 3 of the Rate and Method prior to issuance of Bonds of the Improvement Area. The Owner understands that any payment from Surplus Special Taxes required hereunder is an obligation to pay for "Facilities" under the Rate and Method and does not constitute "Debt Service" as defined in the Rate and Method.
- G. Additional Fees and Facilities. The Owner understands and agrees that this Agreement is not intended to give it additional rights under the Development Agreement and the Operating Memorandum. For example, City Fees shall be paid as provided in the Development Agreement, regardless of whether paid by the Owner, any other person, the proceeds of the Bonds or Special Taxes.

H. Rights Under the WVWD JCFA. The Owner agrees and understands that any right to, timing and availability of reimbursement for Public Facilities and Fees from Surplus Special Taxes are governed by this Agreement notwithstanding anything to the contrary in the WVWD JCFA.

**Section 7.2. Indemnification and Hold Harmless.** The Owner and each of them jointly and severally shall assume the defense of, indemnify, and hold harmless the District, the City, its officers, directors, employees and agents and each of them, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or arising from or resulting from this Agreement, the Improvement Agreements, construction of the Public Facilities, the payment or non-payment of prevailing wages, the Owner's non-payment under contracts between the Owner and its consultants, engineers, advisors, contractors, subcontractors and suppliers in the provision of the Public Facilities, or any claims of persons employed by the Owner or its agents, contractors, subcontractors, employees and others to construct the Public Facilities.

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

**Section 7.3 Remedies in General; Damages Limited.** The Owner acknowledges that neither the District nor the City would have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement. Any and all obligations of the District and the City hereunder shall be payable only from proceeds of Bonds and Surplus Special Taxes, to the extent such proceeds and Surplus Special Taxes may become available. Neither the District nor the City shall have any pecuniary liability for any act or omission of the District or the City, except as set forth in this Section. In no event will an act, or an omission or failure to act, by the District or the City with respect to the sale or proposed sale of Bonds or the Surplus Special Taxes subject the District or the City to pecuniary liability therefor.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Acquisition Agreement; provided, however, that the District and the City shall not be liable in damages to the Owner. In light of the foregoing, the Owner and each of them covenant not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement, other than to compel payment by the District to the applicable Owner of the amount of Bond proceeds to be applied to the acquisition of the Public Facilities in accordance with the provisions hereof or the payment of Surplus Special Taxes for such Public Facilities and Fees from amounts in the Acquisition and Construction Fund.

## ARTICLE VIII DEFAULT AND REMEDIES

**Section 8.1. Default Remedies.** Failure by either Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A Party claiming a Default shall give written notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure,



correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

**Section 8.2. Institution of Legal Actions.** The Parties shall be entitled to seek any remedy available at law and in equity for the other Party's Default. All legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California, or in the United States District Court for the area of California in which San Bernardino County is located.

**Section 8.3. Acceptance of Service of Process.** In the event that any legal action is commenced by Owner against City, service of process on City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Owner, service of process on Owner shall be made in such manner as may be provided by law.

**Section 8.4. Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party. Notwithstanding anything herein, the City shall not be subject to liability for any of the actions of the District and the District shall not be liable for any damages other than as may be paid by Special Taxes to be collected by the District and available following payment of the Pre-Surplus Special Tax Requirement.

**Section 8.5. Inaction Not a Waiver of Default.** Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**Section 8.6. Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**Section 8.7. Attorneys' Fees.** Subject to Section 8.4, in any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

## **ARTICLE IX GENERAL**

**Section 9.1. Mutual Consent.** This Agreement may be terminated by the mutual written consent of the City and the Owner, and the Owner shall have no claim or right to any further payments for the Purchase Price of City Facilities or Discrete Components hereunder or the City Fees, except as otherwise may be provided in such written consent.

**Section 9.2. Audit.** The City shall have the right, during normal business hours and upon the giving of five (5) business days' prior written notice to the Owner, to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner in relation to any of the Public Facilities, and any bids taken or received for the construction thereof or materials therefor.

**Section 9.3. Notices, Demands and Communications Between the Parties.** Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one Party to another (collectively, "Notices") may be personally delivered, transmitted by facsimile (FAX) transmission, deposited with the United States Postal Service for mailing, postage prepaid, or sent by overnight delivery to the address of the other Party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery or FAX transmission or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service or if sent by overnight delivery, on the second day following its deposit with the overnight carrier. Notices shall be sent as follows:

If to City:

City of Rialto  
Attn: Manager  
150 South Palm Avenue  
Rialto, CA 92376  
FAX No. 909-873-9593

If to Owner:

Lytle Development and El Rancho Verde Golf, LLC  
285 W. Rialto Avenue, Suite B  
Rialto, CA 92376  
Attention: Kevin Lynch

**Section 9.4. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto only upon execution of an Assignment Agreement in accordance with this paragraph. Prior to the completion of all Public Facilities required to serve development within an Improvement Area and the build-out of the Improvement Area, the Owner may assign its rights and obligations pursuant to this Agreement to a purchaser of a portion or portions of the property which is/are located within the Improvement Area (a "Purchaser Assignee"). The Owner may assign to the Purchaser Assignee the responsibility for the construction of all or a portion of the Public Facilities which remain to be constructed and the right to receive payment of the Purchase Price for Public Facilities and Discrete Components thereof previously completed by the Owner and/or the right to fund Fees and receive reimbursement of Deposits. The Owner and Purchaser Assignee shall provide to City such reasonable proof as it may require that such Purchaser Assignee is the purchaser of such property within the Improvement Area and has the financial and professional ability to carry out the portion of the Project on the property it is acquiring. Such Purchaser Assignee and Owner shall, as a condition of the Purchaser Assignee or Owner receiving payment of a Purchase Price or reimbursement of Deposits or funding of Fees from the Bonds and/or Surplus Special Taxes, enter into an assignment and assumption agreement with the City and the Owner, in substantially the

form attached hereto as Exhibit C, with such additions as are required or permitted by this Section 9.4, whereby such Purchaser Assignee agrees, except as may be otherwise specifically provided therein, to assume the obligations of the Owner pursuant to this Agreement with respect to such Public Facilities, or Discrete Components thereof, and to be bound thereby, whereby the Owner and Purchaser Assignee describe with specificity the Purchaser Assignee's and Owner's rights to any reimbursements related to the Bonds and Surplus Special Taxes including the priority of such reimbursements vis à vis Owner and all other prior Assignees and whereby the Owner certifies that such rights of reimbursement assigned to the Purchaser Assignee do not conflict with any outstanding rights of reimbursement previously assigned to any other Purchaser Assignees and that such previous assignments have been fully disclosed to the Purchaser Assignee and the Purchaser Assignee acknowledges these certifications, and agrees that it fully understands its rights and has asked sufficient questions regarding such items or been presented with the opportunity to ask such questions of the City, Owner and any Purchaser Assignee mentioned. Any payment of Surplus Special Taxes to the Owner, any Purchaser Assignee and Payment Assignee, or future developer or owner of the property in the District (other than a homeowner or investor in less than four units) with respect to the WWWD JCFA shall be reasonably consented to by the City or require an assignment agreement, as determined by the City.

Following the completion and acceptance of all Public Facilities required to serve development within an Improvement Area and the build-out of the Improvement Area, Owner may also assign its rights solely to receive previously-approved payments pursuant to this Agreement to an assignee that is not a purchaser of any portion of the Property (a "Payment Assignee") pursuant to an executed assignment agreement in substantially the form attached hereto as Exhibit C-1, with such additions as are required or permitted by this Section 9.4. Such assignment agreement with a Payment Assignee shall include the following:

- (a) The name and address of the Payment Assignee;
- (b) The amount and specific description of payments assigned;
- (c) The priority of such payments relative to all other payments pursuant to this Agreement;
- (d) The Payment Assignee's express acknowledgment of the terms of this Agreement with respect to the limitation on Surplus Special Taxes and all other terms applicable to the payments being assigned; and
- (e) Owner's certification that such payments assigned to the Payment Assignee do not conflict with any outstanding rights of reimbursement previously assigned to any Purchaser Assignee or Payment Assignee and that such assignments have been fully disclosed to the Payment Assignee.
- (f) Such Payment Assignee agrees that it will not assign its right to receive payment, except in whole and with the consent of the City as provided herein, and that such Payment Assignee has had the opportunity to review the Agreement, the obligation with respect to the Surplus Special Taxes, and ask such questions of the City, Owner and others regarding administration of the payments that such Payment Assignee understands what it is purchasing and is a sophisticated investor or sophisticated purchaser of the rights. Any assignment of any rights

or obligations to a Purchaser Assignee or Payment Assignee is subject to the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, and the City may require such reasonable protections as it deems necessary with respect to the obligations and rights under the assignment and the Agreement.

If Owner, or any Purchaser Assignee or Payment Assignee incorrectly submits a Payment Request with respect to Public Facilities or Fees for which it does not hold the reimbursement rights, or in an amount which exceeds the rights which it holds, the aggrieved Owner, Purchaser Assignee or Payment Assignee shall not be permitted to assert a claim of default or any other legal claim against the City. The aggrieved Owner, Purchaser Assignee or Payment Assignee's shall have no recourse against the City related to the alleged improper payment.

**Section 9.5. Relationship Between City and Owner.** It is hereby acknowledged by Owner that the relationship between City and Owner is not that of a partnership or joint venture and that City and Owner shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. Owner agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Owner with respect to the development, operation, maintenance or management of the property within the District.

**Section 9.6. No Third Party Rights.** The Parties intend that no rights or remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

**Section 9.7. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement. This Agreement is executed in two (2) originals, each of which is deemed to be an original.

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

**Section 9.9. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**Section 9.10. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

**Section 9.11. No Waiver.** A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**Section 9.12. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

**Section 9.13. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**Section 9.14. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**Section 9.15. Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matter set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**Section 9.16. Cooperation.** Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**Section 9.17. Conflicts of Interest.** No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**Section 9.18. Non-Liability of Officials and Employees of City.** No member, official or employee of City shall be personally liable to Owner, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to Owner or its successors,

or on any obligations under the terms of this Agreement. Owner hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any Default or breach by City or for any amount which may become due to Owner or its successors, or on any obligations under the terms of this Agreement.

**Section 9.19. Notice of Special Tax.** Owner, or the successor or assigns of the Owner, shall prepare and provide written notice to all potential purchasers or lessees, if the special taxes are to be passed through to such lessees, of lots within the District in the form prescribed by California Government Code Section 53341.5 advising the potential Owner or lessee, as applicable, of the fact of the District, with said document being executed by the potential purchaser or lessee, as applicable. Such notice shall be provided to the potential purchaser or lessee, as applicable, before the potential purchaser becomes contractually committed to purchase the lot or the lessee enters into the lease of the lot so that the potential purchaser or lessee, as applicable, may knowingly consider the impact of the special tax in the decision to purchase or lease the lot.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the respective dates set forth below.

**“CITY”**

**CITY OF RIALTO**, a municipal corporation

By: \_\_\_\_\_  
Deborah Robertson,  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Barbara. McGhee,  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Eric S. Vail, Interim City Attorney  
Burke, Williams & Sorensen, LLP

**“OWNER”**

**EL RANCHO VERDE GOLF, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Ronald Pharris,  
Managing Member

**LYTLE DEVELOPMENT COMPANY**, a California corporation

By: \_\_\_\_\_  
Ronald Pharris,  
Chairman

**EXHIBIT A-1 <sup>(1)</sup>****ELIGIBLE CITY FACILITIES LIST<sup>(2)</sup>**

<b>City Facilities</b>	<b>Estimated Cost</b>
1. El Rancho Verde Parkway (Tract 20092) approximately 6100 linear feet of street improvements (including 4" asphalt pavement over 6" class 2 base, curb and gutter, sidewalk)	\$1,838,639
2. El Rancho Verde Parkway (Tract 20092) approximately 4400 linear feet of sewer improvements (including 8" PVC sewer, 6" steel force main, manholes etc.)	\$508,386
3. El Rancho Verde Parkway (Tract 20092) approximately 6400 linear feet of storm drain improvements (including variable size RCP pipe, manholes etc.)	\$1,406,448
4. City of Rialto water transmission line from groundwater extraction wells, approximately 4700 linear feet, 14" CMC steel pipe and appurtenances	\$1,175,460
5. Sewer lift station located off El Rancho Verde Drive in easternmost portion of Project	\$1,200,000
6. Tract 20204 Street improvements approximately 5200 linear feet (including asphalt pavement over class 2 base, curb and gutter, sidewalk)	\$887,624
7. Tract 20204 Sewer improvements approximately 4900 linear feet (including PVC sewer line, manholes etc.)	\$409,176
8. Tract 20204 Storm Drain improvements approximately 1500 linear feet (including rcp pipe manholes etc.)	\$325,500
9. Tract 20205 Street improvements approximately 6300 linear feet (including asphalt pavement over class 2 base, curb and gutter, sidewalk)	\$1,376,522
10. Tract 20205 Sewer improvements approximately 5900 linear feet (including PVC sewer line, manholes etc.)	\$500,616
11. Tract 20205 Storm Drain improvements approximately 2300 linear feet (including rcp pipe manholes etc.)	\$289,020
12. Tract 20206 Street improvements approximately 3600 linear feet (including asphalt pavement over class 2 base, curb and gutter, sidewalk)	\$735,261
13. Tract 20206 Sewer improvements approximately 3300 linear feet (including PVC sewer line, manholes etc.)	\$316,860
14. Tract 20206 Storm Drain improvements approximately 1300 linear feet (including rcp pipe manholes etc.)	\$300,210
15. Tract 20207 Street improvements approximately 3300 linear feet (including asphalt pavement over class 2 base, curb and gutter, sidewalk)	\$657,883
16. Tract 20207 Sewer improvements approximately 3200 linear feet (including PVC sewer line, manholes etc.)	\$250,410
17. Tract 20207 Storm Drain improvements approximately 1200 linear feet (including rcp pipe manholes etc.)	\$90,180



18. Tract 20208 Street improvements approximately 3400 linear feet (including asphalt pavement over class 2 base, curb and gutter, sidewalk)	\$848,549
19. Tract 20208 Sewer improvements approximately 3400 linear feet (including PVC sewer line, manholes etc.)	\$512,362
20. Tract 20208 Storm Drain improvements approximately 1200 linear feet (including rcp pipe manholes etc.)	\$470,376
21. Tract 20209 Street improvements approximately 4800 linear feet (including asphalt pavement over class 2 base, curb and gutter, sidewalk)	\$1,179,525
22. Tract 20209 Sewer improvements approximately 4500 linear feet (including PVC sewer line, manholes etc.)	\$529,932
23. Tract 20209 Storm Drain improvements approximately 1700 linear feet (including rcp pipe manholes etc.)	\$319,440
24. Overhead Utility Undergrounding (limited to taxable bonds or as determined by Bond Counsel)	\$1,900,188
25. Dry Utilities (limited to 5% of the bond amount and taxable bonds)	TBD
26. Off-site sewer improvement upgrades included in the City's master infrastructure plan that are required to serve the Project	\$1,500,000
<b>Total</b>	<b>\$19,528,566</b>

<sup>(1)</sup> This description of the eligible City Facilities is preliminary, general and subject to change. The actual City Facilities eligible to be financed through the District shall be based upon the final approved Plans and shall include the City Facilities required by the City to be constructed in connection with development of the land within the District pursuant to the Improvement Agreements. Any public utility or private improvements may be limited. As of the date of the Acquisition Agreement, the Owner is not intending to finance Discrete Components themselves.

<sup>(2)</sup> All of the City Facilities listed here are expected to have an economic life of at least thirty (30) years.

**EXHIBIT A-2**

**CITY FEES<sup>(1)</sup>**

<b>Type of Fee</b>	<b>Estimated Amount<sup>2</sup></b>
General Facilities	\$768,240
Police Facilities	\$675,120
Fire Facilities	\$325,920
Library Facilities	\$194,000
Street Medians	\$54,320
Wastewater Collection <sup>(3)</sup>	\$1,117,440
Wastewater Treatment (As of July 1, 2017) <sup>(3)</sup>	\$1,527,703
Regional Traffic Fees (As of July 1, 2017)	\$2,741,608
<b>Total Fees</b>	<b>\$7,404,351</b>

<sup>(1)</sup> District shall be authorized to finance only those City Fees applicable to the development within the District provided such City Fees are for the construction and/or acquisition of public infrastructure and/or other governmental facilities with an estimated useful life of five years or longer. Portions of City Fees which contain ineligible costs may be limited by Bond Counsel and the City.

<sup>(2)</sup> Total amount assuming 776 dwelling units and current fee amounts.

<sup>(3)</sup> The Project may be eligible for credit against these City Fees as a result of the Owner's construction of off-site sewer improvement upgrades required to serve the Project, in which case the amount of such City Fees to be funded through the District would be net of such approved credit.

**EXHIBIT B-1**  
**PAYMENT REQUEST NO. \_\_\_\_\_**  
**(City Facilities)**

The undersigned \_\_\_\_\_ (the “Owner”) hereby requests payment in the total amount of \$\_\_\_\_\_ for the City Facilities (as defined in the Funding, Construction and Acquisition Agreement by and between the City of Rialto (the “City”) and \_\_\_\_\_, [type of entity], all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the City and the District as follows:

1. He (she) is a duly authorized officer of the Owner, qualified to execute this Payment Request for payment on behalf of the Owner and is knowledgeable as to the matters set forth herein.
2. To the extent that this payment request is with respect to a completed City Facility or Discrete Component, the Owner has submitted or submits herewith to the City, if applicable, as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such City Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete.
3. All costs of the City Facility(ies) or Discrete Component for which payment is requested hereby are Actual Costs (as defined in the Agreement referenced above) 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.
4. Supporting documentation (such as third party invoices, lien releases and cancelled checks) is attached with respect to each cost for which payment is requested.
5. The City Facility(ies) or Discrete Components for which payment is requested was constructed in accordance with the requirements of the Agreement and in compliance with any applicable prevailing wage requirements.
6. The Owner is in compliance with the terms and provisions of the Agreement and no portion of the amount being requested to be paid was previously paid.
7. The Purchase Price for the City Facility(ies) or Discrete Component (a detailed calculation of which is shown in Attachment 1 hereto for each City Facility or Discrete Component) has been calculated in conformance with the terms of Article IV of the Agreement.
8. Title documentation, if applicable is attached.

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

OWNER:

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative of Owner

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

CITY:

Payment Request Approved for  
Submission to Trustee

By: \_\_\_\_\_  
Director of Public Works

Amount Approved: \$ \_\_\_\_\_

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

**ATTACHMENT 1**

**SUMMARY OF CITY FACILITIES AND DISCRETE COMPONENTS  
TO BE ACQUIRED AS PART OF PAYMENT REQUEST NO. \_\_\_\_\_**

<u>Ref. No.</u>	<u>Facility/Discrete Component</u>	<u>Actual Cost</u>	<u>Disbursement Requested</u>
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[List here all City Facilities for which payment is requested,  
and attach support documentation]

**EXHIBIT B-2**

**FORM OF PAYMENT REQUEST (FEES)**

1. The undersigned (the "Owner") hereby requests payment in the amount of XXXXXXXX ("Requested Amount") from the Acquisition and Construction Fund established by the City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde) (the "District") for the City Fees (as defined in the Funding, Construction and Acquisition Agreement, dated as of \_\_\_\_\_ relating to District).

<b>Fee Category</b>	<b>Amount Requested</b>	<b>No. and Description of</b>
		<b>Lots/DUs for which Fees</b>
		<b>Are Requested</b>

2. The Requested Amount is due and payable and has not formed the basis of any prior request or disbursement.
3. The Owner is in compliance with the terms and provisions of the Agreement.
4. Neither the Owner nor any Affiliate or Assignee (as defined in the Funding, Construction and Acquisition Agreement) is in default in the payment of ad valorem real property taxes or assessments of special assessments or taxes levied in the District (as defined in the Funding, Construction and Acquisition Agreement).

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

\_\_\_\_\_ a  
\_\_\_\_\_

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

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

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

**CITY:**

Payment Request Approved for Submission to  
Finance Director

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

By: \_\_\_\_\_  
Director of Public Works

Amount Approved: \$ \_\_\_\_\_

## EXHIBIT C

### FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT (Purchaser Assignee)

Pursuant to a Funding, Construction and Acquisition Agreement dated as of \_\_\_\_\_ 1, 2020 (the "Agreement") by and between the City of Rialto ("City") and , [type of entity] (the "Owner"), which Agreement is hereby incorporated herein by this reference, and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned agree as follows:

1. The assignment and assumption provided for under this Assignment and Assumption Agreement ("Assignment") is made together with the sale, transfer or assignment of all or a part of the property subject to the Agreement. The property sold, transferred or assigned together with this Assignment is included within Improvement Area No. \_\_ of City of Rialto Community Facilities District No. 2020-1 and described in "Attachment 1" attached hereto and incorporated herein by this reference (the "Subject Property").
2. \_\_\_\_\_, as the assignor hereof (the "Assignor") hereby grants, sells, transfers, conveys assigns and delegates to \_\_\_\_\_ ("Purchaser Assignee"), all of Assignor's rights, title, interest, benefits, privileges, duties and obligations arising under or from the Agreement with respect to the Subject Property and the Public Facilities and/or Fees authorized to be funded as follows: [Describe with specificity the Purchaser Assignee's rights to reimbursements from Surplus Special Taxes and Bonds, if any, including the priority of such funding vis à vis Assignor, Purchaser Assignee and all other prior Purchaser Assignees and describe any rights or obligations being retained by Assignor.]
3. Purchaser Assignee hereby accepts the foregoing assignment and unconditionally assumes and agrees to perform all of the duties and obligations of Assignor arising under or from the Agreement as Owner of the Subject Property.
4. The sale, transfer or assignment of the Subject Property and the assignment and assumption provided for under this Assignment are the subject of additional agreements between Assignor and Purchaser Assignee. Notwithstanding any term, condition or provision of such additional agreements, the rights of the City arising under or from the Agreement and this Assignment shall not be affected, diminished or defeated in any way, except upon the express written agreement of the City.
5. Assignor and Purchaser Assignee execute this Assignment pursuant to Section 9.4 of the Agreement, and the City evidences its consent to this Assignment by signing below.



IN WITNESS WHEREOF, the parties have executed this Assignment on \_\_\_\_\_,  
\_\_\_\_\_.

ASSIGNOR:

\_\_\_\_\_

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

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

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

PURCHASER ASSIGNEE:

\_\_\_\_\_

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

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

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

CITY:

CITY OF RIALTO

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

Its: City Manager

**ATTACHMENT 1**  
**DESCRIPTION OF SUBJECT PROPERTY**

## EXHIBIT C-1

### FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT (Payment Assignee)

Pursuant to a Funding, Construction and Acquisition Agreement dated as of \_\_\_\_\_ 1, 2020 (the "Agreement") by and between the City of Rialto ("City") and , [type of entity] (the "Owner"), which Agreement is hereby incorporated herein by this reference, and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned agree as follows:

1. The assignment and assumption provided for under this Assignment and Assumption Agreement ("Assignment") is made with respect to payment owed pursuant to Payment Requests previously-approved pursuant to the Agreement described in "Attachment 1" attached hereto and incorporated herein by this reference (the "Approved Payments").

2. \_\_\_\_\_, as the assignor hereof (the "Assignor") hereby grants, sells, transfers, conveys assigns and delegates to \_\_\_\_\_ ("Payment Assignee"), all of Assignor's rights, title, interest, benefits, privileges, duties and obligations arising under or from the Agreement with respect to the Approved Payments as follows: [Describe with specificity the Payment Assignee's rights to reimbursements of the Approved Payments from Surplus Special Taxes and Bonds, if any, including the priority of such funding vis à vis Assignor, Payment Assignee and all other prior Purchaser and Payment Assignees pursuant to the Agreement and describe any rights or obligations being retained by Assignor.]

3. Payment Assignee hereby accepts the foregoing assignment and unconditionally assumes and agrees to perform all of the duties and obligations of Assignor arising under or from the Agreement with respect to the Approved Payments.

4. The assignment and assumption provided for under this Assignment may be the subject of additional agreements between Assignor and Payment Assignee. Notwithstanding any term, condition or provision of such additional agreements, the rights of the City arising under or from the Agreement and this Assignment shall not be affected, diminished or defeated in any way, except upon the express written agreement of the City.

5. Assignor and Payment Assignee execute this Assignment pursuant to Section 9.4 of the Agreement, and the City evidences its consent to this Assignment by signing below.

IN WITNESS WHEREOF, the parties have executed this Assignment on \_\_\_\_\_,  
\_\_\_\_\_.

ASSIGNOR:

\_\_\_\_\_

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

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

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

PAYMENT ASSIGNEE:

\_\_\_\_\_

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

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

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

CITY:

CITY OF RIALTO

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

Its: City Manager

**ATTACHMENT 1**  
**DESCRIPTION OF APPROVED PAYMENTS**

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## EXHIBIT "D"

### BIDDING AND CONTRACTING REQUIREMENTS FOR CITY FACILITIES AGREEMENT

1. **Construction of Facilities.** Owner shall construct or have constructed, at its own cost and expense, the Public Facilities in accordance with the Plans. Owner (and/or its contractors) shall provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the Public Facilities. The term Public Facilities (or Public Facility) in this Exhibit D shall mean any of the City Facilities and Discrete Components and not WVWD Facilities.

1.1 **Pre-Approval of Plan and Specifications.** Owner is prohibited from commencing work on any Public Facility until all Plans for the Public Facility have been submitted to and approved by City. Approval by City shall not relieve Owner from ensuring that all Public Facilities conform to all other requirements and standards set forth in the Agreement.

1.2 **Permits and Notices.** Prior to commencing any work with respect to a Public Facility, Owner (through its contractors) shall, at its sole cost and expense, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Facility and performance of Owner's obligations under this Agreement. Owner (through its contractors) shall conduct the work in full compliance with the regulations, rules, and other requirements contained in this Agreement, the Improvement Agreements, any applicable law, and any permit or license issued to Owner.

1.3 **Public Works Requirements.** Owner shall ensure that the bidding, awarding, and construction of the Public Facilities for which a Payment Request is submitted are undertaken as if such Public Facilities were constructed as a public works project under the direction and authority of City, pursuant to the applicable provisions of the Public Contract Code. Owner shall be responsible to comply with applicable portions of the Labor Code and the payment of prevailing wages where applicable with respect to all Public Facilities related to Owner's project and agrees to indemnify and hold harmless the City in connection with any issues related to prevailing wages. Thus, without limitation, Owner shall comply with the requirements in Schedule I attached hereto with respect to the construction of the Public Facilities.

(a) Prior to soliciting or awarding the bid for any portion of a Public Facility, Owner shall submit the bid packet and a set of construction drawings signed by Owner or another authorized representative designated by Owner for the work being bid to the City's Public Works Director/City Engineer ("**Public Works Director**") for review and approval, which approval shall be granted or denied within fifteen (15) calendar days after submission of such bid packet. If the Public Works Director denies approval of such bid packet and construction drawings, the Public Works Director shall specify the reasons for such disapproval and Owner shall resubmit a revised bid packet for review and approval until such approval is obtained.

(b) Owner shall obtain bids for the construction of the Public Facilities in a manner which has been approved by the Public Works Director. Owner shall provide the Public Works Director with copies of all bids received from contractors and a bid summary in a form approved by the Public Works Director to assure that the contractor/subcontractors adhere to the applicable legal requirements for public works projects. The contract or contracts for the construction of the Public Facilities shall be awarded to the responsible bidder(s) submitting the

Lowest responsive bid(s) for the construction of the Public Facilities, as determined by Owner in its good faith discretion. Owner shall enter into a construction contract with each contractor selected to perform work on the Public Facilities (after competitive bidding as set forth above), (each, a "**Construction Contract**") for the performance of the work set forth in the selected bid, and the terms of each Construction Contract entered into by Owner and each contractor/subcontractor shall be reasonably acceptable to the Public Works Director. Owner shall submit to City a copy of each executed Construction Contract for the Public Facilities within fifteen (15) days after execution thereof.

(c) Owner's general contractor for the construction of the Public Improvement ("**General Contractor**") shall pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code, and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of City with respect to the construction of its public works projects or as otherwise directed by the Public Works Director.

(d) All contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Public Facilities which they will construct in conformance the Agreement and requirements of the Public Works Director and City's Risk Manager.

(e) The Public Works Director, exercising reasonable discretion, may waive one or more of the foregoing requirements (other than (c) and (d)) set forth above, including the bidding requirements set for in Schedule I attached hereto.

1.4 Compliance with Plans and Specifications. The Public Facilities shall be completed in accordance with the Plans as approved by City.

1.5 Standard of Performance. Owner and its contractors shall perform all work required, constructing the Public Facilities in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Owner represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Owner warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

1.6 Alterations to Public Facilities. All work shall be done and the Public Facilities completed as shown on the Plans, and any subsequent alterations thereto mutually agreed upon by City and Owner. If Owner desires to make any alterations to the Plans, it shall provide written notice to the City of such proposed alterations. City shall have ten (10) business days after receipt of such written notice to administratively approve or disapprove such alterations, which approval shall not be unreasonably withheld, conditioned or delayed. If City fails to provide written notice to Owner of its approval or disapproval of the alterations within such ten (10) business day period, City will be deemed to have disapproved such alterations to the Plans. Any and all alterations in the Plans and the Public Facilities to be completed may be accomplished without first giving prior notice thereof to Owner's surety for this Agreement.

\_\_\_\_\_ **2. Maximum Payment/Reimbursement.** The amount of the funds paid or reimbursed to Owner shall not exceed the amount of the verified Actual Costs for each Public Facility as approved by the Public Works Director.

3.1 **Soft Costs.** The Public Works Director shall, in his/her sole reasonable discretion, determine the amount of reasonable soft costs eligible for reimbursement. Such amounts may include the reasonable soft costs of the City related to the improvements, such as indirect costs of construction, professional engineering and design services, construction management, soils testing, administrative costs, permits, plan check fees, and inspections. For soft costs to be reimbursable to Owner pursuant to this Agreement, City must be able to verify that such soft costs are specifically attributable to the specified Public Facilities for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by the City. The Public Works Director may, in his/her reasonable discretion, reduce or disallow reimbursement for any costs he/she finds excessive or unreasonable.

**3. Additional Conditions Precedent to Final Credit or Reimbursement.** The City's obligation to pay or reimburse for a Public Facility pursuant to this Agreement is conditioned upon the prior satisfaction by Owner or written waiver by the City Administrator of each of the following conditions precedent within the times designated below:

3.1 **Completion of Construction.** Owner shall have completed the construction of the Public Facility, and notices of completion shall have been recorded in relation to the Public Facility, in accordance with California Civil Code Sections 8182 (as applicable), and thirty-five (35) days shall have elapsed since the recordation of such notices of completion. The purposes of this provision are to ensure that the Public Facility will be independently functional and to maintain consistency with vesting rights, and nothing herein shall be deemed to make any part of the Project other than the Public Facility a public work.

3.2 **Submission of Bills/Invoices.** Owner shall have made full and complete payment of all undisputed claims for work performed on the Public Facility, or in the event of a dispute between Owner and the general contractor or a subcontractor, Owner shall have obtained a commercially reasonable bond reasonably satisfactory to the City to release any applicable mechanics' lien or stop notice, and Owner shall have submitted and the City shall have approved a written request for the reimbursement, including copies of all bills and/or invoices evidencing the hard costs of constructing the Public Facility actually incurred by Owner.

3.3 **As-Built Drawings.** Owner shall have submitted two (2) sets of final as-built drawings for the Public Facility to the Public Works Director.

3.4 **Acceptance of Required Public Facility by the City.** The City, through the City Council, shall have accepted title to the Public Facility, and Owner shall have provided the maintenance guarantees and landscaping requirements reasonably required by the City. The City agrees it will not unreasonably withhold or condition its acceptance of title to the Public Facility.

3.5 **No Default.** Owner shall not be in Default in any of its obligations under the terms of this Agreement, and all representations and warranties of Owner contained in this Agreement shall be true and correct in all material respects.



4. **City/County Inspection of Public Facilities.** Owner shall, at its sole cost and expense, and at all times during construction of the Public Facilities, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Facilities and areas where construction of the Public Facilities is occurring or will occur. The City shall promptly conduct inspections of the Public Facilities at the request of Owner.

5. **Liens.** Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the Public Facilities, Owner shall provide to the City such evidence or proof as the City shall reasonably require that all persons, firms, and corporations supplying work, labor, materials, supplies, and equipment to the construction of the Public Facilities have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm, or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Owner may elect to provide to the City a title insurance policy or other security reasonably acceptable to the City guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

6. **Acceptance of Improvements: As-Built or Record Drawings.** If the Public Facilities are completed by Owner in accordance with the Plans, the City shall be authorized to accept the Public Facilities. The City may, in its reasonable discretion, accept fully completed portions of a Public Facility as a Discrete Component prior to such time as all of the Public Facility is complete, which shall not release or modify Owner's obligation to complete the remainder of the Public Facility. Upon the total or partial acceptance of the Public Facility by City, Owner shall file with the Recorder's Office of the County of San Bernardino a notice of completion for the accepted Public Facility in accordance with California Civil Code Section 8182 ("**Notice of Completion**"), at which time the accepted Public Facility shall become the sole and exclusive property of City without any payment therefor. Notwithstanding the foregoing, City may not accept any Public Facility (or the applicable portion thereof) unless and until Owner provides two (2) sets of "as-built" or record drawings or plans to the City for all such Public Facility (or the applicable portion thereof). The drawings shall be certified and shall reflect the condition of the Public Facility as constructed, with all changes incorporated therein.

7. **Warranty and Guaranty.** Owner hereby warrants and guarantees all the Public Facilities against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the Public Facilities, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Owner shall repair, replace, or reconstruct any defective or otherwise materially unsatisfactory portion of the Improvements, in accordance with the Plans and Specifications. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost and expense of Owner. As to any Public Facilities which have been repaired, replaced, or reconstructed during the Warranty, Owner hereby agree to provide a warranty for a one (1) year period following City acceptance of the repaired, replaced, or reconstructed Public Facilities. Nothing herein shall relieve Owner from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Facility following expiration of the Warranty or any extension thereof. Owner's warranty obligation under this section shall survive the expiration or termination of this Agreement.]

8. **Administrative Costs.** If Owner fails to construct and install all or any part of the Public Facilities, or if Owner fails to comply with any other obligation contained herein, Owner and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs,

including reasonable attorneys' fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

**9. Security; Surety Bonds.** Prior to the commencement of any work on the Public Facilities, Owner or its contractor shall provide City with surety bonds in the amounts and under the terms set forth below or, at the City's request, in lieu of surety bonds, a letter of credit or letters of credit by a banking institution with a rating to be approved by the City and terms to be approved by the City ("Security"). The amount of the Security shall be based on the estimated actual costs (the "Estimated Costs") to construct the Public Facilities, as determined by City after Owner has awarded a contract for construction of the Public Facilities to the lowest responsive and responsible bidder in accordance with this Agreement. If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Owner or its contractor shall adjust the Security in the amount requested by City. Owner's compliance with this Section 9 shall in no way limit or modify Owner's indemnification obligation provided in Section 10 of this Exhibit B to the Agreement.

9.1 Performance Bond. To guarantee the construction of the Public Facilities and faithful performance of all the provisions of this Agreement, to protect City if Owner is in default, and to secure the Warranty of the Public Facilities, Owner or its contractor shall provide City a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City may, in its reasonable discretion, partially release a portion or portions of the security provided under this section as the Public Facilities are accepted by City, provided that Owner is not in default on any provision of this Agreement and the total remaining security is not less than twenty percent (20%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, provided that Owner is not in default on any provision of this Agreement.

9.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the Public Facilities and this Agreement, Owner or its contractor shall provide City a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section shall be released by City six (6) months after the date City accepts the Public Facilities.

9.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California. As part of the obligation secured by the Security and in addition to the face amount of the Security, Owner and, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Owner and its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Facilities, or the Plans and Specifications shall in any way affect its obligation on the Security.

9.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms acceptable to the City, and when such forms are completed to the satisfaction of City.

9.5 Reduction. The Public Works Director, exercising reasonable discretion, may reduce or waive one or more of the foregoing security requirements on a finding that the City is adequately secured for the applicable performance/liability.

**10. Insurance.**

10.1 Types; Amounts. Owner shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("**Required Insurance**"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

10.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

10.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

10.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

10.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Improvements. Such insurance shall be endorsed to include contractual liability.

10.1.5 Other Insurance. Such other insurance as may be required by the Director or the City's Risk Manager.

10.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Owner and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

10.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name City as an additional insured with respect to work performed by or on behalf of Owner or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, or agents.

10.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City

in connection with any damage or harm covered by such policy.

10.5 Certificates; Verification. Owner and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

10.6 Term; Cancellation Notice. Owner and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall, to the extent available from commercially reasonable insurance providers, be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to City.

10.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A-" and FSC-VIII.

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## Schedule I

### BIDDING AND CONTRACT REQUIREMENTS FOR CITY FACILITIES

#### Bidding Phase

- A. Bidding Documents. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements and shall be submitted to City for its prior written approval before release for bid. City shall review and approve, conditionally approve, or disapprove the bidding documents within fifteen (15) days after receipt:
1. Unless impractical due to the nature of the Public Facilities, the bid proposal shall be unit priced rather than lump sum or time and materials.
  2. It is recommended that the bidding documents require the bidder/contractor to provide the following bonds:
    - a. Bid Bond - 10% of the amount of the bid.
  3. The bidding documents shall require the successful bidder to provide evidence of comprehensive public liability insurance in the amount of at least \$2,000,000 prior to the award of the contract.
  4. The bidding documents shall provide for monthly progress payments to the contractor.
  5. The contractor shall be required to pay prevailing wages pursuant to Section 2.3 of this Agreement.
  6. The bidding documents must clearly state the time, date, and place where bids are to be submitted and opened.
  7. The bidding documents shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplementally bid, and are not eligible for public finance unless previously approved by the City's Public Works Director.
  8. The bid documents must require the contractor to provide 100% faithful performance and 100% labor/materials bonds.
  9. Owner shall keep a bidders list with e-mail addresses, and addenda should be sent via email to ensure quick receipt.
  10. Conditioned bids shall not be accepted.
- B. Owner may pre-qualify bidders in accordance with California Public Contract Code Section 20101, by requiring all persons interested in bidding on any portion of the Public Improvements to submit current financial statements and a pre-qualification questionnaire in a form approved by City, and by scoring each submission based on reasonable, objective criteria reasonably acceptable to City. Owner must implement an appeals procedure for

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- responding to disputes in compliance with California Public Contract Code Section 20101(d). If Owner elects to pre-qualify bidders, only those bidders who have submitted complete pre-qualification packets and obtained the minimum required score based on the objective rating system adopted by Owner (and approved by City) shall be permitted to bid on any portion of the construction work for the Public Improvements.
- C. Owner shall keep a log of all persons obtaining pre-qualification questionnaires and/or bidding documents and all persons who submit pre-qualification questionnaires and/or bids and their mailing addresses.
  - D. Addenda shall be mailed by first class mail (or submitted by confirmed electronic transmission) to all bidding document holders and the City's Public Works Director at the same time. The last addendum shall be issued no later than three (3) Business Days prior to the date of opening bids.
  - E. Submitted bids shall be in sealed envelopes.
  - F. Bids shall not be accepted after the stated time for submission.
  - G. Bid opening shall be conducted by Owner at Owner's place of business or other site mutually acceptable to Owner and City's Public Works Director.
  - H. Sealed bids shall be opened and read aloud immediately following the submission time. The City's Public Works Director shall be invited to attend the bid opening.
  - I. Conditioned bids, unless the bid proposal lists them for all to bid on, shall not be accepted.
  - J. The arithmetic of the lowest bid proposals received shall immediately be checked for errors.
  - K. All bids received shall be provided to the City's Public Works Director. The City's Public Works Director may, in his or her reasonable discretion, reject any and all bids that he or she determines to be nonresponsive.
  - L. Award shall be made to the lowest responsible qualified bidder within five (5) Business Days after the bid opening. No fewer than three (3) bids must be received for each Construction Contract to be awarded.
  - M. A preconstruction meeting shall be held with the contractor prior to beginning the work. A City representative shall be invited to attend the meeting.
  - N. The Notice to Proceed shall be issued within a reasonable period of time following the contract execution.

### **Construction Phase**

- A. The City's Public Works Director shall be provided a copy of the construction schedule.
- B. Owner shall require the contractor to conduct weekly construction status meetings to which the City's Public Works Director shall be invited.

- C. Any additional costs incurred for the benefit of Owner, such as accelerating the construction schedule, shall not be eligible for reimbursement unless previously approved by the City's Public Works Director.
- D. Any additional construction costs incurred due solely to unexcused delays caused by Owner shall not be eligible for reimbursement under this Agreement.
- E. All contracts and construction related records shall be available to City as and when required for the final determination of eligible costs for reimbursement.
- F. Owner must file a Notice of Completion within 30 days of City's approval of the Public Improvements (determining substantial completion).
- G. Owner must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Owner shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice filed against Owner or City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Owner are subject to inspection by or on behalf of the Public Works Director. Construction shall be scheduled to allow for periodic inspection by the Public Works Director or his/her designee. The Owner's contractor will be required to provide adequate quality assurance and quality control measures to ensure all public improvements are constructed in accordance with the Standard Specifications for Public Works Construction or Caltrans Standard Specifications, as appropriate for the work to be constructed.

### **General**

Any deviation from these rules must be approved by the Public Works Director.