

**AMENDED AND RESTATED
FUNDING, CONSTRUCTION AND
ACQUISITION AGREEMENT**

City of Rialto CFD No. 2020-1 (El Rancho Verde)

THIS AMENDED AND RESTATED FUNDING, CONSTRUCTION AND ACQUISITION AGREEMENT, dated as of September 13, 2022 (this "**Agreement**"), is by and between the City of Rialto, California (the "**City**"), acting on behalf of itself and the City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde) (the "**District**"), and Lennar Homes of California, LLC, a California limited liability company (the "**Owner**" or "**Lennar Homes**"), the owner and developer of the land within the District.

RECITALS

WHEREAS, the City formed the District, authorized 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 authorized 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.

WHEREAS, the City has conducted change proceedings pursuant to the Act to eliminate the Improvement Areas, revise the Special Taxes, increase the bond authorization for the District, and alter the boundaries of the District, and, as a result, there is one single District with no Improvement Areas.

WHEREAS, El Rancho Verde Golf, LLC and Lytle Development Company (collectively, the "**Prior Owners**") previously entered into the Funding, Construction and Acquisition Agreement dated as of July 14, 2020 (the "**Original Agreement**").

WHEREAS, Lennar Homes purchased the property within the District from the Prior Owners, and the Original Agreement was assigned to Lennar Homes, and Lennar Homes assumed all obligations under the Original Agreement.

WHEREAS, the City and one of the Prior Owners 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, and the Development Agreement was assigned to Lennar Homes.

WHEREAS, the Public Facilities (as defined herein) 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 (as assignee of the Prior Owners) (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 Amended and Restated 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 and that are issued to generate proceeds for the Acquisition and Construction Fund.

“City” means the City of Rialto, California.

“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 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 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 Lennar Homes of California, LLC, as assignee, 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, as amended.

“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.

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

“Owner” means Lennar Homes of California, LLC, a California limited liability company, and its successors and assigns pursuant to this Agreement.

“Parties” mean the Owner and the City.

“Party” means either the City or the Owner.

“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 District, as applicable, including but not limited to litigation and/or extraordinary costs and providing a necessary reserve therefor, and 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 amended and restated rate and method of apportionment of special taxes approved for the District.

“Special Taxes” means the special taxes of 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, 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 assignee of the Prior Owners), 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 in coordination with Owner's timing of development within the District 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 District 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 are funded as a first priority for the use or reservation of proceeds of Bonds and Surplus Special Taxes. 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 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. The foregoing requirement to reimburse the Owner or any Assignee from Surplus Special Taxes is subject to termination should the Owner or its Assignee (as defined in Section 9.4 below) fail to pay its County property taxes or Special Taxes within the District 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) 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 thirty (30) years from the initial levy of Special Taxes within the District, or (c) a Default in the payment of Special Taxes and/or County property taxes with respect to the District 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 the District 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.

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 in the District, 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 District 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 or certificate for the Bonds 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 WVWD 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 WVWD JCFA shall require City to (i) to make any payment beyond the available funds in the WVWD Facilities Account or the Surplus Special Tax Account for such WVWD Facilities or WVWD 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. 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. 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 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. 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 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 District if such failure is not cured within such 30-day period, (b) thirty (30) years from the initial levy of Special Taxes within the District 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 District 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. Owner is a California limited liability company, duly organized and validly existing under the laws of the State of California 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.
- B. Authority. Owner has the power and authority to enter into this Agreement, and has 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 the District and the initial resolutions of intention and formation and change 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 as provided in Section 3 of the Rate and Method prior to the first issuance of Bonds. 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 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. The foregoing indemnity obligation (i) does not apply to any actions, damages, claims, losses or expenses resulting from the actions of the Prior Owners or their officers, directors, employees and agents (ii) applies only for actions, damages, claims, losses or expenses incurred after the date that Lennar Homes acquired the property in the District from the Prior Owners.

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:

Lennar Homes of California, LLC
980 Montecito Drive, Suite 300
Corona, CA 92879
Attention: Geoff Smith

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 the District and the build-out of the District, 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 District (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 District 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 WVWD 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 the District and the build-out of the District, 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 and the District from any claim made against City or the District arising from a claimed relationship of partnership or joint venture between City and Owner or the District and Owner with respect to the development, operation, maintenance or management of the property within the District. The foregoing indemnity obligation (i) does not apply to any actions, damages, claims, losses or expenses resulting from the actions of the Prior Owners or their officers, directors, employees and agents (ii) applies only for actions, damages, claims, losses or expenses incurred after the date that Lennar Homes acquired the property in the District from the Prior Owners.

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 the District 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 the District 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, on behalf of itself and the City of Rialto Community Facilities District No. 2020-1 (El Rancho Verde)

By: _____
Marcus Fuller
City Manager

ATTEST:

By: _____
Barbara A McGee,
City Clerk

APPROVED AS TO FORM:

By: _____
Eric S. Vail, City Attorney
Burke, Williams & Sorensen, LLP

“OWNER”

LENNAR HOMES OF CALIFORNIA, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A-1 (1)**ELIGIBLE CITY FACILITIES LIST(2)**

City Facilities	Estimated Cost
1. River Ranch Parkway (Tract 20092) approximately 6100 linear feet of street improvements (including 4" asphalt pavement over 6" class 2 base, curb and gutter, sidewalk), including a Traffic Signal at River Ranch Parkway and East Highland Ave and related appurtenant improvements.	\$2,422,769
2. River Ranch Parkway (Tract 20092) approximately 4400 linear feet of sewer improvements (including 8" PVC sewer, 6" steel force main, manholes etc.)	\$508,386
3. River Ranch 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	\$1,350,468
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)	\$1,325,618
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)	\$1,466,941
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)	\$783,558
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)	\$982,512
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

City Facilities	Estimated Cost
18. Tract 20208 Street improvements approximately 3400 linear feet (including asphalt pavement over class 2 base, curb and gutter, sidewalk)	\$1,028,893
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)	\$1,430,212
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
Total	\$21,620,076

⁽¹⁾ 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.

⁽²⁾ 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⁽¹⁾

Type of Fee	Estimated Amount ²
General Facilities	\$768,240
Police Facilities	\$675,120
Fire Facilities	\$325,920
Library Facilities	\$194,000
Street Medians	\$54,320
Wastewater Collection ⁽³⁾	\$1,117,440
Wastewater Treatment (As of July 1, 2017) ⁽³⁾	\$1,603,270
Regional Traffic Fees (As of July 1, 2017)	\$2,741,608
Total Fees	\$7,476,918

⁽¹⁾ 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.

⁽²⁾ Total amount assuming 776 dwelling units and current fee amounts.

⁽³⁾ 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:

CITY:

_____, a _____

Payment Request Approved for
Submission to Trustee

By: _____
Authorized Representative of Owner

By: _____
Director of Public Works

Date: _____

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>
-----------------	--	--------------------	-----------------------------------

[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).

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

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 the 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

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. The foregoing indemnity obligation (i) does not apply to any actions, damages, claims, losses or expenses resulting from the actions of the Prior Owners or their officers, directors, employees and agents (ii) applies only for actions, damages, claims, losses or expenses incurred after the date that Lennar Homes acquired the property in the District from the Prior Owners.

- (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.

2.1 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.

- (a) 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.
- (b) 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.

- (c) 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.
- (d) 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.
- (e) 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.

Schedule 1

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 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.