ACQUISITION AGREEMENT

Relating to:

City of Oakland
Community Facilities District No. 2021-1
(Oak Knoll Facilities and Services)

THIS ACQUISITION AGREEMENT (this "Agreement"), dated as of November 16, 2021, is by and between the City of Oakland, a chartered city and municipal corporation of the State of California (the "City"), with respect to City of Oakland Community Facilities District No. 2021-1 (Oak Knoll Facilities and Services) (the "CFD"), and Oak Knoll Venture Acquisition, LLC, a Delaware limited liability company (the "Developer").

RECITALS

A. The Council of the City has established the CFD under the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code (the "Act") for the financing, among other things, of the public facilities (the "Facilities") and the Authorized Fees (as defined herein) described in the City's Resolution No. _____ adopted by the City Council on November 16, 2021 (the "Resolution of Formation") and listed on Exhibit A hereto.

B. The CFD has established the following improvement areas within the CFD (each, an "Improvement Area"; collectively, the "Improvement Areas"):

(i) "Improvement Area No. 1 of the City of Oakland Community Facilities District No. 2021-1 (Oak Knoll Facilities and Services)" ("Improvement Area No. 1").

(ii) "Improvement Area No. 2 of the City of Oakland Community Facilities District No. 2021-1 (Oak Knoll Facilities and Services)" ("Improvement Area No. 2").

(iii) "Improvement Area No. 3 of the City of Oakland Community Facilities District No. 2021-1 (Oak Knoll Facilities and Services)" ("Improvement Area No. 3").

C. This Agreement applies to the financing of Facilities through the CFD and the Improvement Areas, and the Facilities may be financed by each Improvement Area regardless of the physical location of the Facilities.

D. The Developer is developing land within the CFD.

E. The Facilities are required as a condition of developing the land within the CFD and are necessary to mitigate impacts arising from development occurring in the CFD, and the City

will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land owned by the Developer that is located within the CFD.

F. The City has determined that it will obtain no advantage from undertaking the construction of the Facilities and that the Facilities may be constructed by the Developer as if they had been constructed under the direction and supervision, or under the authority of, the City.

G. The City is proceeding with the authorization and issuance of one or more series of bonds and other debt (as defined in the Act) for and on behalf of the CFD with respect to the Improvement Areas (collectively, the "Bonds") under the Act.

DEFINITIONS

Capitalized terms used in this Agreement, in addition to those defined in the introductory paragraph and the Recitals to this Agreement, shall have the following meanings:

"Acceptance Date" means the date upon which the City or another public agency accepts fee simple title or an irrevocable offer of dedication of one or more Facilities.

"Actual Cost" means, with respect to a Facility or a Discrete Component, an amount equal to the sum of (a) the Developer's actual, reasonable cost of constructing such Facility or Discrete Component, including labor, material, and equipment costs, (b) the Developer's actual, reasonable cost of preparing the Plans for such Facility or Discrete Component, (c) the Developer's actual, reasonable cost of environmental evaluations required in the City's reasonable determination specifically for such Facility or Discrete Component, (d) the amount of the fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses, or other necessary governmental approvals for such Facility or Discrete Component, (e) the Developer's actual, reasonable cost for construction management services for such Facility or Discrete Component not exceeding five percent (5%) of the costs described in (a) above (provided that the Developer shall not be required to provide evidence of actual costs if the construction management services are provided by employees of the Developer), (f) the Developer's actual, reasonable cost for professional services directly related to the construction of such Facility or Discrete Component, including engineering, inspection, construction staking, materials testing, and similar professional services, (g) the Developer's actual, reasonable cost of any title insurance required hereby for such Facility or Discrete Component, and (h) the Developer's actual, reasonable cost of any real property or interest therein acquired from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Facility or Discrete Component (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Facility or Discrete Component in order to convey Acceptable Title thereto to the City, all as specified in a Disbursement Request that has been reviewed and approved by the City Engineer or his designee who will be responsible for administering the acquisition of the Facility or Discrete Improvement; provided, however, that no item of cost relating to a Facility or Discrete Component shall be included in more than one category of cost under this definition; and provided further, however, that each item of cost shall be chargeable to the capital account for the Facility under generally accepted accounting principles.

"Authorize" or "Authorization" means either of the following, as the context requires: (i) where payment of a requisition is to be made from Funding Sources held and maintained by the Fiscal Agent, the terms mean that the City provides whatever documentation and written

authorization under the Fiscal Agent Agreement as is necessary for the Fiscal Agent to make payment on the requisition from the applicable Funding Sources; and (ii) where payment of a requisition is to be made from Funding Sources held and maintained by the City, the terms mean that the City authorizes and pays the applicable amount to the Developer pursuant to the requisition.

"Authorized Fees" means the water, sewer, or other capacity or connection fees related to Facilities that are authorized to be financed by each Improvement Area, as further described in Exhibit A attached hereto.

"City Engineer" means the City Administrator of the City, or the designee of such official.

"Conditions of Approval" means the conditions of approval and mitigation measures imposed in connection with the granting of the land use entitlements for the development of land in the CFD, and any improvement agreements, subdivision improvement agreements, owner participation agreement, development agreement, or other agreement with the City relating to the development of the land in the CFD and the installation of the Facilities.

"Discrete Components" means the Discrete Components of each Facility described in Exhibit A attached hereto, which are functional segments or discrete components of a Facility the Actual Cost of which exceeds One Million Dollars ($1,000,000), which segments or components can be separately identified and inspected, and be the subject of a payment request under this Agreement. Discrete Components do 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 constructed in accordance with the Plans therefor, as determined by the City Engineer.

"Facilities Special Tax" means the Facilities Special Tax identified in each Rate and Method.

"Fiscal Agent" means the state or national banking association acting as fiscal agent under the Fiscal Agent Agreement.

"Fiscal Agent Agreement" means the indenture, fiscal agent agreement, resolution or other agreement under which the Bonds are issued, as such Fiscal Agent Agreement may be supplemented from time to time to accommodate additional bond issuances or as it may be amended from time to time.

"Funding Sources" means, collectively, (A) the proceeds of Bonds for each Improvement Area, prepayments of Facilities Special Taxes collected prior to the issuance of the first series of Bonds for each Improvement Area pursuant to the Rate and Method, and prepayments of Facilities Special Taxes otherwise allocated for Facilities and Authorized Fees under each Rate and Method, all as further described in Section 3 herein, and (B) Facilities Special Taxes collected to directly finance Facilities and Authorized Fees under each Rate and Method, as further described in Section 4 herein.

"Improvement Fund" or "Improvement Funds" have the meaning given those terms in Section 3(c).

"Plans" means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable

standards of the City or other entity that will own, operate or maintain the Facilities when completed and acquired.

"Purchase Price" means the amount paid by the City for a Facility and/or any Discrete Components thereof determined in accordance with this Agreement.

"Rate and Method" means the rate and method of apportionment of the Facilities Special Tax for each Improvement Area. Collectively, the Rate and Method for the Improvement Areas are referred to as the "Rates and Method".

"Remainder Taxes" has the meaning given that term in Section 4.

"Remainder Taxes Fund" has the meaning given that term in Section 4.

"Substantially Complete" means, with respect to a Facility or Discrete Component thereof, that the construction by the Developer has, in the reasonable judgment of the City Engineer, reached a stage of completion sufficient to allow such Facility or Discrete Component to be utilized for the purpose for which it is intended and that only the construction of punch list items and final layer of finish surface remain incomplete, it being understood that the intent of this Agreement is to pay for the Facilities in advance of final completion.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

1. Recitals. The City and the Developer represent and warrant, each to the other, that the above recitals, as applicable to each, are true and correct.

2. Sale of Bonds.

a. City Proceedings. From time to time, following the Developer's written request and deposit for non-contingent costs, the City shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of one or more series of Bonds; provided that such proceedings and the principal amount, rates, terms and conditions and timing of the sale of each series of Bonds shall at least meet the then current underwriting and market standards for California land secured bonds and shall be in all respects subject to the final approval of the City Council or its designee. Nothing herein shall be construed as requiring the City to issue any Bonds for the CFD or that the City has in any way engaged the Developer to construct the Facilities, except as specifically provided in this Agreement.

At the request of the Developer, the City shall consider the issuance of one or more series of federally taxable Bonds to finance Facilities and Authorized Fees that cannot be financed on a federally tax-exempt basis.

b. Principal Amount. The maximum principal amount of the Bonds that is authorized for each Improvement Area is set forth below:

(i) Improvement Area No. 1: $45,000,000
(ii) Improvement Area No. 2: $50,000,000
(iii) Improvement Area No. 3: $55,000,000

The City can provide no assurances that it will issue any or all of the authorized amount of the Bonds and the City or related entities shall have no liability to the Developer for the failure of any anticipated bond issuance to occur, or for the amount or timing of any bond issuance that does occur.

c. Termination.

(i) General. This Agreement shall terminate upon the later of (A) payment in full from Funding Sources for all eligible Facilities and Authorized Fees or (B) five years following the final issuance of Bonds to finance the Facilities and Authorized Fees. In this regard, the parties acknowledge that Section 4 and the Rates and Method limit the period of time in which the Developer may be reimbursed from Remainder Taxes (as defined in Section 4).

(ii) Mutual Consent. This Agreement may be terminated by the mutual, written consent of the parties, in which event the City may let contracts for any remaining work related to the Facilities not theretofore acquired from the Developer hereunder, and use all or any portion of the monies in the Improvement Funds to pay for same, and the Developer shall have no claim or right to any further payments for the Facilities or Discrete Components, except as otherwise may be provided in such written consent.

(iii) City Election for Cause. The following events shall constitute grounds for the City to terminate this Agreement, without the consent of the Developer:

(A) The Developer shall be delinquent in the payment of two consecutive installments of special taxes levied in the CFD.

(B) The Developer shall abandon construction of the Facilities. Failure for a period of three hundred sixty-five (365) days to undertake substantial work related to the construction of the Facilities, shall constitute such abandonment, it being understood that delays or stoppages approved by the City and Developer shall not constitute abandonment.

(C) The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(D) The Developer shall transfer any of its rights or obligations under this Agreement in violation of Section 19.

(E) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any preliminary official statement, official statement, continuing disclosure agreement, or bond purchase contract used in connection with the sale of the Bonds.

(F) The Developer shall at any time challenge the validity of the CFD or any of the Bonds, or the levy of special taxes within the CFD, other than on the grounds that such levy was not made in accordance with the terms of the Rates and Method (with respect to Facilities Special Taxes) or the Services Special Tax pursuant to the Rate, Method of Apportionment, and Manner of Collection of Special Tax (Services Special Tax) for the CFD.

Notwithstanding the foregoing, so long as any event listed in any of clauses (A) through and including (F) above has occurred, notice of which has been given by the City to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the City may in its discretion cease making payments for the Purchase Price of Facilities or Discrete Components except with respect to Facilities or Discrete Components for which a payment request has been submitted to the City Engineer prior to the giving of such notice, and in its discretion the City may cease making payments for Authorized Fees except with respect to Authorized Fees for which a payment request has been submitted to the City Engineer prior to the giving of such notice.

If any such event occurs, the City shall give written notice of its knowledge thereof to the Developer, and the Developer agrees to meet and confer with the City Engineer and other appropriate City staff and consultants within twenty-one (21) calendar days of receipt of such notice as to options available to assure timely completion of the Facilities. Such options may include, but not be limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the City to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) calendar days to eliminate or mitigate to the satisfaction of the City Engineer the grounds for such termination. Such period shall be extended, at the sole discretion of the City, if the Developer, to the satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the City, the Developer has not eliminated or satisfactorily mitigated such grounds, to the satisfaction of the City, the City may then terminate this Agreement.

3. Use of Financing Proceeds.

a. Facilities Special Taxes. The City will levy Facilities Special Taxes and allocate revenues from the Facilities Special Taxes as a Funding Source as described in Section 4.

b. Prepayments. Prior to the issuance of the first series of Bonds for an Improvement Area, the proceeds of any prepayments of Facilities Special Tax obligations shall be administered as provided in the Rate and Method for the Improvement Area. After the first series of Bonds for an Improvement Area are issued, the proceeds of any prepayments of Facilities Special Tax obligations shall be administered as provided in the Rate and Method and the Fiscal Agent Agreement. To the extent authorized under the Rate and Method or the Fiscal Agent Agreement, any prepayments of Facilities Special Tax obligations with respect to an Improvement Area before the issuance of the first series of Bonds and any prepayments of Facilities Special Tax obligations with respect to the CFD after the issuance of the first series of Bonds that are identified for payment of Facilities or Authorized Fees shall be placed in a special fund to be held by the City (the "Prepayment Fund), separate and apart from the proceeds of the Bonds. Available moneys in the Prepayment Fund shall be applied, as determined by the City in consultation with the Developer, to the costs of the acquisition of the Facilities or a portion thereof or Authorized Fees.

c. Bond Proceeds. The proceeds of each series of Bonds for an Improvement Area shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. The net proceeds of each series of Bonds for an Improvement Area shall be set aside under the Fiscal Agent Agreement in a separate improvement fund (each, an "Improvement Fund"; collectively the "Improvement Funds"). Moneys in an Improvement Fund shall be withdrawn therefrom, in accordance with the provisions of the Fiscal Agent Agreement, for payment of all or a portion of the costs of acquisition of the Facilities and the payment for Discrete Components thereof or for the payment of Authorized Fees, including costs incurred by the City to review payment requests submitted by the Developer under Section 6(b) of this Agreement, all as determined by the City in consultation with the Developer and as herein provided. The City makes no warranty, express or implied, that the proceeds of the Bonds deposited and held in the Improvement Fund(s), along with other Funding Sources, will be sufficient for payment of the Purchase Price of the Facilities.

The Developer agrees that the City shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to each Fiscal Agent Agreement, including each Improvement Fund, and that the Developer has no right whatsoever to direct investments under a Fiscal Agent Agreement(s). However, all investment earnings on the Improvement Fund shall remain in the Improvement Fund and be used to finance Facilities and Authorized Fees, except as needed to comply with a rebate obligation under federal tax law or replenish a debt service reserve fund, as set forth in the Fiscal Agent Agreement.

The City shall have no responsibility whatsoever to the Developer with respect to any investment of funds under a Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Improvement Fund to pay the Purchase Price of Facilities and Discrete Components hereunder and to pay Authorized Fees. The Developer further acknowledges that the obligation of any owner of real property in the CFD, including the Developer to the extent it owns any real property in the CFD, to pay Facilities Special Taxes levied in the CFD is not in any way dependent on (i) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof hereunder or any Authorized Fees, or (ii) the alleged or actual misconduct of the City in the performance of its obligations under this Agreement, the Fiscal Agent Agreement(s), any subdivision agreement or amendment thereto or any other agreement to which the Developer and the City are signatories.

The Developer acknowledges that any lack of availability of amounts in the Improvement Fund(s) to pay the Purchase Price of Facilities or any Discrete Components thereof shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities required by the Conditions of Approval.

4. Facilities Special Taxes.

The City shall not levy Facilities Special Taxes for the direct payment of Facilities or Discrete Components if such additional levy increases the Facilities Special Taxes on Final Use Small Lot Parcels, Large Lot Parcels or Undeveloped Parcels (as such terms are defined in the Rates and Method). However, the preceding sentence shall not prevent the issuance of Bonds secured by Facilities Special Taxes levied on Final Use Small Lot Parcels, Large Lot Parcels or Undeveloped Parcels.

Subject to applicable limits in the Rates and Method, the City shall levy and collect Facilities Special Taxes on Developed Property (as defined in the Rates and Method) to provide a Funding Source to fund the Facilities and Discrete Components thereof.

For each Improvement Area, for a period of five fiscal years beginning with the initial fiscal year in which the Facilities Special Taxes are levied in an Improvement Area, any special tax revenues that are not needed to pay debt service on any Bonds or other debt or to pay administrative expenses ("Remainder Taxes") will be deposited in a special fund for the Improvement Area ("Remainder Taxes Fund") to be held in the manner determined by the City, separate and apart from the Prepayment Fund or any fund in which Bond proceeds are deposited. Moneys in the Remainder Taxes Fund shall be used to finance Facilities and Discrete Components or Authorized Fees, as Funding Sources to pay for all or a portion of the costs of acquisition of the Facilities and any Discrete Components or to pay Authorized Fees. For each Improvement Area, beginning in the sixth fiscal year in which the Facilities Special Taxes are first levied in an Improvement Area, the City shall collect and direct the use of Remainder Special Taxes in its discretion.

5. Construction of the Facilities.

a. Plans and Specifications. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further represents that the Facilities have been or will be constructed in full compliance with such Plans and any change orders thereto, as approved in the same manner. Copies of all Plans shall be provided by the Developer to the City Engineer. The City agrees to use good faith efforts to review and, to the extent that they comply with applicable entitlements and applicable law including the Oakland Municipal and Planning Codes, approve all applicable Plans necessary to build the Facilities required as a condition of developing the land within the CFD.

b. Construction of Facilities. All Facilities to be acquired hereunder shall be constructed by or at the direction of the Developer in accordance with the approved Plans and the Conditions of Approval. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the City from the Developer hereunder.

The Developer shall be obligated: (i) to construct and cause conveyance to the City all Facilities (including Discrete Components thereof) in accordance with the Conditions of Approval and the Developer's timing of development of the property within the CFD, and (ii) to use its own funds to pay all costs thereof in excess of the Purchase Price thereof to be paid therefor hereunder and available Funding Sources to be paid therefor hereunder, except as may be otherwise expressly provided in the Conditions of Approval.

The Developer shall not be relieved of its obligation to construct each Facility (including Discrete Components thereof) and convey each such Facility to the City in accordance with the Conditions of Approval, even if there are insufficient Funding Sources to pay the Purchase Price

thereof, and, in any event, this Agreement shall not affect any obligation of any owner of land in the CFD under any Conditions of Approval or any governmental approval to which any land within the CFD is subject, with respect to the public improvements required in connection with the development of the land within the CFD.

c. Relationship to Public Works. This Agreement is for the acquisition of the Facilities or Discrete Components thereof by the City from Funding Sources and is not intended to be a public works contract. The City and the Developer agree that the Facilities are of local, and not state-wide concern, and that the provisions of the California Public Contracts Code shall not apply to the construction of the Facilities. The City and the Developer agree that this Agreement is necessary to assure the timely and satisfactory completion of the Facilities and that compliance with the Public Contracts Code with respect to the Facilities would work an incongruity and would not produce an advantage to the City or the CFD.

d. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities, it will assure that the contracts contain a covenant to pay prevailing wages and to follow any applicable law or regulation for the payment of prevailing wages for such construction.

e. Bidding Procedures. Other than with respect to the Exhibit D Contracts (as defined in subsection (j) below), the following bid procedures shall apply to all work to be performed by Developer under this Agreement.

(i) Developer shall prepare a bid package, the form of the required notices and the list of proposed recipients for review and comment by the City Engineer. Developer shall provide notice of the competitive bid process to and obtain competitive bids from a minimum of three (3) bidders. The City Engineer shall make good faith efforts to respond with any comments within ten (10) calendar days.

(ii) Developer shall send notices inviting formal bids to the recipients approved (or deemed to have been approved) by the City Engineer. The notices shall be distributed (by mail or electronic mail) no less than twenty (20) calendar days before the opening date of the bids. The notices shall distinctly describe the project and state the time and place for submission of bids and disclose the Developer's right to elect to perform the work under Section 53329.5 of the Act.

(iii) Bids shall be submitted to the Developer either via hard copy or email. The bids shall be received and opened by the Developer and there shall be no requirement for a public bid opening. After the bids are received and opened by the Developer, the Developer may contact one or more of the bidders and request clarification of any bid or adjustments to the bid to comply with the specifications of the proposed project so that all bids may be evaluated on a comparable basis.

(iv) Developer shall submit to the City written evidence of compliance with the competitive bidding procedures set forth herein, including evidence of the required noticing, a listing of all responsive bids and their amounts (as adjusted pursuant to subsection (iii), if applicable), and the name or names of the contractor or contractors to whom Developer proposed to award the contracts for such construction.

(v) The contract for the construction of any Facilities or Discrete Component shall be awarded to the responsible bidder submitting the lowest responsive

bid (as adjusted pursuant to subsection (iii), if applicable) for the construction of such Facilities or Discrete Components or, if the Developer elects to perform the work pursuant to Section 53329.5 of the Act, the Developer shall perform the work at the prices specified in the bid of the lowest responsible bidder.

f. Performance and Payment Bonds. The Developer agrees to comply with all applicable performance and payment bonding requirements of the City (and other applicable public entities and/or public utilities) set forth in the Conditions of Approval with respect to the construction of the Facilities and as otherwise required by the Oakland Municipal and Planning Codes, including, but not limited to, Section 16.20.100 thereof. Nothing in this Agreement shall alter or amend any provisions in the Conditions of Approval as to the provision or exoneration of any applicable payment or performance bonds.

g. Contracts and Change Orders.

(i) This subsection (g) does not apply to any change orders that were approved by the Developer with respect to the Exhibit D Contracts (defined in subsection (j) below) prior to execution hereof. However, nothing in this subsection (g)(i) is intended to excuse the Developer from complying with the provisions of Section 6 related to submission, review and approval of payment requests.

(ii) All contracts for the construction of Facilities shall be submitted to the City Engineer for review and approval as to cost and quantity and quality of work.

(iii) Each change order shall be submitted to the City Engineer for review and approval as to cost and quantity and quality of work if (A) the cumulative total of the change orders for any Payment Request exceeds $1,000,000 or (B) the change order involves a major scope change in materials, regulatory compliance or overall nature of the work as determined by the City Engineer or the Department of Public Works. Each change order shall be itemized as part of a Payment Request, using a Change Order Log substantially in the form attached to this Agreement as Exhibit B, Attachment 2 (or such other form approved by the City Engineer).

h. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City or the CFD. Neither the City nor the CFD shall be responsible for making any payments to any contractor, subcontractor, agent, employee or supplier of the Developer.

i. Periodic Meetings. From time to time at the request of the City Engineer, representatives of the Developer shall meet and confer with City staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Agreement. The Developer shall advise the City Engineer in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The City Engineer or his/her designated representative shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the City Engineer to resolve disputes and/or ensure the proper completion of the Facilities.

j. Exhibit D Contracts. Notwithstanding anything herein to the contrary, prior to the execution of this Agreement, the Developer has solicited bids, awarded a contract, and began

construction for the Facilities listed in Exhibit D attached hereto (the "Exhibit D Contracts"). The Developer certifies that (i) the Developer solicited at least three bids for the Exhibit D Contracts, (ii) the contract price is the lowest responsible bid to construct the Facilities in accordance with the Developer's development schedule (it being understood that the contract price does not have to be the lowest price to be competitive), (iii) the bid was received in an arms-length transaction with the Developer, and (iv) the bidders have no proprietary interest in the overall Project. In addition, Exhibit D also lists all change orders that have already been approved by the Developer for the construction of Facilities.

k. Facilities Constructed by Third-Parties. In some cases, Facilities may be constructed by a related (e.g., an affiliate) or unrelated (e.g., a merchant builder) entity. For purposes of this Agreement, Facilities constructed by a related or unrelated entity are referred to as "Third-Party Facilities." The City agrees that so long as the Third-Party Facilities are constructed in accordance with the provisions of this Agreement, the Third-Party Facilities may be financed by available Funding Sources notwithstanding that the Third-Party Facilities being acquired hereunder will be purchased from an affiliated or unaffiliated entity and that the affiliated or unaffiliated entity bid and entered into, and paid the costs under, the contracts for the constructed Third-Party Facilities. The City shall make all payments for the Purchase Price of any Third-Party Facilities to the Developer, and shall not be obligated to make any payments to such other entities.

6. Payment for the Facilities. The Developer hereby agrees to sell the Facilities to the City, and the City hereby agrees to use available Funding Sources to pay the Purchase Price thereof to the Developer, subject to the terms and conditions hereof.

a. Inspection. No payment hereunder shall be made by the City to the Developer for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected by the City or other applicable public entity or utility and found to be constructed in accordance with the approved Plans by the City and Substantially Complete. For Facilities to be acquired by the City, the Developer shall request inspection using applicable City procedures. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof to the City Engineer. The Developer agrees to pay all inspection, permit and other similar fees of the City applicable to construction of the Facilities, and such fees are subject to reimbursement under this Agreement as part of the Actual Cost of the Facilities.

b. Request for Payment. Any request for payment hereunder by the Developer shall be in a form substantially similar to the form attached to this Agreement as Exhibit B and shall include such supporting documentation to substantiate such request as the City may require. For any request for payment, the following shall apply:

(i) Substantiation of Actual Costs. The Developer shall provide any documentation substantiating the Actual Cost of the Facilities reasonably requested by the City Engineer, including but not limited to a review of the Actual Costs (including certified quantities) by the Developer's civil engineer and determination that they are consistent with the approved Plans. There shall be a presumption of reasonableness as to costs incurred under a construction contract (or change order) entered into as a result of a call for bids by the Developer (or similar procedure approved by the City Engineer), provided that no extraordinary limitations or requirements (such as a short time frame) are imposed by the Developer on the performance of such contracts. For any Facility to be acquired by a public entity or utility other than the City, the Developer shall provide written

evidence of the approval of such cost substantiation and approval of such Facility from such entity or utility when requesting payment.

(ii) Payment of Claims. In order to receive the Purchase Price for a Facility or Discrete Component, inspection thereof under Section 6(a) shall have been made and the Developer shall deliver to the City Engineer a payment request for such Facility or Discrete Component, together with all supporting documentation required by this Agreement to be included therewith.

(iii) City Fees. The Developer agrees to pay the fees imposed by the City for its review of payment requests hereunder if Funding Sources are not then available for such purpose, and such fees paid by the Developer are subject to reimbursement from Funding Sources under this Agreement.

c. Conditions for Acceptance. The City shall not be obligated to pay the Purchase Price of any Facility or Discrete Component until the Facility or Discrete Component is Substantially Complete and the processing requirements of this Section 6 for such Facility or Discrete Component have occurred. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not accept a Facility of which a Discrete Component is a part until the entire Facility has been completed in accordance with the Conditions of Approval. The City acknowledges that the Facilities or Discrete Components do 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 Facilities or Discrete Component is Substantially Complete in accordance with the Plans therefor, as determined by the City Engineer. In any event, the City shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the Funding Sources.

d. Purchase Price. The Purchase Price shall be calculated by the Developer's civil engineer based on the criteria of Section 6(a)-(c) above, and submitted to the City Engineer for final determination. The Purchase Price shall include the substantiated Actual Costs related to the Facilities (or Discrete Component thereof) or each of them. The Purchase Price paid hereunder for any Facility or Discrete Component thereof may be paid in any number of installments as Funding Sources become available. The City and Developer acknowledge that the Purchase Price paid will be for the costs the Developer incurred to Substantially Complete the Facilities or Discrete Component, and that the remaining costs to complete the Facilities or Discrete Components will be paid by the Developer as and when required. Notwithstanding any other provision of this Agreement, the City shall prioritize the payment of the Purchase Price for Facilities or Discrete Components thereof that constitute backbone infrastructure, as determined by the City.

e. Payments to the Developer. The Developer may request in writing a payment of the Purchase Price of any Facility or Discrete Component thereof as described in Exhibit A hereto subject to the following:

(i) Compliance with Conditions. The Developer shall first comply with Subsections 6 (a) through (c) above and shall have demonstrated the ability to comply with Section 7 below, all to the satisfaction of the City Engineer.

(ii) Source of Payments. The City and the Developer expect the Purchase Price, in some cases, may be partially paid from Bond proceeds and partially from other available Funding Sources.

(iii) Requests for Payment. Any request for payment by the Developer shall be made to the City Engineer in the form attached to this Agreement as Exhibit B and include the supporting documentation herein specified. Within thirty (30) calendar days of receipt of any request, the City Engineer shall review such request and advise the Developer in writing of denial, in whole or in part, setting forth the reasons for denial. The Developer shall be entitled to resubmit any request or portion thereof so denied if it is able to address the reasons for the denial. The Developer shall not submit more than one (1) payment request in a 30-day calendar period.

(iv) Payment by the City. The City shall Authorize payment to be made to the Developer pursuant to the applicable provisions of the Fiscal Agent Agreement within ten (10) business days of the approval pursuant to Subsection 6(e)(iii) above. The City may Authorize any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing or as the City otherwise determines such joint or third party payment is necessary to obtain lien releases. Subject to Section 3(a), if there are insufficient Funding Sources to pay the full amount of a payment request, then the City shall Authorize as much of the amount on the payment request as there are Funding Sources available, and the payment of the balance of the payment request shall be deferred until there are sufficient Funding Sources available to the remaining balance of the payment request. Promptly following the availability of Funding Sources, the City shall, from time to time and in as many installments as necessary, Authorize the remaining balance of the payment request. Payment requests may be paid (i) in any number of installments as Funding Sources become available and (ii) irrespective of the length of time of such deferral of payment. The City shall also have the right to temporarily withhold payment for the acquisition of a Facility or Discrete Component if: (a) the Developer or any of its affiliates is delinquent in the payment of any special taxes levied within the CFD on property then owned by the Developer or any of its affiliates within the CFD; or (b) the Developer is not then in substantial compliance with a condition or obligation imposed upon the project within the CFD by the City, including, but not limited to, payment of all applicable fees, dedication of all applicable rights-of-way or other property or construction requirements. Once all such delinquencies or non-compliance is cured, the payments for the acquisition of a Facility or Discrete Component will be released.

(v) Allocation of Costs. If Developer incurs costs that (1) apply to more than one Facility or Discrete Component (e.g., soft costs) or (2) apply to both Facilities or Discrete Components and improvements other than the Facilities or Discrete Components (e.g., grading), Developer shall allocate, or cause the contractor to reasonably allocate, such costs between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Developer Allocation"). The Developer Allocation shall be presumed to be reasonable and shall be accepted for all purposes of this Agreement unless the City notifies Developer of its good-faith reasonable disapproval of the allocation within the period specified in Section 6.e.(iv) above. If the City has properly disapproved the Developer Allocation, then the City and Developer shall promptly allocate such costs, on a reasonable basis, between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the "Agreed-Upon Allocation"). Based on the Developer Allocation or the

Agreed-Upon Allocation, if applicable, the City shall include the costs allocated to a specific Facility or Discrete Component as part of the Actual Costs of such Facility or Discrete Component when such Facility or Discrete Component is subject to a payment request.

(vi) General Cooperation. In connection with processing any payment request under this Agreement, the City and the City Engineer will use good faith efforts to request any additional information required to process the request as soon as practicable following the submission of the original materials, and to make each additional information request comprehensive and thorough to minimize the number of requests delivered, and Developer will use its good faith efforts to provide a thorough, organized, and complete response to each request. Developer is authorized to communicate directly with the City, the City Engineer, and their designees, agents, and contractors to facilitate any additional information request, to facilitate the prompt resolution of any technical issues, and to minimize the amount of time it takes to resolve outstanding issues. In addition to the foregoing, and except as otherwise is provided for herein, the parties agree that: (1) if a payment request includes more than one Discrete Component or Facility, the City will not withhold payment Authorization on any Discrete Component or Facility that has been approved and will withhold payment Authorization only on such Discrete Components and Facilities that have not been approved; and (2) in no event will the City make a partial payment for a single Discrete Component or Facility (except in cases where the Facility is comprised of more than one Discrete Component, in which case the City will make separate payments for each Discrete Component of such Facility otherwise eligible for payment hereunder). The City will ensure that any consultants assisting it with implementation of this Agreement have reviewed the relevant provisions of this Agreement.

(vii) Expectations of the Parties. The City understands and agrees that (i) Developer may be constructing Facilities or Discrete Components prior to the availability of Funding Sources that will be used to pay for such Facilities or Discrete Components, (ii) the City or the other public agencies that will own and operate such Facilities or Discrete Components may be inspecting such Facilities or Discrete Components and processing and completing payment requests for the payment on such Facilities or Discrete Components with knowledge that there may be insufficient Funding Sources available at such time, (iii) the Facilities or Discrete Components may be conveyed to and accepted by the City or other local agency that will own and operate such Facilities or Discrete Components when there are insufficient Funding Sources to pay the Purchase Prices of such Facilities or Discrete Components, and (iv) in any such case, the payment of any approved payment requests for the Purchase Prices of such Facilities or Discrete Components will be deferred until there are sufficient Funding Sources available to pay the Purchase Prices of such Facilities or Discrete Components, at which time the City will make such payments in accordance with this Agreement. At all times, Developer will be constructing such Facilities or Discrete Components with the expectation that the Purchase Prices for such Facilities or Discrete Components will be paid from the Funding Sources, subject to the limitations set forth in this Agreement. The conveyance of Facilities or Discrete Components to the City or a local agency that will own and operate such Facilities or Discrete Components prior to receipt of the Purchase Prices for such Facilities or Discrete Components shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such Facilities or Discrete Components.

(viii) Maximum Amount of Design Engineering and Related Costs. Payment requests solely for design engineering and related costs prior to construction of the related Facilities shall not exceed ten percent (10%)of the estimated construction costs of such Facilities, as reviewed and approved by the City Engineer. Payment requests received in excess of ten percent (10%) of the estimated construction costs of such Facilities shall include justification and related documentation for review, with determination of costs in excess of ten percent (10%) to be made by the City Engineer based on the extent to which Facilities have been completed or are reasonably expected to be completed. In clarification of the foregoing, this subsection (viii) does not, in any way, limit the amount of design engineering and related costs that may be financed as part of the Actual Cost of a Facility; this section only limits the amount of such costs that may be requisitioned prior to requisitioning for the constructions costs of the Facilities.

(ix) Retention. If the payment request indicates that the Developer is withholding from its contractor a retention of at least ten percent (10%) of the contract price for constructed Facilities, then the full amount of the approved payment request shall be authorized for payment to the Developer; if the Payment Request does not indicate the withholding by the Developer of such ten percent (10%) retention, then the amount to be paid to the Developer shall be equal to the Purchase Price less a retention of ten percent (10%) of the contract price. Upon completion of such constructed Facilities in their entirety, including all "punch list" work, and acceptance of the constructed Facilities by the City, the City shall authorize and shall pay from the Funding Sources the balance of the Purchase Price then due to the Developer for such constructed Facilities, including any ten percent (10%) progress retention then paid by Developer or any ten percent (10%) retentions previously retained by City with respect thereto.

7. Ownership and Transfer of the Facilities; Maintenance; Warranties. Any of the Facilities to be owned by public entities or utilities other than the City shall be conveyed in accordance with the entity's or utility's policies and procedures. Conveyance of the Facility or the Land (as defined herein) underlying the Facility or Discrete Component is not a condition to the payment of the Purchase Price of a Substantially Complete Facility or Discrete Component. For the Facilities to be owned by the City, the following applies:

a. Land. For purposes of this Agreement, the term "Land" includes fee simple title or such lesser interests (including easement and/or rights of way or an irrevocable offer of dedication of the real property with interests therein) as are required and approved by the City and are included in the description of the Facilities to be acquired. The Developer agrees to cause the owners of real property in the CFD to execute and deliver to the City such documents as are required to complete the transfer of Land, free and clear of all liens, taxes, assessments, easements, leases, or other encumbrances (whether recorded or not), except for those which the City Engineer determines in writing will not interfere with the intended use of the land or related Facilities. If the Land is within the boundaries of any existing community facilities district (including the CFD), an assessment district, or other financing district, then the lien of the special taxes or assessments shall be a permitted exception to title so long as the Land, while owned by the City or other public agency, is exempt from the special tax or assessments to be levied by the community facilities district, assessment district, or other financing district. Completion of the transfer of title to land shall be evidenced by recordation of the acceptance of thereof by the City Council or the designee thereof.

b. Facilities Constructed on Private Lands. If any Facility to be acquired is located on privately-owned Land, the owner thereof shall retain title to the Land and the completed

Facilities until acquisition under Subsection 7(a) above, which shall apply to such transfer. Pending the completion of such transfer and where the Developer has received any payment for any such Facility, the Developer shall be responsible for maintaining the Land and any Facilities in good and safe condition.

c. Facilities Constructed on City Land. If the Facilities to be acquired are on Land owned by the City, the City hereby grants to the Developer a license to enter upon such Land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

d. Warranties; Maintenance. The Developer shall maintain each Discrete Component in good and safe condition until the Acceptance Date of the Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or Facility.

On or before the Acceptance Date, the Developer shall assign to the City all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility. The Developer shall maintain or cause to be maintained each Facility to be owned by the City (including the repair or replacement thereof) for a period of one year from the Acceptance Date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the City Engineer for such period and for such purpose, to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the City Engineer. During any such one-year period, the Developer shall commence to repair, replace or correct any such defects within 30 days after written notice thereof by the City to the Developer, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the City shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the City Engineer as part of the transfer of title.

For purposes of this Section 7, after the City has accepted a Facility, the terms "maintain" and "maintenance" mean the repair, replacement, or correction of any defects in the Facility or Discrete Component, and shall not mean the day-to-day upkeep or correction of normal wear and tear of the Facility or Discrete Component (such as watering or weeding for landscape improvements, painting, graffiti removal, etc.).

8. Limitation of Liability; Excess Costs; Surplus in the Improvement Funds. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City and the City's obligations to make any payments hereunder are restricted entirely to the Funding Sources and from no other source. The Developer agrees to pay all costs of the Facilities it is constructing that are in excess of the Funding Sources. No City Council member, City staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

If the construction and acquisition of all the Facilities listed on Exhibit A have been Substantially Complete and the Purchase Price with respect thereto has been paid, and all Authorized Fees have been paid, and Funding Sources remain or become available through, among other things, the issuance of additional Bonds, the City shall determine the use of such funds consistent with the terms of the Fiscal Agent Agreement and the Resolution of Formation.

9. Payment of Authorized Fees

a. Request for Payment of Authorized Fees. The Developer may request payment of Authorized Fees from the Funding Sources by executing and submitting to the City Engineer a request for payment in substantially the form of Exhibit C attached hereto and shall include such supporting documentation to substantiate such request as the City may require. Upon receipt of such payment request, the City shall pay, or cause to be paid, the Authorized Fees requested in such payment request in accordance with this Agreement and to the extent of such Funding Sources. Authorized Fees may be financed by the Funding Sources from any Improvement Area, regardless of whether those Authorized Fees were payable in connection with the development of a specific Improvement Area.

b. City Response to Request for Payment of Authorized Fees. Within thirty (30) days of receipt of any request for payment of Authorized Fees, or such longer period to which the City and the Developer may agree, the City Engineer shall review such request and advise the Developer in writing whether the request is approved or denied. If the request is denied, in whole or in part, the written denial shall set forth the reasons for denial. The Developer shall be entitled to resubmit any request or portion thereof so denied if it is able to address the reasons for the denial.

c. Payment of Authorized Fees in Advance of Availability of Sources. The Developer may be required pursuant to the Conditions of Approval or the fee ordinance to pay the Authorized Fees prior to the availability of the Funding Sources to pay such Authorized Fees. In the event such Authorized Fees are paid prior to the availability of the Funding Sources, the amounts paid to the City shall be deemed to be deposits (each a "Deposit") that are subject to refund by the City to Developer in the manner set forth in subsection (d) of this Section. The City shall place each Deposit in a capital facilities account(s), which may be held by the Fiscal Agent. The Developer and the City represent that the Deposits are not available as a permanent source of funds to pay the Authorized Fees. The Developer acknowledges that the City may finance Authorized Fees with proceeds of tax-exempt bonds only if the City and the other parties to related joint community facilities agreements can meet certain requirements of federal tax law.

d. Return of Deposits. If the Developer has made any Deposits to the City, then following deposit of Funding Sources with the City for the corresponding Authorized Fees, the City shall return to the Developer from the capital account in which the Deposits were deposited the Deposits not previously returned, without interest or other earnings thereon. The City shall be obligated to return such Deposits only to the extent that an equivalent amount of the Deposits to be returned is deposited with the City from the Funding Sources. The Deposits may be returned from time to time as additional Funding Sources become available.

e. Deposits Allocated First. Funding Sources used to pay Authorized Fees shall be allocated first for return of all Deposits prior to being allocated to the payment of Authorized Fees not previously deposited by the Developer.

f. Application of Deposits. Any Deposits that have not been returned to the Developer at the time it is determined that there will be no further Funding Sources available (now or in the future) shall be retained by the City and may be used for the purposes for which the Authorized Fee was required, and the unrefunded Deposits shall constitute full and final payment for such Authorized Fees, without any increase of any kind.

The parties agree that, although the parties intend to use Funding Sources to finance Authorized Fees as set forth in this Section 9, nothing in this Section 9 is intended to limit the use by the City of any Deposits for the purposes for which the Authorized Fees were imposed. The City shall reimburse the Developer for any Deposits made in accordance with this Agreement even if the City has expended the Deposits for an authorized purpose prior to the availability of the Funding Sources to pay such Authorized Fees.

g. Expectations. The Developer may pay Authorized Fees (as Deposits) prior to the availability of Funding Sources to pay such Authorized Fees. Any Authorized Fees paid (as Deposits) by the Developer shall be made with the understanding that such Deposits will be returned from the Funding Sources if, and when, such Funding Sources become available. The payment of Deposits prior to the availability of the Funding Sources shall not be construed as a dedication or gift of the Authorized Fees, or a waiver of the return of the Deposits, it being the intention that the Authorized Fees be paid by the Funding Sources to the extent of the Funding Sources.

h. Joint Community Facilities Agreements. The Developer has asked the City to enter into one or more joint community facilities agreements with other public agencies for the purpose of financing Authorized Fees, and the provisions of this Agreement shall be subject to any such joint community facilities agreements.

10. Indemnification and Hold Harmless. The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Agreement until the acceptance by the City of the respective Facilities occurs.

The Developer shall assume the defense of and indemnify and save harmless the City, the CFD and the City's Councilmembers, officers, employees and agents, from and against any and all claims, losses, damage, expenses and liability of every kind, nature, and description, directly or indirectly arising from any breach by the Developer of this Agreement, the performance of the work covered by this Agreement, from the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities, or any claims of persons employed by the Developer or its agents to construct the Facilities. In accordance with Civil Code section 2782, nothing in this Section shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the active or sole negligence or willful misconduct of the City, and its consultants, and its Councilmembers, agents, servants or independent contractors who are directly responsible to the City, or for defects in design furnished by such persons. Moreover, nothing in this Section shall apply to impose on the Developer, or to relieve the City from, liability for active negligence of the City, or its consultants as delineated in Civil Code Section 2782. Any relief for determining the City's sole or active negligence shall be determined by a court of law.

The City does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the City, or deposit with the City by the Developer of any insurance policies required by the City. The hold harmless agreement by the Developer set forth in this Section shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the City, or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

11. Representations and Covenants of the Developer.

a. Representations of the Developer. The Developer represents and warrants for the benefit of the City and the CFD as follows:

(i) Organization. The Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified to do business in California, is in compliance with all applicable laws of the State of California, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(ii) Authority. The Developer 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 Developer.

(iii) Binding Obligation. This Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(iv) Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the City for the acquisition of any improvements that are not part of the Facilities, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the payment requests.

(v) Plans. The Developer represents that it has obtained or will obtain approval of the Plans for the Facilities to be acquired from the Developer hereunder from all appropriate departments of the City. The Developer further agrees that the Facilities and Discrete Components to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications, any supplemental agreements (change orders) thereto, as approved in the same manner, and the Conditions of Approval.

b. Covenants of the Developer. The Developer covenants for the benefit of the City and the CFD as follows:

(i) Financial Records. Until the final acceptance of the Facilities, the Developer covenants to maintain proper books of record and account for the construction of the Facilities 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.

(ii) Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities to be acquired from the Developer

hereunder, it will assure that the contracts contain a covenant to pay prevailing wages and to follow any applicable law or regulation for the payment of prevailing wages for such construction.

(iii) Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

(iv) Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the CFD to another builder or developer where all or part of this Agreement will be assigned, the Developer will (i) notify the City within thirty (30) calendar days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel number or numbers for the land sold and the acreage of the land sold, and (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities. For any sale of property, the Developer shall notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

(v) Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the City related to the status of construction of improvements within the CFD and the anticipated completion dates for future improvements.

(vi) Initial Disclosure; Continuing Disclosure. The Developer agrees to provide such information about its development and its financing plan as may reasonably be requested by the City, the City's bond counsel or disclosure counsel or a bond underwriter in connection with the issuance of Bonds. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement or certificate executed by it in connection with the offering and sale of any of the Bonds.

(vii) Compliance With Applicable Law. The Developer accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the Facilities and the contract or contracts pertaining thereto, including but not limited to such applicable laws as may be contained in the California Labor Code, the California Public Contract Code, and the California Government Code. The Developer will neither seek to hold or hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Developer to correctly determine the applicability of any such requirements to any contract it enters into. This paragraph shall apply with respect to any enforcement action, whether public or private, and whether brought by a public enforcement agency or by private civil litigation, against the Developer, the City or the CFD, or any of them, with respect to the matters addressed by this paragraph.

12. Limitation. Nothing in this Agreement shall be construed as affecting the Developer's or the City's duty to perform their respective obligations under any other agreements, land use regulations, or subdivision requirements related to the property being developed by the Developer

in the CFD (if any), which obligations (if any) are and shall remain independent of the Developer's and the City's right and obligations under this Agreement.

13. Cooperation. The City and Developer agree to cooperate with respect to the completion of the financing of the Facilities by the CFD through the levy of Facilities Special Taxes and issuance of one or more series of Bonds, as set forth in this Agreement. The City and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by the Agreement.

14. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers, or agents shall be deemed to require that the consent, approval, or acceptance not be unreasonably withheld or delayed, unless the provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

15. Audit. The City Engineer and the City's chief financial officer shall have the right, during normal business hours and upon the giving of ten days written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in constructing any of the Facilities or Discrete Components and any bids taken or received for the construction thereof.

16. Attorney's Fees. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

17. Notices. Any notice, payment or instrument required or permitted by this Agreement to be give or delivered to either party shall be deemed to have been received when personally delivered or one week following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

Developer: Oak Knoll Venture Acquisition, LLC,
4131 S. Main Street
Santa Ana, CA 92707
Attention: Travis Devan
Telephone: (949) 777-4000
Email: tdevan@argentmanagementllc.com

City or CFD: Tom Morgan
Agency Administrative Manager
Oakland Public Works
City of Oakland
250 Frank H Ogawa Plaza, Ste 4314
Oakland, CA 94612
(510) 238-7953
E-mail: TMorgan@oaklandca.gov

With a copy to the City Attorney:

Brian P. Mulry, Deputy City Attorney
Office of Oakland City Attorney
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612
Phone: (510) 238-6839
BMulry@oaklandcityattorney.org

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

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

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may not be assigned by the Developer without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee and upon any other factor which the City deems relevant in the circumstances. Nothing in this Section shall prevent the Developer from assigning all or any part of the Purchase Price or the right to receive the return of any Deposits to a third party without the consent of, or advance notice to, the City, but the City is not required to make payment to any party other than Developer unless provided a copy of the assignment at least five calendar days prior to any expenditure.

20. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

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

23. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

24. Governing Law. The provisions of this Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first-above written.

CITY OF OAKLAND

By:_____
Authorized Representative

OAK KNOLL VENTURE ACQUISITION, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

By:_____

Name: _____

Title:_____

APPROVED AS TO FORM

_____
City Attorney

EXHIBIT A

FACILITIES AND DISCRETE COMPONENTS AND AUTHORIZED FEES

[to come]

Notes:

1. The Purchase Price of the Facilities described in the Report will be the Actual Costs (as defined in the Acquisition Agreement) of the Facilities, including, but not limited to, eligible soft costs, permit fees, title insurance, and construction management.
2. The quantities, measurements, sizes and types of the components of each Facility described above shall be those specified in the Plans for the Facility approved by the City.
3. Discrete Components of each Facility may be identified upon the written request of the Developer and subject to the approval of the City Engineer.
4. This Exhibit A may be amended at any time by the mutual written agreement of the Developer and the City, without requiring approval by the City Council, so long as the facilities added to Exhibit A pursuant to such amendment are authorized to be financed by the CFD.

EXHIBIT B

FORM OF PAYMENT REQUEST
(Facilities and Discrete Components)

City of Oakland
Community Facilities District No. 2021-1 (Oak Knoll Facilities and Services)

Oak Knoll Venture Acquisition, LLC (the "**Developer**"), hereby requests payment of the Purchase Price of the Facilities and the Discrete Components (as those terms are defined in the Acquisition Agreement, dated as of November 16, 2021 (the "**Acquisition Agreement**"), by and between the City of Oakland (the "**City**") and the Developer) described in Attachment 1 hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Acquisition Agreement.

In connection with this Payment Request, the undersigned hereby represents and warrants to the City as follows:

1. The undersigned is an authorized representative of the Developer, qualified to execute this request for payment on behalf of the Developer and knowledgeable as to the matters set forth herein.

2. The Developer has submitted or submits herewith to the City Engineer Plans for each of the Facilities and Discrete Components described in Attachment 1, and such drawings or Plans, as applicable, are true, correct and complete representations of the Facilities and Discrete Components listed in Attachment 1.

3. Each of the Facilities and Discrete Components described in Attachment 1 has been constructed in accordance with the Plans therefor, the Conditions of Approval, all applicable City standards and the requirements of the Acquisition Agreement.

4. The true and correct Actual Cost of each of the Facilities and Discrete Components described in Attachment 1 is set forth in Attachment 1.

5. The Developer has submitted or submits herewith to the City Engineer a copy of each construction contract for each of the Facilities and Discrete Components described in Attachment 1, a copy of the bid notice for each such contract and a copy of each change order applicable to each such contract, together with the written approval of each such change order by the City Engineer of the City, if required by the Acquisition Agreement. Each change order is listed in the Change Order Log attached hereto as Attachment 2. The requirements of this paragraph 5 shall not apply to Exhibit D Contracts to the extent set forth in Sections 5(e) and 5(j) of the Acquisition Agreement.

6. The Developer has submitted or submits herewith to the City Engineer a letter from the Developer's civil engineer evaluating invoices, receipts, worksheets and other evidence of costs for each of the Facilities and Discrete Components described in Attachment 1, which are in sufficient detail to allow the City Engineer to verify the Actual Cost of such Facilities and Discrete Components. If any of such invoices, receipts, worksheets or other evidence of costs include costs for facilities other than such Facilities and Discrete Components, the Developer has submitted or submits herewith to the City Engineer a written description as to how the items and amounts in such invoices, receipts, worksheets and other evidence of costs have been allocated

among such other Facilities and Discrete Components, and such allocation shall be evaluated pursuant to Section 6.e.(v) of the Acquisition Agreement.

7. The Developer has submitted or submits herewith to the City Engineer evidence that each of the invoices, receipts, worksheets and other evidence of costs referred to in the preceding paragraph, has been paid in full, which evidence is (i) in the form of copies of cancelled checks, (ii) electronic payment receipts, or (iii) such other form as the City Engineer of the City has approved in writing.

8. There has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive, the payment of the Purchase Price of each of the Facilities and Discrete Components described in Attachment 1 which (i) has not been released or will not be released simultaneously with the payment of such obligation or (ii) has been covered by a bond, other than materialmen's or mechanics' liens accruing by operation of law.

9. The Developer has submitted or submits herewith to the City Engineer copies of unconditional or conditional (providing for release upon payment) lien releases from all contractors, subcontractors and materialmen for all work with respect to each of the Facilities and Discrete Components described in Attachment 1, in a form subject to review and approval by the City Attorney.

10. The representations and warranties of the Developer set forth in Section 11 of the Acquisition Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.

11. The Developer represents that it has satisfied the conditions specified in the Acquisition Agreement for the payment of the Purchase Price by the City.

12. The Developer represents and warrants that, to its actual knowledge, as of the date hereof, there is not present on, under or in any of the Facilities and Discrete Components described in Attachment 1, or any portion thereof, any hazardous materials, except for (i) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (ii) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, (iii) those with respect to which ongoing remediation or mitigation is being performed in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, (iv) any types or amounts that do not present a human health risk or hazard to the public, and (v) if such Facilities and Discrete Components described in Attachment 1 were, at the time of commencement of the acquisition, construction and installation of such Facilities and Discrete Components, property of the City and, from such time of commencement through and including the date hereof, remained property of the City, those hazardous substances that were present on, under or in such Facilities and Discrete Components at such time of commencement.

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

OAK KNOLL VENTURE ACQUISITION, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

By:_____

Name: _____

Title:_____

APPROVAL BY THE [CITY ENGINEER/PUBLIC WORKS DIRECTOR]

The [City Engineer/Public Works Director] of the City of Oakland hereby certifies as follows:

(i) Oak Knoll Venture Acquisition, LLC (the "Developer"), has requested payment of the Purchase Price of the Facilities and the Discrete Components described in Attachment 1 hereto.

(ii) The City Engineer has confirmed that each of the Facilities and Discrete Components described in Attachment 1 is Substantially Complete in accordance with the Plans.

(iii) The Developer's civil engineer has provided documentation to the City Engineer that the Facilities and Discrete Components installed are consistent with those presented in the documentation of Actual Costs.

(iv) The Actual Cost of the Facilities and Discrete Components described in Attachment 1 has been reviewed, verified and approved by the City Engineer under the terms specified in Section 5 of the Acquisition Agreement. As such, Payment of the Purchase Price of each of the Facilities and Discrete Components described in Attachment 1 is hereby approved.

The City is obligated to pay the Purchase Price from Funding Sources only, and from no other funds, as set forth more completely in the Acquisition Agreement (defined below).

Capitalized undefined terms shall have the meanings ascribed thereto in the Acquisition Agreement, dated as of November 16, 2021 (the "Acquisition Agreement"), by and between the City of Oakland (the "City") and the Developer.

Date:

[CITY ENGINEER/PUBLIC WORKS DIRECTOR], CITY OF Oakland

By: _____

ATTACHMENT 1

Facility or Discrete Component	Actual Cost	Purchase Price
Total		

ATTACHMENT 2

CHANGE ORDER LOG

EXHIBIT C

FORM OF PAYMENT REQUEST
(Authorized Fees)

City of Oakland
Community Facilities District No. 2021-1 (Oak Knoll Facilities and Services)

Oak Knoll Venture Acquisition, LLC (the "**Developer**"), hereby requests payment of certain Authorized Fees (as that term is defined in the Acquisition Agreement, dated as of November 16, 2021 (the "**Acquisition Agreement**"), by and between the City of Oakland (the "**City**") and the Developer) described in Attachment 1 hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Acquisition Agreement.

In connection with this Payment Request, the undersigned hereby represents and warrants to the City as follows:

1. The undersigned is an authorized representative of the Developer, qualified to execute this request for payment on behalf of the Developer and knowledgeable as to the matters set forth herein.

2. Each fee listed on Attachment 1 is an Authorized Fee as defined in the Acquisition Agreement.

3. Authorized Fees represented by a Deposit previously made by the Developer with the City are identified on Attachment 1, and such Deposits are hereby requested to be returned to the Developer from the capital account in which the Deposits were deposited.

4. The representations and warranties of the Developer set forth in Section 11 of the Acquisition Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.

5. The Developer represents that it has satisfied the conditions specified in the Acquisition Agreement for the payment of Authorized Fees.

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

OAK KNOLL VENTURE ACQUISITION, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

By:_____

Name: _____

Title:_____

APPROVAL BY THE [CITY ENGINEER/PUBLIC WORKS DIRECTOR]

The [City Engineer/Public Works Director] of the City of Oakland hereby certifies as follows:

(i) Oak Knoll Venture Acquisition, LLC (the "Developer"), has requested payment of the Authorized Fees described in Attachment 1 hereto.

(ii) The City Engineer has confirmed that the listed fees are Authorized Fees.

(iii) The City Engineer has confirmed that Attachment 1 accurately identifies any fees identified as being represented by a Deposit deposited by the Developer with the City.

The City is obligated to pay the Authorized Fees from Funding Sources only, and from no other funds, as set forth more completely in the Acquisition Agreement (defined below).

Capitalized undefined terms shall have the meanings ascribed thereto in the Acquisition Agreement, dated as of November 16, 2021 (the "Acquisition Agreement"), by and between the City of Oakland (the "City") and the Developer.

Date:

[CITY ENGINEER/PUBLIC WORKS DIRECTOR], CITY OF Oakland

By: _____

ATTACHMENT 1

Identity of Authorized Fee	Amount	Represented by Deposit Held by the City
Total		