

**ACQUISITION/FINANCING AGREEMENT
CALIFORNIA MUNICIPAL FINANCE AUTHORITY
COMMUNITY FACILITIES DISTRICT NO. 2022-12
(CITY OF CHULA VISTA – OTAY RANCH VILLAGE 3 PHASE II)**

THIS ACQUISITION/FINANCING AGREEMENT (the “Agreement”), dated as of _____ 1, 2022 (the “Effective Date”), is made and entered into by and between the CITY OF CHULA VISTA, a chartered municipal corporation duly organized and validly existing under the Constitution and laws of the State of California, (the “City”), the CALIFORNIA MUNICIPAL FINANCE AUTHORITY (the “Authority”), on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 2022-12 (City of Chula Vista Otay Ranch Village 3 Phase II), a community facilities district formed and existing pursuant to the laws of the State of California (the “CFD”), and HOMEFED VILLAGE III, LLC, a Delaware limited liability company (the “Developer”).

WHEREAS, the Developer is the master developer of the property depicted in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”) and Developer has obtained certain land use entitlements from the City which permit the development of the Property as entitled, (the “Development Project”); and

WHEREAS, as a part of the development of the Development Project, the Developer has caused, or will cause to be constructed certain public improvements to serve the Development Project that will be owned, operated or maintained by the City, including the improvements identified in Exhibit “B” attached hereto and incorporated herein by this reference (the “Acquisition Improvements”); and

WHEREAS, in connection with the development of the Development Project, certain City capital improvement fees described in Exhibit “B” hereto (the “City Fees”) are required to be paid and then used by the City to pay the costs of constructing or acquiring capital improvements to be owned, operated or maintained by the City (“City Infrastructure” and with the City Fees and Acquisition Improvements, the “Facilities”), including financing costs and program administration costs; and

WHEREAS, the Developer requested that the City consider and the City did consider authorizing the Authority to form the CFD under the terms and conditions of the “Mello-Roos Community Facilities Act of 1982,” as amended (Government Code Section 53311 and following) (the “Act”), for the purpose of financing the acquisition or construction of the Facilities; and

WHEREAS, pursuant to its Resolution Nos. 2021-48, _____ and _____ (the “Resolutions”), the City Council authorized the City’s participation in the Authority’s program, the Authority’s formation of the CFD and the execution of this Agreement; and

WHEREAS, on _____, 2022, the governing board of the Authority adopted Resolution No. _____ (the “Resolution”) forming the CFD, under the provisions of the Act. The Authority is authorized to levy special taxes upon land within the CFD (the “Special Taxes”)

in accordance with the Rate and Method of Apportionment of Special Tax approved pursuant to the Resolution, as it may be amended (the “Rate and Method”) and issue bonds (the “Bonds”) in one or more series to provide financing for the Facilities to be owned, operated or maintained by the City. The boundaries of the CFD are illustrated on Exhibit “A” hereto; and

WHEREAS, Developer, in order to proceed in a timely way with development of the Development Project, desires to construct the Acquisition Improvements that will, following the completion of the construction thereof, be acquired, owned, operated and/or maintained by the City; and

WHEREAS, the City, CFD and Developer agree that the Acquisition Improvements to be constructed by the Developer may, upon the completion of the construction thereof, be acquired by the City through financing provided by the CFD at prices determined pursuant to and in accordance with the provisions of this Agreement; and

WHEREAS, the City and the Developer further agree that the Facilities shall be funded solely from (a) the proceeds of the Bonds which shall be issued by the CFD and which shall be secured by the levy of Special Taxes within the CFD and (b) Available Special Taxes (defined below) levied within the CFD; and

WHEREAS, it is the intent of this Agreement that Developer shall be entitled pursuant to the provisions of this Agreement to be paid for each of the Acquisition Improvements constructed by or on behalf of the Developer at the prices as determined by the City pursuant to this Agreement upon: (a) the sale and delivery of Bonds by the CFD the proceeds of which shall be authorized and designated to make the payments to acquire such Acquisition Improvements, or the receipt of Available Special Taxes and (b) the completion of the construction of each such Acquisition Improvement; and

WHEREAS, the City and CFD are willing to have the CFD finance the Facilities, subject to the requirements of the Act, City Council Policy No. 505-04 (Statement of Goals and Policies Regarding the Establishment of Community Facilities Districts, the “Goals and Policies”) (except those provisions of the Goals and Policies that have been waived in accordance with the Resolutions and this Agreement), and this Agreement and Developer desires that the CFD so finance the Facilities.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the respective parties as follows:

SECTION 1. **Recitals.** The above recitals are all true and correct.

SECTION 2. **Plans and Specifications.** All plans, specifications and bid documents for the Acquisition Improvements (the “Plans and Specifications”) and all changes in the Plans and Specifications necessitated by change orders shall be prepared by the Developer at the Developer’s initial expense, subject to City approval. The costs of acquisition of such Acquisition Improvements shall include costs of the preparation of the Plans and Specifications and all related documentation as set forth in Section 7 below.

Developer shall not award contracts for construction, commence construction or cause commencement of construction of any Acquisition Improvement until the Plans and Specifications for such Acquisition Improvement have been approved by the City.

SECTION 3. Design, Bid and Construction of Improvements. Developer covenants and agrees that each Acquisition Improvement shall be designed, bid and constructed:

- (a) in substantial compliance with the approved Plans and Specifications for such Acquisition Improvement;
- (b) in a good and workmanlike manner by well-trained adequately supervised workers;
- (c) in strict compliance with all governmental and quasi-governmental rules, regulations, laws, building codes and all requirements of Developer's insurers and lenders;
- (d) free of any known design flaws and defects; and
- (e) except as provided below, in substantial compliance with the requirements of Exhibit "D" hereto which is incorporated herein by this reference.

In the event of a protest by a bidder to the award of a contract for the construction of an Acquisition Improvement or Acquisition Improvements to the apparent low bidder, the Developer may, in its sole discretion, elect to:

- (a) award the contract to the apparent low bidder pursuant to the provisions of Exhibit "D" hereto if the Developer has determined that the bid of the apparent low bidder was, in fact, responsive and that the irregularity upon which the protest is based was minor in nature, i.e., the irregularity did not create an unfair competitive advantage for the apparent low bidder;
- (b) reject the bid of the apparent low bidder if the Developer determines that the irregularity upon which the protest is based did create an unfair competitive advantage for the apparent low bidder and the bid of the apparent low bidder was, therefore, not responsive and award the contract to the lowest responsive bidder; or
- (c) reject all bids and solicit new bids for the construction of the applicable Acquisition Improvement or Acquisition Improvements.

Should a legal action be filed challenging the validity of the Developer's decision regarding any such bid protest and/or the award of any contract for the construction of any Acquisition Improvement, the Developer shall, at Developer's sole expense, defend such action and shall defend, indemnify, and hold harmless the City, its officers, directors, employees and agents and the CFD and Authority and their officers, directors, employees and agents (each, an "Indemnified Party" and collectively, the "Indemnified Parties").

SECTION 4. Inspection and Acceptance of the Acquisition Improvements. The construction activities relating to the Acquisition Improvements to be constructed by the Developer shall be subject at all reasonable times to inspection by authorized representatives of City. Once an Acquisition Improvement to be acquired by City is substantially completed in

accordance with the approved Plans and Specifications, then such Acquisition Improvement shall be eligible for payment of the Base Increment of the Purchase Price (as defined in Section 7 below) therefor.

Prior to acceptance by the City of any Acquisition Improvement constructed by the Developer for purposes of paying the Retained Increment (as defined in Section 7 below) of the Purchase Price, the Developer shall provide to the City Engineer of the City, or his or her designee (the "City Engineer"), the documentation set forth in this Section 4 and Section 7(c)(ii) below and obtain approval of as-built drawings for the Acquisition Improvement in accordance with the process described below in this Section 4. The engineer of record for any such Acquisition Improvement ("Engineer of Record") shall file form PW-E-106 (Request for Release of Bonds) with the City Engineer. Within 20 working days of such filing, the field inspector of the City or his or her designee ("Field Inspector") shall issue and transmit to the Engineer of Record a letter requesting (i) as-built drawings and soils reports (when applicable) and (ii) a punchlist of work to be completed or corrections to work to be completed before such Acquisition Improvement will be eligible for payment of the Retained Increment. Within 20 working days of receipt of the Field Inspector's letter, the Engineer of Record shall prepare redline as-built drawings and submit them, together with any necessary soils reports, to the Field Inspector and the Developer shall complete the items of work and/or corrections specified in the punchlist. Within 10 working days of the Engineer of Record's submittal of the red lined as-built drawings, the Field Inspector shall review such drawings and provide comments. The Engineer of Record shall revise the redline as-built drawings per the Field Inspector's comments and resubmit within 10 working days. The Field Inspector shall make his final review within 5 working days of the Engineer of Record's resubmittal and notify the Engineer of Record to prepare mylar as-built drawings and a microfiche copy and submit both to the City Engineer or his designee and notify the Developer of any punchlist items which remain to be completed. The City and Developer shall make best efforts to perform within the time periods described above. The inability of City or Developer to perform within each time period, notwithstanding its best efforts, shall not constitute a breach of this Agreement.

SECTION 5. Warranty of Acquisition Improvements Constructed by the Developer. At all times prior to the City's acceptance of any Acquisition Improvement constructed by the Developer, the Developer shall be responsible for maintaining such Acquisition Improvement at the Developer's expense. The Developer shall be obligated for the period of twelve (12) months immediately following the City's acceptance of such an Acquisition Improvement to repair or replace, at Developer's expense, any defects or failures resulting from the work of Developer, its contractors or agents. Upon the expiration of such twelve (12) month period, Developer shall assign to the City its rights in and to any warranties, guarantees or other evidence of contingent obligations of third persons with respect to such Acquisition Improvement. As a condition precedent to the payment of the Retained Increment (as defined in Section 7 below) of the Purchase Price, Developer shall post a maintenance bond in a form reasonably approved by the City, cause such a maintenance bond to be posted, or assign Developer's rights under such a maintenance bond naming the City as beneficiary in an amount equal to fifteen percent (15%) of the Purchase Price of such Acquisition Improvement in order to secure Developer's obligations pursuant to this Section. Upon posting of such maintenance bond, the City shall release any performance, labor and material bonds for such Acquisition Improvement.

SECTION 6. Notice of Completion and Lien Releases. Upon completion of the construction of an Acquisition Improvement, Developer shall notify the City Engineer in writing of such completion and shall prepare and execute a Notice of Completion for such Acquisition Improvement in the form prescribed by Section 8182 of the California Civil Code and shall record such notice in the Official Records of the County of San Diego. Developer shall cause its contractors to provide unconditional lien releases for such Acquisition Improvement. Notwithstanding the foregoing, City may waive the requirement for a Notice of Completion and lien releases if City determines that as of the date of payment of the Retained Increment of the Purchase Price for an Acquisition Improvement, title to such Acquisition Improvement or portion thereof satisfies the requirements for Acceptable Title (as hereinafter defined).

SECTION 7. Payment of Purchase Price.

(a) Amount of Purchase Price. The amount to be paid by the CFD for the Acquisition Improvements to be constructed by and acquired from Developer (the "Purchase Price") shall, as to each such Acquisition Improvement, (i) be determined by City in accordance with the provisions of this Section 7, (ii) equal the lesser of the cost or the value thereof, (iii) include the reasonable cost or value of eligible appurtenant public facilities, (iv) include the costs of the title insurance policy described in Section 9 (a), and (v) include all other costs of construction and incidental costs eligible under the Act and the Goals and Policies as a part of the cost of the Acquisition Improvements.

The costs of each Acquisition Improvement to be included in the Purchase Price of such Acquisition Improvement shall include the following:

- (i) the actual hard costs for the construction of the Acquisition Improvement, including labor, materials and equipment costs;
- (ii) the costs of grading related to the Acquisition Improvement;
- (iii) the costs incurred in designing, engineering and preparing the plans and specifications for the Acquisition Improvement;
- (iv) the costs of environmental evaluation and mitigation of or relating to the Acquisition Improvement;
- (v) fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Acquisition Improvement;
- (vi) costs of construction administration and supervision up to one and three quarters percent (1.75%) of the total cost of the Acquisition Improvement;
- (vii) professional costs associated with the Acquisition Improvement, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services, subject to the limitations established in the Goals and Policies; and

(viii) costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Acquisition Improvement.

In no event shall the cost or value of the construction of the Acquisition Improvements be deemed to exceed the construction contract prices set forth in the contracts and change orders approved by City (“Approved Change Orders”) pursuant to the applicable provisions of Exhibit “D” hereto, which is incorporated herein by this reference, or otherwise authorized pursuant to this Agreement.

Notwithstanding anything in this Section to the contrary, the City may elect, by written notice to the Authority and Developer, to have the audit and payment processes described in this Section 7 administered by the Authority’s third party/consultant, rather than City personnel.

(b) Incremental Payment of Purchase Price of an Acquisition Improvement. The Purchase Price for any Acquisition Improvement constructed by the Developer shall be payable in not to exceed two increments: (i) the “Base Increment” which shall be an amount equal to 75% of the audited, eligible costs as reflected in the written request for payment of the Base Increment submitted by the Developer and as approved by the Director of Development Services of the City, or his or her designee (the “DSD Director”) and shall not exceed 75% of the cost estimate set forth in Exhibit “B” for such Acquisition Improvement; and (ii) the “Retained Increment” which shall be an amount not to exceed the remaining, unpaid portion of the Purchase Price for such Acquisition Improvement determined pursuant to the provisions of (a) above.

(c) Requisition for Incremental Payment of Purchase Price of an Acquisition Improvement.

(i) Base Increment. The Developer may submit only one (1) written request to the DSD Director for the payment of the Base Increment for an Acquisition Improvement constructed by the Developer upon the substantial completion of the construction of such Acquisition Improvement in accordance with the approved Plans and Specifications. The criteria for determining “substantial completion” of each such Acquisition Improvement is described in Exhibit “C” and shall mean generally that construction, or work with respect to such Acquisition Improvement has progressed to the point where it is sufficiently complete so that such Acquisition Improvement can be utilized for the purpose for which it was intended. Substantial completion of such an Acquisition Improvement shall also mean that all components of such Acquisition Improvement are substantially complete, e.g., in the case of Acquisition Improvement including streets, the components are described in Exhibit “C.” Each Base Increment payment request must be in the form attached hereto as Exhibit “E,” which is incorporated herein by this reference, and conform to the requirements of (f) below. The request for payment of the Base Increment for an Acquisition Improvement shall be accompanied by a copy of the following documents related to the construction of such Acquisition Improvement: (1) each construction contract and copy of bid notice for such contract, (2) each change order, (3) each invoice submitted pursuant to such construction contracts, (4) evidence of payment of each such invoice such as copies of cancelled checks or other evidence of payment satisfactory to the City Engineer, and (5) written conditional lien releases executed by each applicable contractor, subcontractor and materialman in a form

satisfactory to the City Attorney of the City (the "City Attorney") for such Acquisition Improvement.

(ii) Retained Increment. The Developer may submit only one (1) written request to the DSD Director for the payment of the Retained Increment for an Acquisition Improvement in the form attached hereto as Exhibit "F," which is incorporated herein by this reference, upon the submission to the City Engineer of (1) as-built drawings or other equivalent plans and specifications for such Acquisition Improvement in a form reasonably acceptable to the City, (2) evidence that the Developer has posted a maintenance bond for such Acquisition Improvement as required by Section 5 hereinabove, (3) evidence of the satisfaction of the requirements of Section 9 hereinbelow directly related to such Acquisition Improvement and (4) written unconditional lien releases from all contractors, subcontractors and materialmen satisfactory to the City Attorney for such Acquisition Improvement. For any costs not included in the Developer's written request for payment of the Base Increment but requested for payment in the Retained Increment the request shall conform to the requirements of (f) below and also be accompanied by the following documents related to such additional costs of the construction of such Acquisition Improvement if not done so with the written request for payment of the Base Increment: (1) each construction contract, (2) each change order, (3) each invoice submitted pursuant to such construction contracts, and (4) evidence of payment of each such invoice such as copies of cancelled checks or other evidence of payment satisfactory to the DSD Director.

(d) Documentation. Any payment request submitted by Developer shall be properly executed and shall include copies of all supporting documents required by subsection (c)(i) or (c)(ii), as applicable.

(e) Review of Payment Request for an Acquisition Improvement. The DSD Director shall review each payment request and the supporting documentation accompanying such payment request. If the City DSD Director finds that any such payment request is incomplete, improper or otherwise not suitable for approval, the DSD Director shall inform Developer in writing within twenty (20) working days after receipt thereof, the reasons for his finding. Developer shall have the right to respond to this finding by submitting further documentation after receipt of the denial. The DSD Director shall review any further documentation received from the Developer in support of a payment request and inform Developer of his approval or denial of the payment request as supplemented in accordance with this Section within ten (10) working days after receipt of the supplemental documentation. A resubmittal of a payment request shall be deemed a new payment request for purposes of this Section.

Subject to the limitations set forth herein, costs incurred under a construction contract for an Acquisition Improvement entered into pursuant to the requirements of this Agreement and Approved Change Orders shall be deemed to be reasonable and, subject to the other provisions of this Agreement, shall be included in the Purchase Price for such Acquisition Improvement.

After his or her approval of each payment request, the DSD Director shall immediately forward a request to the Authority and CFD notifying the Authority and CFD of his or her approval of the payment request and requesting that such payment be made to the appropriate

payee. The CFD shall process any such request of the DSD Director pursuant to the applicable procedures of the Authority and shall make or authorize such payment pursuant to such procedures and subsection (h) below.

(f) Payment.

(i) Priority of Payment of Purchase Prices for Acquisition Improvements. The City and the Developer acknowledge and agree that the Purchase Prices of all Acquisition Improvements may exceed the aggregate amount of the Bond proceeds and special taxes which will be available for the payment of the Purchase Prices.

(ii) Timing of the Payment of the Purchase Price for an Acquisition Improvement. Subject to the limitations contained in (i) above and (iii) and (iv) below, the increment of the Purchase Price for each Acquisition Improvement shall be paid to Developer within thirty (30) days after the date of the DSD Director's approval of the payment request for any such increment; provided, however, no Retained Increment for any Acquisition Improvement shall be paid earlier than thirty five (35) days after the recording of a Notice of Completion for such Acquisition Improvement.

(iii) Source of Payment. The Purchase Price or any increment thereof for an Acquisition Improvement shall be payable to the Developer from (a) those proceeds of the sale of each series of Bonds deposited in the project fund (the "Project Fund") established pursuant to the indenture or fiscal agent agreement for the Bonds (the "Indenture") and (b) the Special Taxes of the CFD that have been levied directly to pay for Facilities and collected by the CFD, including prepayments allocable to Facilities (the "Available Special Taxes"). The funds deposited in the Project Fund and the Available Special Taxes shall be referred to as the "Available Amount."

The Authority agrees to levy the Special Taxes on Developed Property at 100% of the Assigned Special Tax rate pursuant to the Rate and Method until the earlier of (i) payment in full of all of the Facilities, or (ii) the issuance of the final series of Bonds, excluding Bonds issued for refunding purposes only, after which point the Authority shall levy Special Taxes to meet the Special Tax Requirement in the Rate and Method excluding Special Taxes to pay for Facilities directly (as those capitalized terms are defined in the Rate and Method). The Indenture shall also provide that all Available Special Taxes collected prior to the issuance of the final series of Bonds, excluding Bonds issued for refunding purposes only, shall be deposited in the Project Fund until all Facilities have been fully funded.

(iv) Withholding of Payment. In addition to the foregoing, the City shall have the right to withhold approval of a payment request for of the Purchase Price or any increment thereof of any Acquisition Improvement if the DSD Director reasonably determines that the Developer is not then in substantial compliance with all applicable conditions and obligations imposed upon the Developer hereunder or upon the Development Project pursuant to the land use entitlements approved by the City for the Development Project, including but not limited to, payment of all applicable fees, dedication of all applicable rights-of-way or other property and construction of all applicable public improvements.

The DSD Director shall provide written notice to the Developer of the decision to withhold any such approval and shall specify the reason for such decision. The notice shall specify such condition or obligation and what action will be necessary by the Developer to substantially comply with such condition or obligation. Upon the determination by the DSD Director that the Developer has substantially complied with the subject condition or obligation, the City shall forthwith provide any approval which has been withheld pursuant to the provisions of this paragraph.

SECTION 8. Audit. The authorized representatives of City shall have the right, upon two (2) days prior written notice to Developer and during normal business hours, to review all books and records of Developer pertaining to costs and expenses incurred by Developer in construction of the Acquisition Improvements.

SECTION 9. Ownership and Transfer of Acquisition Improvements. The conveyance of the Acquisition Improvements by Developer to City shall be in accordance with the following procedures:

(a) Acquisition Improvements Constructed on Land not Owned by City. As a condition to the payment of the Retained Increment of the Purchase Price, Developer shall cause an irrevocable offer of dedication to be made to City or an outright grant of a fee interest or easement interest as appropriate, in the sole discretion of the City of the appropriate right, title and interest in and to the portion of the applicable property owned by the Developer related to the applicable Acquisition Improvement, including any temporary construction or access easements. Developer, whether or not it is the entity constructing the Acquisition Improvements, agrees to execute and deliver to the City the documents required to complete the transfer of Acceptable Title for property owned by the Developer upon or within which such Acquisition Improvements are to be located. For purposes of this Agreement, the term "Acceptable Title" shall mean title to the portion of the property to be conveyed free and clear of all taxes, liens, encumbrances, assessments, easements, leases, whether any such item is recorded or unrecorded, except (i) non-delinquent taxes and assessments and (ii) those non-monetary encumbrances and easements which are reasonably determined by the City not to interfere with the intended use of the portion of the property. As a further condition to the payment of the Retained Increment of the Purchase Price for any Acquisition Improvement, Developer at its sole initial cost and expense, subject to reimbursement pursuant to Section 7, shall cause to be issued a policy of title insurance for such portion of the property in an amount not to exceed the Purchase Price and in the form normally required by City in connection with the dedication of land for subdivision improvements and containing such title endorsements as may be reasonably requested by City. City's final acceptance of the portion of the property and the Acquisition Improvements constructed thereon shall not be unreasonably withheld or delayed.

SECTION 10. Grading and Subdivision Acquisition Improvement Bonds. Except as provided below, Developer shall be required to post or cause the posting of bonds or other security acceptable to the City to guarantee completion of the Acquisition Improvements in accordance with City's standard subdivision requirements and conditions of approval of the Development Project (the "Conditions of Approval"). Labor and materials bonds shall also be required to be provided by the Developer's contractor for all Acquisition Improvements to be constructed under this agreement. Such bonds shall name the City of Chula Vista as additional

obligee and shall remain in effect until the final acceptance of the Acquisition Improvements by the City Engineer. The presence of Bond proceeds shall not relieve the Developer of requiring this obligation of the Developer's contractor.

Performance and labor and material bonds for specific Acquisition Improvements shall not be required or may be released if: (1) such Acquisition Improvements constitute a portion of the required subdivision improvements, (2) Bond proceeds equal to 125% of the estimated cost to construct or acquire such Acquisition Improvements are available and set aside for such purpose, and (3) the Acquisition Improvements are to be constructed or acquired entirely with the proceeds of the Bonds. Provided that conditions (1) and (2) are satisfied, if an Acquisition Improvement is to be constructed or acquired only in part with the proceeds of the Bonds, performance and labor and material bonds shall not be required for that portion of the Acquisition Improvements to be so constructed or acquired except with respect to the portion that will not be acquired or constructed with Bond proceeds. In the event that the Bond proceeds that are available and may be set aside to fund the cost to construct or acquire an Acquisition Improvement are less than 125% of the estimated cost thereof, the Developer shall be required to provide a performance and labor and material bond or other security satisfactory to the City Engineer and the City Attorney in the amount of such deficiency. City will cooperate with Developer in the termination or exoneration of any performance and labor and material bonds assuring completion of Acquisition Improvements for which bonds have been sold. The City Engineer shall be the sole judge of determining release of such bonds.

SECTION 11. Indemnification by Developer. Developer shall defend, indemnify and hold harmless the City, its elected and appointed officers, agents and employees (the "Indemnified Parties"), from and against any and all claims, losses, liabilities, damages, including court costs and reasonable attorneys' fees by reason of, or resulting from, or arising out of the financing, design, engineering, solicitation of bids, award of contracts, administration of contracts and construction of the Acquisition Improvements by the Developer, its employees, agents, independent contractors and/or representatives; provided that any claims for personal injury or property damage which relate to the Improvements shall be limited to those arising out of personal injury or property damage caused by actions or omissions by Developer or Developer's employees, agents, independent contractors or representatives which occurred during the period prior to the transfer of title to the Acquisition Improvements by City, whether or not a claim is filed prior to the date of acceptance of the Acquisition Improvements. Nothing in this Section 11 shall limit in any manner the rights of the City against any of the architects, engineers, contractors or other consultants employed by the Developer which has performed work in connection with construction or financing of the Acquisition Improvements. Notwithstanding the foregoing, Developer shall have no obligation to defend, indemnify or hold harmless the Indemnified Parties from and against any claims, liabilities, losses or damages (including court costs and attorneys' fees) which result from or arise out of the sole negligence or willful misconduct of an Indemnified Party.

Except as set forth in this Section 11, no provision of this Agreement shall in any way limit the extent of the responsibility of Developer for payment of damages resulting from the operations of the Developer, its agents, employees or contractors.

SECTION 12. Obligation of City. Neither the City nor the CFD has a legal or financial obligation to construct the Acquisition Improvements. All costs incurred for actual construction of the Acquisition Improvements, including all incidentals thereto, shall be borne by Developer, and the obligations of the City and CFD are limited to the acquisition of the Acquisition Improvements pursuant to the provisions of this Agreement.

SECTION 13. Failure by Developer to Construct Acquisition Improvements. At any time following commencement of the construction of any Acquisition Improvements by the Developer the City determines that such construction is not progressing within a reasonable time in accordance with the Conditions of Approval or the Developer fails to demonstrate a continuing ability to complete the construction of such Acquisition Improvement in accordance with the Conditions of Approval, the City may give written notice of such failure of performance to the Developer. Developer shall have sixty (60) days from the date of receipt of such notice to either (i) cure such failure of performance by demonstrating to the satisfaction of the City during such cure period reasonable progress in the construction of the Acquisition Improvement and a continuing ability to complete the construction of such Acquisition Improvement in accordance with the Conditions of Approval or (ii) reasonably demonstrate that such failure of performance is due to circumstances or conditions beyond Developer's reasonable control ("Force Majeure") including, without limitation, the City's actions, omissions or inaction which result in a delay of performance by Developer, labor disputes, acts of God, war, riots, insurrections, civil commotions, moratoriums, inability to obtain labor or materials or reasonable substitutes for either, fire, unusual delay in transportation, and adverse weather conditions. Should Developer fail to reasonably demonstrate such reasonable progress or such continuing ability to complete the construction of such Acquisition Improvement or Force Majeure, the obligation of the City to pay the Purchase Price for the acquisition of such Acquisition Improvement pursuant to this Agreement may be terminated by the City by providing ten (10) days written notice to the Developer. Upon termination, the City may in its sole discretion then proceed to advertise and bid the balance of the construction of such Acquisition Improvement, and there will be no further obligation on the part of the City for payment of the Purchase Price for such Acquisition Improvement due to Developer pursuant to this Agreement.

In the event that the City chooses not to advertise and bid the balance of the construction of any such Acquisition Improvement following such a termination, any monies remaining in the Project Fund and set aside for the acquisition of such Acquisition Improvement shall be transferred to the redemption fund established by the Indenture and used to call outstanding Bonds.

SECTION 14. Notice of Special Tax. Developer, or the successor or assigns of the Developer, shall provide written notice to all potential purchasers of lots in the form required pursuant to Government Code Section 53341.5 and/or such additional requirements as may be established by the City, so advising the potential purchaser of the fact of the CFD, with said document being executed by the potential purchaser. Such notice shall be provided to the potential purchaser a reasonable time before the potential purchaser becomes contractually committed to purchase the property so that the potential purchaser may knowingly consider the impact of the special tax in the decision to purchase the property. A copy of all such notices executed by actual purchasers shall be provided to the DSD Director.

SECTION 15. Agreement Contingent. The City may, at its option, suspend the performance of its obligations under this Agreement if any legal challenge is filed relating to the validity or enforceability of this Agreement. The obligations of the City and CFD hereunder shall be reinstated upon the entry of a final judgment in any such proceedings upholding the validity and enforceability of the Agreement. In the event that a final judgment or other final and non-appealable resolution is entered invalidating or declaring unenforceable this Agreement, the City and CFD may, at their option, terminate this Agreement.

SECTION 16. Limitation of Aggregate Taxes and Assessments. Owner agrees to include in any future agreement to sell all or any portion of the property to any person or entity for the purpose of constructing and marketing owner-occupied residential dwelling units (each, a “Merchant Builder”) provisions requiring the inclusion of the following “escrow instructions” in all sales by such Merchant Builder to residential home owners.

(a) At or prior to the close of each such escrow with a residential homeowner, the escrow company shall apply a “calculation formula” previously approved by the DSD Director and deposited with the escrow company by the Merchant Builder to determine the aggregate of all annual ad valorem property taxes, all special taxes authorized to be levied to finance the construction or acquisition of public facilities and all assessment installments authorized to be levied to finance the construction or acquisition of public facilities (the “Total Annual Taxes and Assessments”) applicable to the parcel subject to such escrow (the “Applicable Parcel”).

(b) If the Total Annual Taxes and Assessments exceed 2% of the sales price of the Applicable Parcel, the Escrow Company will make immediate written demand upon the Merchant Builder for deposit into the escrow of the funds necessary to partially prepay the special tax obligation for the CFD or any other community facilities district so that the Total Annual Taxes and Assessments will thereafter be equal to or less than 2% of the sales price of the Applicable Parcel. Such funds must be received by the escrow company prior to the close of escrow of the sale of the Applicable Parcel. The calculation of the prepayment amount for the CFD shall be in accordance with the method of prepayment of special tax as set forth in the rate and method of apportionment of special taxes approved by the qualified electors of the CFD or the other community facilities district for which the special taxes are being partially prepaid. Upon closing of such escrow, the amount so deposited by the Merchant Builder pursuant to this escrow instruction shall be sent by the escrow company to the Director of Finance, together with written instructions that such amount is to be used to partially prepay the special tax obligation of the Applicable Parcel for the CFD or shall be sent to the other community facilities district for which the special tax obligation has been prepaid with similar written instructions.

The provisions of this Section 16 related to sales by Merchant Builders to residential homeowners shall also apply to any sale by Owner of a parcel to a residential homeowner.

In addition to any other remedy provided for by law or in equity, the City may enforce the provisions of this Section 16 by an action for specific performance or injunctive relief or both.

SECTION 17. Relationship to Public Works. This Agreement is for the construction and acquisition of certain Acquisition Improvements by City and is not intended to be a public works

contract. In performing its obligations under this Agreement, Developer is an independent contractor and not the agent of City. Neither City nor the Authority shall have any responsibility for payment to any contractor or supplier of Developer. Notwithstanding the foregoing, Developer may be subject to certain public contract requirements as provided in Section 3 of this Agreement.

SECTION 18. Deposit and Use of Available Amount.

(a) Project Fund Held by Authority. Prior to the issuance of the first series of Bonds, Available Special Taxes collected by the Authority (including from prepayments of Special Taxes) shall be deposited in the Project Fund established by the Authority for the CFD and may be disbursed to pay or reimburse the costs of the Facilities in accordance with this Agreement. All funds in the Project Fund shall be considered a portion of the Available Amount, and upon the issuance of the first series of Bonds for the CFD, the Project Fund shall be transferred to the trustee or fiscal agent for the Bonds (the "Trustee") to be held in accordance with the Indenture.

(b) Issuance of Bonds - Project Fund Held by Trustee. Developer, the City and the Authority agree to reasonably cooperate with one another in the completion of the financing through the issuance of the Bonds in one or more series for the CFD in accordance with the California Municipal Finance Authority Policies and Procedures for Community Facilities Districts (<http://www.cmfa-ca.com/bold/cmfa-cfd-policies-and-procedures/>). Upon the issuance of the first series of Bonds for the CFD, the Authority will cause the Trustee to establish and maintain a separate Project Fund for the purpose of holding all funds derived from each series of Bonds for the financing of the Facilities. A separate Tax Exempt Account and Taxable Account of the Project Fund may be established for each series of Bonds into which the proceeds of tax exempt Bonds and taxable Bonds, if any, shall be deposited. All earnings on amounts in a Project Fund shall remain in such Project Fund for use as provided herein and pursuant to the applicable Indenture. Money in each and every Project Fund shall be available to respond to delivery of Payment Requests for the Base Increment or Retained Increments in the form attached hereto as Exhibits "E" and "F," respectively, with respect to Acquisition Improvements, and a Disbursement Request Form (defined below) relating to City Fees to be paid to the City, or its designee, or the Developer, or its designee, from the Available Amount pursuant to such forms. Upon completion of the Project and the funding of all Facilities, any remaining funds in each Project Fund (less any amount determined by the City as necessary to reserve for claims against the Project Fund) shall be applied by the Authority to call Bonds or to reduce Special Taxes as the Authority shall determine.

(c) City Disbursement from Project Fund for City Fees. Following the Developer's submittal of a payment request to FAI for a prepayment of City Fees pursuant to the Financed Fees Payment Request Procedures attached hereto as Exhibit "H," moneys on deposit in the Project Fund shall be disbursed pursuant to written disbursement requests of the City, in substantially the form attached hereto as Exhibit "G" ("Disbursement Request Form (City Fees)") and executed by the City Manager or DSD Director, or any designee of the foregoing (each, an "Authorized Officer"), which disbursements shall be used for the payment of City Fees. In the event of such a disbursement, the City shall establish a Trust Account relating to each applicable City Fee for the benefit of the Developer or the Developer's designees. In addition, City Fees paid previously with respect to the Project shall be reimbursed to the Developer through the Developer's

submittal of a payment request pursuant to the procedures set forth in the Financed Fees Payment Request Procedures attached hereto as Exhibit "H."

The Authority and its designees, including the Trustee holding funds in the Project Fund, may conclusively rely on such requisitions for purposes of making such disbursements. All disbursements from the Project Fund to the City shall be made by wire transfer of immediately available funds or by check payable to the City's bank account number at a bank located within the United States on file with the Authority as part of the BOLD program, unless another method of payment is requested in writing by the City.

SECTION 19. Conflict with Other Agreements. Except as specifically provided herein, nothing contained herein shall be construed as releasing Developer from any condition of development or requirement imposed by any other agreement with City. To the extent the provisions of this Agreement conflict with any provisions of such other agreement, the provisions of such other agreement shall control.

SECTION 20. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval, discretion or acceptance of any party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard.

SECTION 21. Entire Agreement; Amendment. This Agreement and the agreements expressly referred to herein contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understandings, oral or written, pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified, waiver, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

SECTION 22. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

Authority: California Municipal Finance Authority
2111 Palomar Airport Road, Suite 320
Carlsbad, CA 92011
Attn: Edward J. Becker

Administrator: Francisco & Associates, Inc.
Attn: Ed Espinoza
5927 Balfour Court, Suite 109
Carlsbad, CA 92008

Developer: Homefed Village III, LLC
c/o Otay Land Company, LLC
1903 Wright Place, Suite 220

Carlsbad, CA 92008
Attn: Curt Smith

With a copy to:

John P. Yeager, Esq.
O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612

City: City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Manager

With a copy to:

276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Attorney

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

SECTION 23. Severability. If any provision 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.

SECTION 24. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Developer may not assign its rights or obligations hereunder except upon written notice to City and the Authority within ten (10) days of the date of such assignment indicating the name and address of the assignee. No other Developer of property within the CFD shall have any right to receive payments with respect to any Facilities unless such right has been expressly assigned to such Developer by Developer in writing. Upon such notice and the assumption by the assignee of the rights, duties and obligations of the Developer arising under or from this Agreement, Developer shall be released by City from all future duties or obligations arising under or from this Agreement.

SECTION 25. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California, Additionally, this Agreement and the construction of the Acquisition Improvements shall be subject to all City ordinances and regulations relating to the requirement of improvement agreements, land division, improvement security or other applicable development requirements.

SECTION 26. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights

under the default of any other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by any other party with the terms of this Agreement thereafter.

SECTION 27. Singular and Plural; Gender. As used herein, the singular of any work includes the plural, and terms in the masculine gender shall include the feminine.

SECTION 28. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

SECTION 29. Construction of Agreement. This Agreement has been reviewed by legal counsel for the City, the Authority and the Developer and shall be deemed for all purposes to have been jointly drafted by the City, the Authority and the Developer. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The language in all parts of this Agreement, in all cases, shall be construed as a whole and in accordance with its fair meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives of the parties hereunder. The captions of the sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

SECTION 30. Recitals; Exhibits. Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

SECTION 31. Authority of Signatories. Each signatory and party hereto hereby represents and warrants to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable such party to enter into this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

Signature Page to
Acquisition/Financing Agreement by and between
the City of Chula Vista, California Municipal Finance Authority, Community Facilities District
No. 2022-12 (City of Chula Vista Otay Ranch Village 3 Phase II)

IN WITNESS WHEREOF, City, Authority and Developer have executed this Agreement as of the Effective Date thereby indicating that they have read and understood same and indicate their full and complete consent to its terms.

“CITY”

CITY OF CHULA VISTA

MARIA V. KACHADOORIAN,
CITY MANAGER

APPROVED AS TO FORM:

GLEN R. GOOGINS,
CITY ATTORNEY

“DEVELOPER”

HOMEFED VILLAGE III, LLC, a Delaware
limited liability company

By: _____
Name: _____
Its: _____

“AUTHORITY”

CALIFORNIA MUNICIPAL FINANCE
AUTHORITY, a joint powers authority

By: _____
Name: _____
Its: Authorized Signatory

EXHIBIT "A"
CFD BOUNDARY MAP

EXHIBIT “B”

DESCRIPTION OF FACILITIES

A. CITY FEES

1. Salt Creek Sewer Basin Fee
2. Parkland Acquisition and Development Fee (“PAD”)
3. Public Facilities Development Impact Fees (“PFDIF”)
4. Possible Future Fee for Vehicle Miles Traveled (“VMT”)

B. ACQUISITION IMPROVEMENTS

1. **Main Street – (TDIF Facility) – Estimated Cost \$14,000,000**

City TDIF Road: 60A

Limits: From Heritage Road to Wolf Canyon Bridge (6-lane prime arterial)

Includes: Grading, drainage, surface improvements, landscape and irrigation, traffic signals, environmental mitigation, associated soft costs

EXHIBIT “C”

SUBSTANTIAL COMPLETION CRITERIA FOR ACQUISITION IMPROVEMENTS

General:

1. Substantial completion of an Acquisition Improvement for purposes of determining the eligibility of such Acquisition Improvement for the payment of the “Base Increment” therefore shall mean that the construction or work with respect to such Improvement, including each component of such Improvement, has progressed to the point where it is sufficiently complete so that it can be utilized for the purpose for which it was intended. Substantial completion criteria for each Acquisition Improvement or component of an Improvement is further described below.
2. Payment for the “Retained Increment” of the Purchase Price for an Acquisition Improvement shall be in accordance with Section 7, paragraph (c)(ii) and shall be made after submittal of a payment request form, as-built plans and such other documentation as is required pursuant to Section 7 paragraph (c)(ii), posting of maintenance bonds, and submittal of lien release evidence.

Substantial Completion Criteria:

- A. Grading: Grading shall be deemed to be complete upon (1) completion of all preliminary grading work (mobilization, site clearing, remedial grading, overexcavation, installation of subdrainage systems) (2) certification of compaction by the geotechnical engineer, quantity verification by the civil engineer, and confirmation by the Field Inspector and (3) installation of all surface grading improvements (brow ditches, retaining walls, slope protection and similar improvements) and the certification thereof by the geotechnical engineer and confirmation by the Field Inspector.
- B. Sewer: Sewer construction shall be deemed substantially complete upon the installation, flushing, and testing of sewer main line, laterals, cleanouts, manholes, and all other appurtenances of the sewer system as shown on the approved plans and specifications therefore and in accordance with the City standard plans and specifications and the verification of such installation by the civil engineer and confirmation of such installation by the Field Inspector.
- C. Storm Drain: Box culverts and headwall structures shall be deemed substantially complete upon installation as shown on the approved plans and specifications therefore and in accordance with the City standard plans and specifications and verification of such installation by the civil engineer, and confirmation of such installation by the Field Inspector.
- D. Drainage Facilities: Drainage structures including energy dissipation devices (rip-rap, drop structures, cut-off walls, etc.), drainage diversion structures, facilities required as part of the environmental mitigation measures, and other drainage channel appurtenances including drainage pipes connecting the brow ditches to the channel, shall be deemed substantially complete for payment of the Base Increment upon the installation thereof as shown on the

approved plans and specifications therefore and in accordance with City standard plans and specifications and the verification of such installation by the civil engineer and confirmation of such installation by the Field Inspector.

- E. Dry Utility Backbone System: Dry utilities (electric, gas, telephone, CATV) shall be deemed substantially complete upon the installation of the conduits, junction boxes, payment of utility fees, and written acceptance of the facilities by the utility companies.
- F. Roadway Pavement and Roadway Drainage System: Roadway pavement and drainage improvements shall be deemed substantially complete upon the installation thereof as shown on the approved improvement plans therefore and in accordance with City standard plans and specifications and confirmation of such installation by the Field Inspector of all storm drain pipes, catch basins, drainage inlets and cleanouts for the roadway storm drain system, installation of roadway base material, concrete curb and gutter, and AC pavement including the preparation of the subgrade and base material.
- G. Other Street Surface Improvements: Street surface improvements including street lights, traffic signals and conduits, signal interconnect, street name signs, roadway signing and striping, and appurtenances shall be deemed substantially complete when installed as shown on the improvement plans and in accordance with City standard plans and specifications and upon confirmation of such installation by the Field Inspector.
- H. Street Landscape Irrigation and Planting: Parkway landscaping within the roadway right of way including planting, irrigation, concrete sidewalks, median maintenance strip, pedestrian ramps, channel maintenance roads and all associated subgrade and base material preparation shall be deemed substantially complete upon installation thereof as shown on the approved improvement plans therefore and in accordance with City standard plans and specifications and confirmation of such installation by the Field Inspector.
- I. Slope Landscaping: Landscape planting and irrigation improvements for the slopes outside of the roadway and channel right of way and the regional trail (DG) and fencing shall be deemed substantially complete upon installation thereof as shown on the approved improvement plans therefore and in accordance with City standard plans and specifications and confirmation of such installation by the Field Inspector.

Exhibit "D"

Design, Bid, Contract and Change Order Requirements

1. General

These requirements shall be applied to all Acquisition Improvements proposed to be constructed by the Developer and subsequently acquired by the City through California Municipal Finance Authority CFD No. 2022-12 (City of Chula Vista-Otay Ranch Village 3 Phase II). Except as expressly provided otherwise in the body of this Agreement itself, any deviation from these requirements **must be approved in writing in advance by the DSD Director**.

References to the DSD Director means the DSD Director or his or her designee.

The City reserves the right to make the final determination of cost of the Acquisition Improvements to be acquired in accordance with this Agreement.

2. Design Phase

A. Acquisition Improvements shall be designed in accordance with City standards and regulations.

B. Bidding Documents. Two complete sets of bidding documents, including improvement plans, general provisions, and bid proposal forms have been or shall be submitted to the Development Services Department of the City for review and approval within 15 working days of submittal. Advertising for bids shall not have taken place or shall not take place until the bidding documents are approved in writing by the City. This procedure shall have been followed or shall be followed for each contract proposed to be advertised. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements:

1. Unless impractical due to the nature of the Acquisition Improvement, the bid proposal shall be unit priced rather than lump sum. A.C. pavement, base and sub-base shall be bid on a square foot per inch thickness basis.

2. The bidding documents shall require the bidder/contractor to provide the following bonds:

- a. Bid Bond - 10% of the amount of the bid.
- b. Material and Labor Bond - 50% of the contract amount.
- c. Performance Bond - 100% of the contract amount.

The Contractor posted or shall post performance and labor and material bonds for all improvements as part of the bid. The City shall be named as additional obligee with the right to call such bonds if needed. Such bonds shall remain in effect until

such time as all improvements are completed and accepted by the City Engineer. The City Engineer shall be the sole judge in determining the release of such bonds.

3. The bidding documents required or shall require the successful bidder to provide evidence of comprehensive or commercial general public liability insurance in the amount of at least \$1,000,000 prior to the award of the contract.

4. The contractor is required to pay prevailing wages. Developer shall advertise the Project as requiring the payment of prevailing wage and include all provisions in the advertisement and contract documents as required by the California Department of Industrial Relations (“DIR”).

5. The bidding documents clearly stated or must clearly state the time, date, and place where bids are to be submitted and opened.

6. The bidding documents clearly stated or 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 Engineer.

3. Bidding Phase

A. The Notice inviting Sealed Bids was published or shall be published in the Chula Vista Star News and the San Diego Daily Transcript. The notice inviting bids stated or shall state where bidding documents are available.

B. The bidding period following the advertisement of the Notice Inviting Sealed Bids was or shall be a minimum of 14 calendar days.

C. Developer provided or shall provide complete sets of bidding documents to all contractors, subcontractors, or suppliers requesting them. A reasonable price may be charged for bidding documents.

D. Developer kept or shall keep a log of all persons obtaining bidding documents, and their mailing address.

E. Addenda were mailed or shall be mailed by first class mail to all bidding document holders and the DSD Director. If an addendum is required within five working days of the noticed bid opening date, the bid opening date shall be extended.

F. Submitted bids were or shall be in sealed envelopes.

G. Bids were not or shall not be accepted after the stated time for submission.

- H. Bid opening was or shall be conducted by the Developer at the Developer's place of business or other site mutually acceptable to the Developer and DSD Director.
- I. Sealed bids were or shall be opened and read aloud immediately following the submission time. A City representative was or shall be invited to attend the bid opening.
- J. Conditioned bids, unless the bid proposal lists them for all to bid on, were not accepted or shall not be accepted.
- K. The bid proposals conformed or shall conform to all state and local laws governing the listing of subcontractors and suppliers.
- L. The arithmetic of the two lowest bid proposals received was or shall immediately be checked for errors.
- M. A tabulation of all bids received was or shall be provided to the DSD Director within five working days of the bid opening.
- N. Award was or shall be made to the lowest responsible bidder within a reasonable period of time following approval by the DSD Director.
- O. A preconstruction meeting was or shall be held with the contractor prior to beginning the work. A City representative was or shall be invited to attend the meeting.
- P. The Notice to Proceed was or shall be issued within a reasonable period of time following the contract execution.

4. Construction Phase

- A. The City was or shall be provided a copy of the construction schedule.
- B. Developer did or shall require the contractor to conduct weekly construction status meetings to which a City representative shall be invited.
- C. Any additional costs incurred for the benefit of the Developer, such as accelerating the construction schedule, shall not be eligible for public financing unless previously approved by the DSD Director.
- D. Any additional construction costs incurred due solely to delays caused by the Developer shall not be eligible for public financing.
- E. All contracts and construction related records shall be available to the City as and when required for the final determination of eligible costs for the public financing. This shall include trip tickets and other confirmations of material delivered to the Improvement.

5. Change Orders

- A. All change orders shall be fully documented and be in a format consistent with the original bid items (i.e., show units, unit costs, extensions and total costs). The DSD Director, in his/her sole discretion shall determine the eligibility of each change order for inclusion in the Purchase Price for an Acquisition Improvement.
- B. Chula Vista Municipal Code (“CVMC”) Section 2.56.160(H)(6), provides that all or portions of the developer-performed public work ordinance may be waived where “the waiver is in the best interest of the public after consideration of factors including, without limitation, project costs, time for completion, and other relevant criteria, and (ii) appropriate safeguards are in place to protect the public interest.” Developer has requested and the City Council has approved a post-award waiver pursuant to CVMC 2.56.160(H)(6) for change orders for Acquisition Improvements entered into prior to September [28, 2021] and approved by the Field Inspector (the “Post-Award Waiver Change Orders”). The Post-Award Waiver Change Orders shall be eligible for inclusion in the Purchase Price subject to 5.A. above.
- C. The aggregate of all change orders for the Acquisition Improvements shall not increase the Purchase Price thereof so as to cause such Purchase Price to exceed the cost estimate for such Acquisition Improvement as set forth in Exhibit B by more than 25% without City Council approval. This modification of the requirements of CVMC Section 2.56.160(H)(3)(b) is made pursuant to CVMC Section 2.56.160(H)(5).
- D. Change orders that the Developer does not wish to include in the Purchase Price for an Acquisition Improvement do not require City approval, provided that they (i) result in no additional maintenance or overhead costs to the City; (ii) result in no material delay to the completion date; and (iii) result in no material modifications to the design or construction.
- E. Negotiated set price change orders are acceptable where most of the items of work in the change order have unit prices from the bids. Where change orders are for work that does not have unit prices for a substantial portion of the work contained within the bids, time and materials change orders are preferred.
- F. Failure to comply with the provisions herein may, in City’s sole discretion, result in a waiver of all claims for additional payments, bond drawdowns, or development credits to Developer in connection with such change order.

EXHIBIT “E”

**CALIFORNIA MUNICIPAL FINANCE AUTHORITY
Community Facilities District No. 2022-12 (City of Chula Vista Otay Ranch
Village 3 Phase II)**

**Base Increment
Payment Request No. _____**

The undersigned (the “Developer”) hereby requests payment in the total amount of \$ _____ for the Base Increment for the Acquisition Improvement (as defined in the Acquisition/Financing Agreement (the “Agreement”)) by and among the City of Chula Vista (the “City”), the California Municipal Finance Authority (the “Authority”) and Developer and described in Exhibit “B” to the Agreement, all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby certifies, represents and warrants to the City as follows:

- A. He/she is a duly authorized representative or signatory of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth herein.
- B. The Acquisition Improvement that is the subject of this Payment Request has been substantially completed in accordance with Exhibit “C” to the Agreement.
- C. This request for payment of the Base Increment for the Acquisition Improvement has been calculated in conformance with the terms of the Agreement. All costs for which payment is requested hereby are eligible costs (as permitted in the Agreement) and have not been inflated in any respect. The Base Increment for which payment is requested has not been the subject of any prior payment request paid by the CFD.
- D. All items have been clearly delineated as DIF/Non-DIF eligible (all DIFs) and detailed backup and cost breakdown is provided supporting each item.
- E. Supporting documentation (such as third-party invoices, change orders and checks) is attached with respect to each cost for which payment is requested.
- F. The Acquisition Improvement for which payment is requested was constructed in accordance with the requirements of the Agreement.
- G. Developer is in compliance with the terms and provisions of the Agreement.
- H. No mechanics liens or other encumbrances have attached, or to the best knowledge of Developer, after due inquiry, will attach to the Acquisition Improvement.
- I. A cop(ies) of the letter(s) of unconditional lien release for the Acquisition Improvement for which payment is requested is included this request. Alternatively, a copy of a letter of conditional lien release for the Acquisition Improvement for which payment is requested together with a letter from the contractor(s) stating that they have

been paid in full by the Developer for the Acquisition Improvement for which payment is requested is also included in this request.

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

DEVELOPER:

Dated: _____

CITY

Payment Request Approved for Submission to
Director of Finance

Director of Development Services
Dated: _____

ATTACHMENT 1

SUMMARY OF ACQUISITION IMPROVEMENTS
TO BE ACQUIRED AS PART OF PAYMENT REQUEST NO. _____

| <u>Improvement</u> | <u>Purchase price</u> | <u>Base Increment</u> | <u>Retained Increment</u> | <u>Disbursement Requested</u> |
|--------------------|-----------------------|-----------------------|---------------------------|-------------------------------|
| | | | | |

[List here all Acquisition Improvements for which payment is requested,
and attach supporting documentation]

EXHIBIT “F”

**CALIFORNIA MUNICIPAL FINANCE AUTHORITY
Community Facilities District No. 2022-12 (City of Chula Vista Otay Ranch
Village 3 Phase II)**

**Retained Increment
Payment Request No. _____**

The undersigned (the “Developer”) hereby requests payment in the total amount of \$_____ for the Retained Increment of the Purchase Price of an Acquisition Improvement (as defined in the Acquisition/Financing Agreement by and among the City of Chula Vista (the “City”), the California Municipal Finance Authority (the “Authority”) and Developer and described in Exhibit “B” to the Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby certifies, represents and warrants to the City as follows:

- A. He/she is a duly authorized representative or signatory of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth herein.
- B. Developer has submitted or submits herein to the City, if applicable, as-built drawings or similar plans and specifications for the Acquisition Improvement and such drawings or plans and specifications, as applicable, are true, correct and complete.
- C. The Purchase Price for the Acquisition Improvement has been calculated in conformance with the terms of the Agreement. All costs for which payment is requested hereby are eligible costs (as permitted in the Agreement) and have not been inflated in any respect. The Retained Increment for which payment is requested has not been the subject of any prior payment request paid by the CFD.
- D. All items have been clearly delineated as DIF/Non-DIF eligible (all DIFs) and detailed backup and cost breakdown is provided supporting each item.
- E. Supporting documentation (such as third-party invoices, change orders, lien releases and checks) is attached with respect to each cost for which payment is requested.
- F. The Acquisition Improvement for which payment is requested was constructed in accordance with the requirements of the Agreement.
- G. Developer is in compliance with the terms and provisions of the Agreement.
- H. No mechanics liens or other encumbrances have attached, or to the best knowledge of Developer, after one inquiry, will attach to the Acquisition Improvement.

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

DEVELOPER:

Dated: _____

CITY

Payment Request Approved for Submission to
Director of Finance

Director of Development Services
Dated: _____

ATTACHMENT 1

SUMMARY OF ACQUISITION IMPROVEMENTS
TO BE ACQUIRED AS PART OF PAYMENT REQUEST NO. _____

| <u>Improvement</u> | <u>Purchase price</u> | <u>Base Increment</u> | <u>Retained Increment</u> | <u>Disbursement Requested</u> |
|--------------------|-----------------------|-----------------------|---------------------------|-------------------------------|
| | | | | |

[List here all Acquisition Improvements for which payment is requested,
and attach supporting documentation]

EXHIBIT "G"

DISBURSEMENT REQUEST FORM (CITY FEES)

To:

California Municipal Finance Authority
2111 Palomar Airport Road, Suite 320
Carlsbad, California 92011
Attention: Travis Cooper
Email: tcooper@cmfa-ca.com
Tel: (760) 795-9185

Re: **BOLD Program - Request for Disbursement of Bond Proceeds**
Community Facilities District No. 2022-12 (City of Chula Vista – Otay Ranch
Village 3 Phase II)

The undersigned, a duly authorized officer of the City of Chula Vista (the "City") hereby requests a disbursement from the [Taxable/Tax Exempt] Account of the Project Fund set forth below, and, if the disbursement is to be made from the Tax Exempt Account, certifies that the amounts of development impact fees financed thereby and listed below have been or will be spent by the City for public capital improvements as of the date indicated below or within [__] days/months thereafter

| Project Fund | Account | Amount(s) |
|---|----------------|------------------|
| Community Facilities District No. 2022-12 | | \$ |

Total:

Wiring Instructions: _____

The undersigned hereby additionally certifies as follows:

1. [Tax-Exempt Only] These funds have been or will be used to acquire and/or construct capital improvements, and this disbursement is not being made for the purpose of reinvestment.

2. [Tax-Exempt Only] None of the expenditures for which payment is requested have been reimbursed previously from other sources of funds.

3. If the total amount above is greater than the funds held by the Authority on behalf of the City in the Account identified above, the Authority is authorized to pay only that portion of the amount request equal to such held funds and to pay the remainder when sufficient additional funds are deposited in the applicable Account.

4. The amounts being disbursed pursuant to this request are being used to finance or refinance certain public infrastructure and facilities, including certain financing and administrative costs (the "City Infrastructure"). City will own, and for the entire useful life of such City Infrastructure reasonably expects to own, all of such City Infrastructure.

5. [Tax-Exempt Only] To the extent any of such City Infrastructure is sold to an entity that is not a state or local government City, City will seek the advice and approval of bond counsel to the Authority for the BOLD program prior to any such sale. City will not allow any of such City Infrastructure to be used (for example, by lease or other contract) in the trade or business of any nongovernmental persons (other than in their roles as members of the general public). All of such City Infrastructure will be used in the performance of essential governmental functions of City or another state or local government City. The average expected useful life of such City Infrastructure is at least 5 years. The representations and covenants contained in this paragraph are intended to support the conclusion that the interest paid on the bonds issued to finance the City Infrastructure is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and are not required for disbursements to be made from the Taxable Account of the Project Fund.

Dated: _____

CITY OF CHULA VISTA

Signature: _____

Print Name: _____

EXHIBIT “H”

FINANCED FEES PAYMENT REQUEST PROCEDURES

Francisco & Associates, Inc., (FAI) has been retained by the California Municipal Finance Authority (CMFA) to assist with the administration of the BOLD Program bond proceeds. The following are the procedures in place for the processing of payment requests for eligible Financed Fees.

- 1.) The Developer shall submit all payment requests with supporting documentation directly to FAI to expedite the audit process.
- 2.) Once a payment request is received, FAI will conduct an initial audit to determine if the payment request package is complete. The initial review will determine if the following essential elements are included:
 - a. Payment Request Form with completed Attachment 1 (see attached)
 - b. Identification of fees for prepayment to the City or for reimbursement
 - c. Invoices, receipts, worksheets or other evidence of costs
 - d. Proof of payment
- 3.) If any essential element has been omitted, FAI will prepare a letter to the Developer deeming the payment request incomplete. The letter will include a list of items required to complete the package.
- 4.) Upon receiving a complete payment request, FAI will begin the detailed audit of the payment request, using the following procedures:
 - a. Invoices and proofs of payment will be compared to determine if there are any discrepancies. Invoices without proof of payment will be deemed ineligible for reimbursement. Where discrepancies occur, the lowest amount will be deemed eligible for reimbursement until additional supporting documentation can be provided by the Developer.
 - b. FAI will confirm fee amounts with City staff for fees that are to be prepaid to the City or reimbursed to the Developer.
 - c. A detailed worksheet will be prepared detailing the amount submitted for reimbursement under each invoice, the corresponding proof of payment for that invoice, the amounts deemed eligible and ineligible for reimbursement by FAI, the amount submitted for prepayment to the City, the corresponding documentation for prepayment and comments by FAI.
 - d. A summary of invoices and proof of payment provided by the Developer will be prepared.
- 5.) FAI will prepare additional information requests to the Developer as needed to facilitate the audit.
- 6.) FAI will prepare an audit letter for City staff review that summarizes the items above and includes FAI’s recommendation of fees that are eligible and appropriate for reimbursement to the Developer and the amount that is to be retained by the City corresponding to the prepayment of eligible fees. Such audit letter will be accompanied by all back up documentation and the detailed worksheet.

- 7.) FAI will prepare the Disbursement Request Form (City Fees) in the form attached as Exhibit "G" hereto, for review and approval of the City.
- 8.) Upon receipt of the approved Disbursement Request Form (City Fees), FAI will prepare the Certificate of the Authority Requesting Disbursement from the Project Fund required under the Indenture, for review and approval by CMFA.
- 9.) CMFA will transmit the executed Certificate above to the Trustee for disbursement of the bond proceeds to the Developer for reimbursement or to the City for prepayment.
- 10.) Approximate Review, Approval and Disbursement Timeline:
 - a. FAI performs audit of payment request and provides the City with the audit letter and Disbursement Request Form for review and approval – Approximately 5 days
 - b. City reviews and approves audit letter and supporting documentation and provides signed Disbursement Request Form – Approximately 30 days
 - c. CMFA reviews, approves, and submits Certificate to Trustee – Approximately 5 days
 - d. Trustee wires funds to the Developer for reimbursement or to the City for prepayment for deposit in Trust Account – Approximately 2 days

**California Municipal Finance Authority
BOLD Program
CFD No. 2022-12**

Payment Request Form

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 identity and amount of the City Fees are described in Attachment 1.
3. For the City Fees for which the Developer is seeking reimbursement, the Developer has submitted or submits herewith to the CMFA Administrator evidence that City Fees referred to in the preceding paragraph have been paid in full, which evidence is in the form of copies of cancelled checks or such other form of proof of payment, such as bank statements.

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

Developer: _____

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT 1

| City | Description of City Fee | Description of Lots or Parcels | Amount to be Reimbursed | Amount to be Prepaid |
|------|-------------------------|--------------------------------|-------------------------|----------------------|
| | | | | |
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