
ACQUISITION AGREEMENT

by and between the

CITY OF ALAMEDA, CALIFORNIA

and

CATELLUS ALAMEDA DEVELOPMENT, LLC

dated as of November 1, 2013

**relating to:
City of Alameda
Community Facilities District No. 13-1
(Alameda Landing Public Improvements)**

the special tax levy on property in the CFD or from the proceeds of bonds issued for the CFD. The annual costs to administer the CFD are to be paid from annual special taxes levied on property within the boundaries of the CFD.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The Municipal Code contains, in Section 3-70, the City of Alameda Special Tax Financing Improvement Code pursuant to which the CFD was formed, and pursuant to which the Acquisition Agreement and amendments and supplements to it are authorized.

CLIMATE IMPACTS

Approval of Supplement No. 2 to the Acquisition Agreement for CFD 13-1 has no climate impacts.

ENVIRONMENTAL REVIEW

On December 5, 2006, the City Council certified the Final Environmental Impact Report for the Alameda Landing Mixed Use Development Project (a Supplement to the 2000 Catellus Mixed Use Development Project EIR) in accordance with the California Environmental Quality Act (CEQA) (State Clearinghouse #2006012091). The City has prepared several addenda to the 2006 SEIR.

Adoption of a Resolution Approving and Authorizing Execution of a Supplement No. 2 to Acquisition Agreement Relating to Community Facilities District No. 13-1 (Alameda Landing Public Improvements) would not generate any new or additional impacts beyond those analyzed in the EIR.

RECOMMENDATION

Adopt a Resolution Approving and Authorizing Execution of a Supplement No. 2 to Acquisition Agreement Relating to Community Facilities District No. 13-1 (Alameda Landing Public Improvements).

CITY MANGER RECOMMENDATION

Respectfully submitted,

Debbie Potter, Community Development Director

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibits:

1. Acquisition Agreement
2. Supplement No. 1 to Acquisition Agreement
3. Supplement No. 2 to Acquisition Agreement

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ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of November 1, 2013, is by and between the City of Alameda, California, a chartered city and municipal corporation organized and existing under the Constitution and laws of the State of California (the "City"), for the proposed City of Alameda Community Facilities District No. 13-1 (Alameda Landing Public Improvements) ("CFD"), and Catellus Alameda Development, LLC, a Delaware limited liability company (the "Developer").

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Acquisition Agreement.

"Acceptable Title" means title to land or interest therein, in form acceptable to the public entity that will own and operate the applicable Facility, is free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director (upon consultation with representatives of the public entity that will own and operate the applicable Facility, if other than the City) as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an "Acceptable Title" if: (a) such offer is necessary to satisfy a condition to a tentative or final parcel map, (b) such offer is in a form acceptable to the Director, (c) the Director has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (d) the Developer commits in writing not to allow any liens to be imposed on such property prior to its acceptance by the applicable public agency.

"Acceptance Date" means (a) with respect to any Facility involving the conveyance of an interest to the City, the date the City Council takes final action to accept dedication of or transfer of title to, or transfer of Acceptable Title to, such a Facility; and (b) with respect to all other Facilities, the date on which the Facilities have been accepted by the public entity that will own the Facility, or the date on which such public agency determines that the respective Facility has been completed in accordance with the approved Plans, in each case based on written advice from such public agency or based on such other evidence as the Director determines to be acceptable.

"Acquisition Agreement" means this Acquisition Agreement, together with any Supplement hereto.

"Actual Cost" means the substantiated cost of a Facility or a Discrete Component, which costs may include: (a) the costs incurred by the Developer for the construction of the Facility or Discrete Component, including demolition and site grading costs directly related to such construction, general condition costs and general contractor fees (but only if the general contractor is not the Developer or an Affiliate of the Developer), (b) the costs incurred by the Developer in preparing the Plans for the Facility or Discrete Component and the related costs of design, engineering and environmental evaluations of the Facility or Discrete Component, (c) the fees paid to governmental agencies or public entities for obtaining permits, licenses or other governmental approvals for the Facility or Discrete Component, (d) professional costs incurred by the Developer associated with the Facility or Discrete Component, such as engineering, legal, accounting, plan check, permit, inspection, construction staking, materials testing and similar professional services; (e) costs directly related to the construction and/or acquisition of the

Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder); and (f) the out-of-pocket cost to the Developer of any real property or interest therein that the Developer must acquire from one or more entities that are not Affiliates of the Developer and which acquisition is required for the construction of a Facility and which real property or interest therein is required to be conveyed to the public entity that will own or operate such Facility. Actual Cost may also include an amount not in excess of five percent (5.0%) of the cost described in clause (a) of the preceding sentence in respect of any construction, project management or other similar fee, which fee may be payable to the Developer, any party related thereto or a third party. In no event, however, shall Actual Cost include any payment for any cost of carry or interest expense with respect to any construction loan obtained by the Developer or otherwise with respect to the Facilities or Discrete Components, or any premium paid to a contractor for early completion of any improvement.

"Administrative Expenses" means the expenses of the City incurred in connection with the administration of the CFD and the levy and collection of the Special Taxes, including any and all out-of-pocket expenses as well as an allocable portion of the salaries (and City overhead related thereto) of City Staff for time working on such matters.

"Affiliate" of another Person means (a) a Person directly or indirectly owning, controlling, or holding with power to vote, 20% or more of the outstanding voting securities of such other Person, (b) any Person 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other Person, and (c) any Person directly or indirectly controlling, controlled by, or under common control with, such other Person; for purposes hereof, control means the power to exercise a controlling influence over the management or policies of a Person, unless such power is solely the result of an official position with such Person.

"Bonds" means any bonds issued by the City for the CFD.

"Budgeted Cost" means the estimated cost of a Facility or Discrete Component as shown on Exhibit B hereto.

"Business Day" means a day on which the City's Public Works Department is open for business.

"CFD" means the proposed City of Alameda Community Facilities District No. 13-1 (Alameda Landing Public Improvements), expected to be established by the City Council of the City under the Law.

"City" means the City of Alameda, California, a chartered city and municipal corporation organized and existing under the Constitution and laws of the State.

"Conditions of Approval" means the conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements for the development of land in the CFD, and any subdivision improvement, development or other agreement with the City relating to the development of the land in the CFD or the installation of the Facilities (including but not limited to the Development Agreement and the Subdivision Improvement Agreement).

"County" means the County of Alameda, California.

"Developer" means Catellus Alameda Development, LLC, a Delaware limited liability company, and its successors and assigns to the extent permitted under Section 10.07 hereof.

"Development Agreement" means, collectively, (a) the Disposition and Development Agreement (Alameda Landing Mixed Use Project), originally by and between the Community

Improvement Commission of the City of Alameda and Palmtree Acquisition Corporation, dated and executed as of December 5, 2006, together with any amendments thereto, as in effect from time to time, (b) the Development Agreement (Alameda Landing Mixed Use Residential Project), by and between the City and Palmtree Acquisition Corporation, dated and executed as of January 2, 2007, together with any amendments thereto, as in effect from time to time; and (c) the Development Agreement (Alameda Landing Mixed Use Commercial Project), by and between the City and Palmtree Acquisition Corporation, dated and executed as of January 16, 2007, together with any amendments thereto, as in effect from time to time.

"Director" means the Public Works Director of the City, or such person's written designee acting as such under this Acquisition Agreement.

"Discrete Component" means a functional segment or major component of a Facility that the Director has agreed can be separately identified as a major component of a completed facility, and be the subject of a Payment Request hereunder. For Discrete Components of any Facility the purchase value of which is \$1,000,000 or less, the Discrete Component must be a portion or phase of a Facility that is capable of serviceable use, as determined by the Director. The Discrete Components are shown on Exhibit B hereto.

"Eligible Facilities" means the public facilities described in Exhibit A hereto which are eligible to be financed by the CFD.

"Facilities" means those Eligible Facilities listed in Exhibit B hereto, as amended from time to time.

"Fiscal Agent" means the entity acting in the capacity as fiscal agent under the Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under the Fiscal Agent Agreement.

"Fiscal Agent Agreement" means an agreement by that name between the City and the Fiscal Agent, providing for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended from time to time.

"Fiscal Year" means the fiscal year of the City for accounting purposes.

"Improvement Fund" means (a) prior to the date of issuance of any Bonds, a fund maintained by the City into which it will deposit Special Taxes in accordance with Section 3.06 hereof; and (b) from and after the issuance of any Bonds, the Improvement Fund established by the Fiscal Agent Agreement. During the period in which the Improvement Fund is to be maintained by the City, it may be maintained as a component of any other fund maintained by the City and funds therein may be commingled with other City funds for investment and safekeeping purposes, so long as the City maintains separate records for the amounts deposited thereto, any investment earnings thereon, and any amounts withdrawn therefrom.

"Law" means the City of Alameda Special Tax Financing Improvement Code, constituting Section 3-70.1 et seq. of the City's Municipal Code.

"MDIGP" means the Master Demolition, Infrastructure, Grading and Phasing Plan for the Catellus Mixed Use Development Project, as referenced in Section 5.7(c) of the agreement referred to in clause (a) of the definition "Development Agreement" in this Section 1.01, as in effect from time to time.

"Payment Request" means a document, substantially in the form of Exhibit C hereto, to be used by the Developer in requesting payment of a Purchase Price.

"Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

"Plans" means the plans, specifications, schedules and related construction contracts and supplemental agreements (change orders) for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the entity that will own, operate or maintain the Facilities when completed and acquired; including with respect to Facilities to be owned by the City, but not limited to, the MDIGP. As of the date of this Acquisition Agreement, the City standards for construction incorporate those set forth in the Standard Specifications for City of Alameda Public Works.

"Purchase Price" means the amount paid by the City for a Facility and/or any Discrete Components thereof determined in accordance with Article V hereof, being an amount equal to the Actual Cost of such Facility or Discrete Component, but subject to the limitations and reductions provided for in Article V.

"Rate and Method of Apportionment" means the rate and method of apportionment of special taxes for the CFD, as approved in the proceedings to form the CFD, and as it may thereafter be altered in accordance with the Law.

"Special Taxes" means the special taxes authorized to be levied by the City on property in the CFD in accordance with the Rate and Method of Apportionment, pursuant to the Law and the proceedings to form the CFD.

"State" means the State of California.

"Subdivision Improvement Agreement" means the Subdivision Improvement Agreement (Parcel Map, PM-10086, Alameda Landing) entered into as of June 20, 2012, by and between the City and the Developer).

"Substantial Completion" means, for any Discrete Component or Facility, when the following have occurred with respect to such Discrete Component or Facility: (a) the Discrete Component or Facility is located on land or in an easement that (i) is owned by the City or the Successor Agency of the Community Improvement Commission of the City of Alameda, or (ii) has been conveyed to the public entity that will own the Discrete Component or Facility, or (iii) such land or easement has otherwise been irrevocably dedicated to the public entity that will own the Discrete Component or Facility; and (b) the Facility or Discrete Component has been inspected by the public entity that will own the Discrete Component or Facility and has been found to have been constructed in accordance with the applicable Plans and is otherwise available for its intended purpose, even though minor additional work (commonly referred to as "punch list items") may be required before the applicable public agency will accept ownership of the Discrete Component or Facility.

"Supplement" means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including any amendments to the list of Facilities and Discrete Components in Exhibit B, and/or the addition to Exhibit B of additional Facilities (and Discrete Components) to be financed with the proceeds of the Bonds deposited in the Improvement Fund.

ARTICLE II

RECITALS

Section 2.01. The CFD. The City Council of the City expects to conduct proceedings under the Law to establish the CFD for the purpose of financing of the acquisition, construction and installation of the Eligible Facilities listed in Exhibit A hereto. Nothing in this Acquisition Agreement shall require the City Council to form the CFD, and such formation shall only be on terms fully satisfactory to the City Council of the City, as the governing board of the CFD.

Section 2.02. The Development. The Developer is developing the land located within the CFD.

Section 2.03. The Facilities. The Facilities are within or in the vicinity of the CFD, and the City and the Developer will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land located within the CFD. The Developer acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the City to issue any Bonds to acquire the Facilities from the Developer or implies that the City has in any way engaged the Developer to construct the Facilities, except as specifically provided in this Acquisition Agreement. Moreover, except for those Facilities listed in Exhibit B, this Acquisition Agreement shall in no way, by itself, obligate the Developer to construct the Eligible Facilities. The Facilities which are the subject of acquisition by the City from the Developer under this Acquisition Agreement are only the Facilities listed in Exhibit B hereto, as such Exhibit may be amended and/or supplemented by any Supplement.

Section 2.04. The Financing. The Developer and the City wish to finance the acquisition of the Facilities by the City and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities, and payment for Discrete Components thereof as shown in Exhibit B hereto (as it may be amended and supplemented) with proceeds of Bonds on deposit in the Improvement Fund.

Section 2.05. The Bonds. The City is proceeding with the authorization and issuance of the Bonds under the Law and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the acquisition of all or a portion of the Facilities. The execution by the City of this Acquisition Agreement in no way obligates the City to issue any Bonds, or to acquire any Facilities with proceeds of any Bonds issued, except the Facilities listed in Exhibit B (as such Exhibit B may be amended from time to time) which are to be acquired subject to the terms and conditions set forth in this Acquisition Agreement.

Section 2.06. No Advantage to City Construction. The City, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the City directly of the Facilities, and that the provisions of this Acquisition Agreement require that each Facility be constructed pursuant to Plans approved by the City (or other public entity that will own the respective Facility), and each Facility must be inspected by the City (or other public entity that will own the respective Facility) and found to be in compliance with applicable building codes and standards. The Developer hereby represents that it or one of its members has experience in the supervision of the construction of public facilities of the character of the Facilities.

Section 2.07. Agreements. In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree that the foregoing recitals, as applicable to each of them, are true and correct and further make the agreements set forth herein.

ARTICLE III

FUNDING

Section 3.01. City Proceedings. The City shall conduct all necessary proceedings under the Law for the formation of the CFD and the issuance, sale and delivery of the Bonds; provided, however, that nothing herein shall be construed as requiring the City to form the CFD or to issue the Bonds or any series thereof, except as may be required under the Development Agreement. Upon the written request of the Developer, the Developer and the City staff shall meet regarding the amount, timing and other material aspects of the Bonds, but the legal proceedings and the principal amount, interest rates, maturity dates, and other terms and conditions, and timing of the formation of the CFD and the sale of the Bonds shall be in all respects subject to the approval of the City Council of the City. The authorized aggregate principal amount of the Bonds is expected to be \$20,000,000.00.

Section 3.02. Bonds. The City, in connection with this Acquisition Agreement, is proceeding with the formation of the CFD and the authorization to issue the Bonds for the CFD. The City shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components except from amounts on deposit in the Improvement Fund on or after the closing date of the first series of the Bonds. The City makes no warranty, express or implied, that if and when the CFD is formed and the Bonds are issued, the proceeds of the Bonds deposited and held in the Improvement Fund, and any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the Purchase Price of all of the Facilities.

Section 3.03. Bond Proceeds. The proceeds of the Bonds, if and when the CFD is formed and the Bonds are issued, shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds (other than proceeds of refunding bonds) are expected to be set aside under the Fiscal Agent Agreement in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the Actual Costs of the Facilities (including payment of the Purchase Price of Discrete Components thereof), all as herein provided.

The Developer agrees that the City alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under a Fiscal Agent Agreement.

The City shall have no responsibility whatsoever to the Developer with respect to any investment of funds made by the Fiscal Agent under the 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. 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 special taxes levied in the CFD when and if it is formed is not in any way dependent on: (a) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof, or (b) the alleged or actual misconduct of the City in the performance of its obligations under this Acquisition Agreement, the Fiscal Agent Agreement, the Development Agreement, any developer agreement or amendment thereto, any subdivision improvement agreement, or any other agreement to which the Developer and the City are signatories. As provided in Section 10.08, the foregoing provisions of this paragraph shall not in any way waive or affect the rights or obligations of the City or the Developer under the Development Agreement.

Section 3.04. No Change in Obligations Under Conditions of Approval. The Developer acknowledges that any failure by the City to form the CFD and issue the Bonds, or any lack of availability of amounts in the Improvement Fund to pay the Purchase Price of Facilities or Discrete Components if the Bonds are issued, shall (a) in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities and mitigation measures required by the Conditions of Approval to which the Developer or any land within the CFD is subject; or (b) diminish any obligation of the City under the Development Agreement (as provided in Section 10.08).

Section 3.05. Refunding Bonds. The City may, in its sole and absolute discretion, determine at any time to issue bonds the net proceeds of which are used to refund any outstanding Bonds (the term "refund" as used in this sentence, and the term "refunding" as used in the next sentence, includes any purchase in lieu of redemption of any Bonds). The Developer shall have no right whatsoever in connection with any such refunding bond issue, including but not limited to any right to any reduction in special taxes levied or to be levied by the CFD, or to any additional funds whether pursuant to this Acquisition Agreement or otherwise as a consequence of any such refunding.

Section 3.06. Special Taxes. The City agrees, when and if the CFD is formed, to levy the Special Taxes on property in the CFD in accordance with the Rate and Method of Apportionment. The first such levy shall be at the maximum amounts permitted under the Rate and Method of Apportionment for the Fiscal Year in which the CFD is formed, and such levies shall continue thereafter until the Purchase Prices of the Facilities and any Bonds issued for the CFD have been paid in full. The City agrees to deposit any Special Taxes received by it prior to the issuance of any Bonds, after deducting any Administrative Expenses theretofore incurred and expected to be incurred in the then Fiscal Year, in the Improvement Fund.

On the date of issuance of the first series of the Bonds, the City shall transfer all amounts then held by it in the Improvement Fund maintained by it as described in clause (a) of the definition of "Improvement Fund" in Section 1.01 hereof to the Fiscal Agent for deposit by the Fiscal Agent to the Improvement Fund established under the Fiscal Agent Agreement.

ARTICLE IV

CONSTRUCTION OF FACILITIES

Section 4.01. Plans. To the extent that it has not already done so, the Developer shall cause Plans to be prepared for the Facilities. The Developer shall obtain the written approval of the Plans for each Facility in accordance with applicable resolutions, ordinances and regulations of the public entity that will own and operate the respective Facilities and, in any event, such approvals will be sought and given in accordance with the Conditions of Approval. Copies of all Plans shall be provided by the Developer to the Director (in both printed format and in an electronic format approved by the City) upon request therefor, and, in any event, as built drawings (in both printed format and in an electronic format approved by the City) and a written assignment of the Plans for any Facility to be owned by the City shall be provided to the City prior to its acceptance of the related Facility.

Section 4.02. Duty of Developer to Construct. All Facilities to be acquired hereunder specified in Exhibit B hereto as amended from time to time, shall be constructed substantially in accordance with the approved Plans (including any supplemental agreements) by the Developer or by a licensed general contractor which is under the direct supervision of the Developer. The Developer shall perform all of its obligations hereunder and shall monitor the performance of any applicable general contractor to confirm that all operations with respect to the construction of Facilities are conducted in a good and workmanlike 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 require that each general contractor performing work in connection with the Facilities (and any Discrete Components thereof) employ at all times adequate staff or consultants with the requisite experience and applicable licenses and registrations necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities (and any Discrete Components thereof) to be acquired by the City from the Developer hereunder. The Developer shall at all times have adequate staff or consultants with the requisite experience and licenses to discharge its obligations under this Acquisition Agreement.

The Developer shall be obligated: (a) to construct and cause conveyance to the applicable governmental agency all Facilities and Discrete Components thereof listed in Exhibit B hereto, and (b) to use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid therefor hereunder. As provided in Section 10.08, the foregoing provisions of this paragraph shall not in any way waive or affect the rights or obligations of either party to this Acquisition Agreement under the Development Agreement.

The Developer shall not be relieved of its obligation to construct each Facility and Discrete Component thereof listed in Exhibit B hereto and convey each Facility to the applicable governmental agency that will own and operate it in accordance with the terms hereof, even if (a) because of the limitations imposed by Section 5.06 hereof, the Purchase Price for such Discrete Component or Facility is less than the Actual Cost, or cost to the Developer, of such Discrete Component or Facility, or (b) there are insufficient funds in the Improvement Fund to pay the Purchase Prices thereof; and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the CFD under the Conditions of Approval or any other agreement or any other 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. Such obligation of the Developer to construct and convey such Facilities, and pay the costs thereof in excess of available monies in the Improvement Fund, shall be an obligation of the Developer as a party to this Acquisition Agreement without regard to any governmental conditions to development of the land in the CFD that may otherwise apply to

the owners of land in the CFD. As provided in Section 10.08, the foregoing provisions of this paragraph shall not in any way waive or affect the rights or obligations of either party to this Acquisition Agreement under the Development Agreement.

Section 4.03. Relationship to Public Works. This Acquisition Agreement is for the acquisition by the City of the Facilities and payment for the Facilities (including any Discrete Components thereof) listed in Exhibit B hereto from moneys in the Improvement Fund and is not intended to be a public works contract by the City for construction of the Facilities. The City and the Developer agree that, because the City is a charter city, and that the Facilities are of local, and not state-wide concern, the provisions of the California Public Contract Code shall not apply to the construction of the Facilities. The City and the Developer agree that the Developer shall award all contracts for the construction of the Facilities and Discrete Components listed in Exhibit B hereto and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of the Facilities and that compliance with the Public Contract Code with respect to the Facilities would work an incongruity and would not produce an advantage to the City or the CFD.

Notwithstanding the foregoing, the Developer shall, or shall cause the Developer's general contractor to, award all contracts and any subcontracts for construction of the Facilities (and any Discrete Components thereof) listed in Exhibit B hereto and materials related thereto by means of a bid process that complies with the requirements set forth in Exhibit D hereto. In any event, bids for general contractors shall require that general contractors provide reasonable opportunity for local contractors to participate as subcontractors. Upon written request of the Director, the Developer shall provide an analysis of bids received for the construction of the Facilities.

The Director may, in the Director's discretion, waive in writing any bidding requirements with respect to long lead time materials, specialty materials or work, or similar items, if requested in writing by the Developer identifying the specific contract, and the Director shall be entitled to discuss the bidding process with the Developer at any time and from time to time, and to require reasonable changes thereto for future contracts if, in the judgment of the Director, said process is not resulting in competitive bids for the Facilities.

The Developer shall develop or cause to be developed and shall maintain or cause to be maintained a cost-loaded project schedule, using the critical path method, providing for all major project elements included in the construction of any Facility to be acquired hereunder, so that the whole project is scheduled in the most efficient manner. The Developer shall provide the Director with complete copies of the schedule and each update to the schedule for the Director to review.

The Developer shall provide the Director with a schedule showing the dates and times of regularly scheduled meetings to be held with contractors relating to the Facilities and any updates thereto, as well as three (3) days advance notice of any unscheduled meetings with contractors (provided, however, that the Developer shall endeavor to provide any feasible notice, verbal or otherwise, of any emergency meetings with contractors). The Director or the Director's designated representative shall have the right to be present at such meetings, and to meet and confer with individual contractors in connection with change orders if deemed advisable by the Director. In addition, from time to time at the request of the Director and given reasonable notice thereof, the Developer shall meet and confer with the Director, other City Staff and consultants, and applicable contractors regarding matters arising hereunder with respect to the Facilities, the Discrete Components and the progress in the construction and acquisition of the same, and as to any other matter related to the Facilities or this Acquisition Agreement.

In addition to using City Staff for such purposes, the City expects to employ an independent firm as a construction monitor and to otherwise assist the City in administering this Acquisition Agreement. The fees and expenses of any such firm and any successor or replacement firm engaged by the City for such purpose shall be payable from (a) proceeds of the Bonds deposited to a Public Works Administration Account established under a Fiscal Agent Agreement in an amount determined by the City, or (b) if there are no amounts available therein (or no such account is created under the Fiscal Agent Agreement), from Bond proceeds deposited to the Improvement Fund, or (c) if the Bonds are not issued for any reason, from advances by the Developer under and as required by the Development Agreement. In the event that at any time there is no acting construction monitor engaged by the City, the City will designate a specific City Staff member as a primary contact of the City to interface with the Developer under this Acquisition Agreement.

Section 4.04. Developer is Independent Contractor. In performing this Acquisition 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 officer or employee of the Developer or any contractor, subcontractor, agent, consultant, employee or supplier selected by the Developer.

Section 4.05. 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) with respect to the construction of the Facilities. All contractors and/or subcontractors providing work in connection with the construction of Facilities shall provide a labor and materials and performance bonds which name the City (and the public agency, if different from the City, that will own any respective Facility) as an additional insured.

Section 4.06. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Facilities listed in Exhibit B hereto, as amended from time to time, and all such contracts and supplemental agreements shall be submitted to the Director. Prior approval of supplemental agreements by the Director shall only be required for such change orders (a) which materially alter the quality or character of the subject Facilities, or (b) which involve an amount equal to or greater than ten percent (10%) of the amount of the bid for the related Facility. Any such contract or supplemental agreement shall in any event be deemed approved if the Plans contemplating such changes are signed by the City.

Within five (5) Business Days of receipt by the Director of a contract or supplemental agreement that needs the prior approval of the Director, the Director will determine if the costs related to such contract or supplemental agreement, if the contract or supplemental agreement is actually approved by the Director, will be considered an Actual Cost that is payable as a portion of the Purchase Price of the related Facility. Within fifteen (15) Business Days of receipt by the Director of a contract or supplemental agreement that needs the prior approval of the Director, the Director will either (a) if no change is needed to the then-approved Plans for the respective Facility by reason of such contract or change order, approve or deny such contract or supplemental agreement (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval), or (b) notify the Developer that it needs additional time (not to exceed an additional fifteen (15) Business Days) to approve or deny the contract or supplemental agreement. The Director will use a good faith effort to grant approvals or provide denials on a more expeditious basis in the event that the Developer identifies in writing that the subject contract or supplemental agreement is needed to address an emergency or critical path situation. To the extent that a supplemental agreement permitted by this Section 4.06 or otherwise approved by the Director increases the Actual Cost of a Discrete

Component or Facility, such increased cost may be payable as part of the Purchase Price of the related Discrete Component or Facility as provided in Section 5.06A. hereof.

Section 4.07. Time for Completion. The Developer agrees that this Acquisition Agreement is for the benefit of the City and the Developer and, therefore, the Developer represents that it expects the Facilities to be completed and to have requested payment for the Facilities under this Acquisition Agreement prior to the date which is twelve (12) calendar months from the date of the closing of the first series of the Bonds. The Developer agrees to use its good faith efforts to cause all Facilities initially listed in Exhibit B to be completed prior to the date which is twelve (12) calendar months from the date of closing of the first series of the Bonds. Any failure to complete the Facilities within said time period shall not, however constitute a breach by the Developer of the terms of this Acquisition Agreement.

ARTICLE V

ACQUISITION AND PAYMENT

Section 5.01. 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 and found to be Substantially Completed in accordance with the approved Plans (including any supplemental agreements), and found to be in compliance with applicable building codes and standards, by the applicable public entity or utility. The applicable departments of the City shall make or cause to be made regular, on-going site inspections of the Facilities and any Discrete Components thereof to be acquired hereunder which are expected to be owned by the City in accordance with customary inspection practices of public agencies for similar public improvements, and consistent with the payment processing provisions of Section 5.04 below; provided that in no event shall the City incur any liability for any delay in the inspection of any Facilities or Discrete Components. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining inspections by the applicable public agencies of the Facilities and any Discrete Components thereof to be owned by them and to take any required actions to correct all deficiencies identified by the inspectors. The Developer agrees to pay all inspection, permit and other similar fees applicable to construction of the Facilities and any Discrete Components thereof, subject to reimbursement therefor as an Actual Cost of the related Facility or Discrete Component.

Section 5.02. Agreement to Sell and Purchase Facilities. The Developer hereby agrees to convey the Facilities listed in Exhibit B hereto to the applicable public agency that will own the respective Facility, and the City hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof to the Developer, subject to the terms and conditions hereof.

The City shall not be obligated to finance the purchase of any Facility until the Facility has been Substantially Completed and the Acceptance Date for such Facility has occurred; provided that the City has agreed hereunder to make certain payments to the Developer for Discrete Components of Facilities expressly shown in Exhibit B hereto, and any Supplement. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the applicable public agency that will own a Facility is not expected to accept a Facility of which a Discrete Component is a part until the Facility has been Substantially Completed.

The City acknowledges that the Discrete Components do not have to be accepted by the applicable public agency that will own a Facility as a condition precedent to the payment of eighty percent (80%) of the Purchase Price therefor (referred to in Section 5.06 as the "80% Payment"), but any such payment shall not be made until the Discrete Component has been Substantially Completed. As provided in Section 5.05, payment of the full Purchase Price of any Facility (including any Discrete Components thereof) will be made by the City only following the Acceptance Date of the Facility.

In any event, the City shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the moneys in the Improvement Fund.

Section 5.03. Payment Requests. In order to receive the Purchase Price for a Facility or Discrete Component, inspection thereof under Section 5.01 shall have been made and the Developer shall deliver to the Director: (a) a Payment Request in the form of Exhibit C hereto for such Facility or Discrete Component, together with all attachments and exhibits required by Exhibit C and this Section 5.03 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit C), (b) if the property on which the Facility is located is not

owned by the applicable public agency that will own the Facility or the subject of a recorded easement at the time of the request, a copy of the recorded documents conveying to the applicable public agency that will own the Facility Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.01 hereof, (c) a copy of the recorded notice of completion of such Facility (if applicable), (d) to the extent paid for with the proceeds of the Bonds, an assignment to the CFD of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements, and (v) an assignment of the warranties and guaranties for such Facility, as described in Section 6.04 hereof, in a form acceptable to the Director.

Section 5.04. Processing Payment Requests. Within ten (10) Business Days of receipt of any Payment Request, the Director will review the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, the Director will provide in reasonable detail a description of what additional documentation must be provided. Within thirty (30) days following receipt of a complete Payment Request (and all accompanying documentation), the Director will (a) conduct a review in order to confirm that the Facility or Discrete Component identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Facility or Discrete Component specified in such Payment Request; (b) confirm the matters certified in the Payment Request; and (c) provide a written approval or denial (specifying in reasonable detail the reason for any denial and the corrective action or actions needed to eliminate the factor or factors giving rise to the denial) of the request. The Developer agrees to cooperate with the Director in conducting each such review and to provide the Director with such additional information and documentation as is reasonably necessary for the Director to conclude each such review. If a Payment Request seeking reimbursement for more than one Facility or Discrete Component is denied, the Director shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components shall be processed for payment under Section 5.05 notwithstanding such partial denial.

Section 5.05. Payment. Upon approval of the Payment Request by the Director, the Director promptly shall sign the Payment Request and forward the same to the City Finance Director. Upon receipt of the reviewed and fully signed Payment Request, the City Finance Director shall cause the same to be paid from amounts in the Improvement Fund. Prior to the issuance of Bonds, payments from the Improvement Fund in respect of fully signed Payment Requests shall be made by the City only twice each year, on or after January 15 and July 15 of each year, but as to any such Payment Request no earlier than thirty (30) days after receipt by the City Finance Director of the fully signed Payment Request. After the issuance of Bonds, the City Finance Director shall use his best efforts to cause each fully signed Payment Request to be paid by the Fiscal Agent under the applicable provisions of the Fiscal Agent Agreement, within thirty (30) days of receipt by the City Finance Director of the fully signed Payment Request. Any approved Payment Request not paid in full due to an insufficiency of funds in the Improvement Fund shall be paid following the deposit into the Improvement Fund of (a) prior to the date of issuance of any Bonds, collections of Special Taxes deposited to the Improvement Fund as contemplated by Section 3.06 hereof, on the next succeeding January 15 or July 15 until paid in full; and (b) after the issuance of Bonds, proceeds of any investment earnings or additional Bonds, or other amounts, transferred to the Improvement Fund under the terms of the Fiscal Agent Agreement.

The parties hereto acknowledge that (a) the Developer has been and will be constructing Discrete Components or Facilities prior to the issuance of Bonds, the proceeds of which will be used to reimburse the Developer for those Discrete Components or Facilities, (b) prior to the issuance of Bonds, the only funds that will be deposited to the Improvement Fund will be Special Tax proceeds pursuant to Section 3.06 hereof, (c) the Developer may be submitting

Payment Requests to the City in advance of the issuance of Bonds, with knowledge that there may be insufficient funds available in the Improvement Fund for reimbursement, (d) the Discrete Components or Facilities that are the subject of the Payment Requests submitted when there are no proceeds or insufficient proceeds in the Improvement Fund will be inspected and reviewed by the Director as set forth in this Article V and that such Payment Requests will be reviewed by the Director in the manner set forth in Sections 5.03, 5.04 and 5.05, (e) the Director will forward any approved Payment Request to the City Finance Director as described in the preceding paragraph, and (f) all approved Payment Requests so submitted to the City Finance Director shall be payable as described in the preceding paragraph. The conveyance to the City or other applicable public agency of a Facility prior to the payment in full of the Purchase Price from the proceeds of Bonds shall not be construed as a dedication or gift, or a waiver of the unpaid balance of such Purchase Price, and such unpaid amount shall be paid only from funds available in the Improvement Fund.

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

Section 5.06. Restrictions on Payments. Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 5.02 and 5.05 hereof:

A. Amounts of Payments. Subject to the following paragraphs of this Section 5.06, payments for each Discrete Component or Facility will be made in an amount not to exceed (i) upon Substantial Completion of a Facility or Discrete Component, eighty percent (80%) of the Purchase Price for the respective Discrete Component or Facility (the "80% Payment"); and (ii) upon the Acceptance Date of such Facility or Discrete Component, release of any subdivision improvement bond related to the Facility, and the posting of a maintenance bond for the Facility, the remaining twenty percent (20%) of the Purchase Price for the respective Discrete Component or Facility ("20% Payment"). Nothing herein shall require the City in any event (i) to pay more than the Actual Cost of a Facility or Discrete Component; or (ii) to make any payment beyond the available funds in the Improvement Fund, after taking into account any amounts needed by the City for purposes described in the last paragraph of Section 4.03 hereof. The parties hereto acknowledge and agree that all payments to the Developer for the Purchase Prices of Facilities and Discrete Components are intended to be reimbursements to the Developer for monies already expended or for immediate payment by the Developer (or directly by the City) to third parties in respect of such Facilities and/or Discrete Components.

B. Withholding Payments. The City shall be entitled to withhold any payment hereunder for a Discrete Component or a Facility if the Developer or any Affiliate (as such term is defined in Section 1.01 hereof) of the Developer is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or special taxes levied in the CFD for which the Developer or such Affiliate is responsible. In the event of any such delinquency, the City shall only make payments hereunder directly to contractors or other third parties employed in connection with the construction of the Facilities or Discrete Components, until such time as the Developer provides the Director with evidence that all such delinquent taxes and assessments have been paid. Copies of all payment documents related to such direct payments to contractors or other third parties shall be provided to the Developer promptly after payment thereof.

The City shall withhold both the 80% Payment and the 20% Payment for any Discrete Component of any Facility, or for any Facility that does not have Discrete Components, in each case constructed on land, until Acceptable Title to such land is conveyed to the public entity that will own the respective Facility, as described in Article VI hereof.

The City shall be entitled to withhold any payment hereunder for a Discrete Component or Facility that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Discrete Component or Facility that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Discrete Component or Facility. The City, in its discretion, may waive this limitation upon the provision by the Developer of letters of credit deemed satisfactory by the Director, upon consultation with the City Attorney, to assure payment of such claims.

The City shall be entitled to withhold both the 80% Payment and the 20% Payment for any Facility hereunder (or a Discrete Component of any Facility) until the Director determines that such Facility (or Discrete Component) is ready for its intended use (e.g., a sewer improvement is ready for its intended use when the sewer line is connected to the sewer system and the sewer line is otherwise ready to carry sewer flows, a street improvement is ready for its intended use when it has been connected to the City street system and the street improvement is otherwise ready to allow for vehicular traffic). The City shall be entitled to withhold the 20% Payment for any Facility hereunder (or the final Discrete Component of any Facility) until (i) all inspections of such Facility or Discrete Component have been completed and any identified deficiencies for such Facility or Discrete Component have been corrected, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.01, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Developer, in a form acceptable to the Director, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility (or final Discrete Component) have been submitted to the Director for the Facility. The City hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a letter of credit with the City and/or the public entity that will own the Facility to indemnify it for any losses sustained by the City and/or such entity because of any liens that may exist at the time of acceptance of such a Facility, so long as such letter of credit is drawn on a bank and is otherwise in a form acceptable to the Director, upon consultation with the City Attorney, and the applicable public entity. The City shall be entitled to withhold the 20% Payment for any Facility (or the final Discrete Component of any such Facility) until the Developer provides the Director with evidence that the governmental entity that will own such Facility has accepted dedication of and/or title to the Facility. If the Director determines that a Facility is not ready for intended use under the first sentence of this paragraph, the Director shall so notify the Developer as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or materialman's lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Facilities or any Discrete Components thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall only be required to post or cause the delivery of a letter of credit in an amount equal to the amount in dispute with respect to any such contested

lien, so long as such letter of credit is drawn on a bank and is otherwise in a form reasonably acceptable to the Director, upon consultation with the City Attorney.

Nothing in this Section 5.06 shall permit the City to withhold payment for any Facility or Discrete Component due any infirmity or deficiency in any other Facility Discrete Component for which a Payment Request is not being made.

C. Joint or Third Party Payments. The City may make 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.

Section 5.07. Use of Excess Funds in the Improvement Fund. If the construction by the Developer and acquisition by the City of all the Facilities listed in Exhibit B have been completed and the Purchase Prices (including any retentions described in 5.06(C) above) with respect thereto have been paid from amounts in the Improvement Fund, and funds remain on deposit in the Improvement Fund, the City shall notify the Developer in writing of the amount of funds remaining in the Improvement Fund and shall allow the Developer thirty (30) calendar days to submit a proposed amendment to Exhibit B to this Acquisition Agreement to include Eligible Facilities not theretofore funded by the City. If such amendment is approved by the City Council, the City shall retain the excess funds in the Improvement Fund as necessary to pay the Purchase Prices of the Eligible Facilities so added to Exhibit B. If such proposed amendment is not so approved, or if the remaining funds are in excess of what is needed to pay the Budgeted Costs of such Eligible Facilities added to Exhibit B, such excess funds will be used to pay debt service on the Bonds as provided in the Fiscal Agent Agreement.

Section 5.08. Defective or Nonconforming Work. If any of the work done or materials furnished for a Facility or Discrete Component are found by the Director to be defective or not in accordance with the applicable Plans: (a) and such finding is made prior to payment for the Purchase Price of such Facility or Discrete Component hereunder, the City may withhold payment of the Purchase Price for such Facility or Discrete Component until such defect or nonconformance is corrected to the satisfaction of the Director, or (b) and such finding is made after payment of the Purchase Price of such Facility or Discrete Component, the City and the Developer shall act in accordance with the City's standard specification for public works construction (which are set forth in the Standard Specifications for City of Alameda Public Works) and any applicable provisions of the Subdivision Improvement Agreement.

Section 5.09. Modification of Discrete Components. Upon written request of the Developer, the Director shall consider modification of the description of any Discrete Component. Any such modification shall be subject to the written approval of the Director, and shall not diminish the overall Facilities to be provided by the Developer hereunder (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted to sell the Bonds) or in any way increase the total Budgeted Costs identified in Exhibit B. It is expected that any such modification will be solely for purposes of dividing up the work included in any Discrete Component for purposes of acceptance and payment, for example: (a) separation of irrigation and landscaping from other components of a Discrete Component, (b) modifications to allow for payment for street improvements prior to completion of the final lift of paving, or (c) division of utility construction by utility work orders. In most instances, the Director will only approve modifications for payment purposes when there will be an unusual period of time between the completion and acceptance of such divided work or to better implement the phasing of the overall construction of the Facilities; but no such circumstances shall this Section in any way obligate the Director to approve such modification.

ARTICLE VI

OWNERSHIP AND TRANSFER OF FACILITIES

Section 6.01. Facilities to be Owned by the City – Conveyance of Acceptable Title to City. Acceptable Title to all property on, in or over which each Facility to be owned by the City will be located, shall be transferred to the City by way of bill of sale, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Acquisition Agreement. The Developer agrees to assist the City in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a Facility and shall be evidenced by recordation of the acceptance thereof by the City Council or the designee thereof.

Section 6.02. Facilities to be Owned by the City – Title Evidence. Upon the request of the City, the Developer shall furnish to the City a preliminary title report for land with respect to Facilities to be acquired by the City and not previously dedicated or otherwise conveyed to the City, for review and approval at least fifteen (15) calendar days prior to the transfer of Acceptable Title to a Facility to the City. The Director, upon consultation with the City Attorney, shall approve the preliminary title report unless it reveals a matter which, in the judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to such Facility and the City shall not be obligated to pay the Purchase Price for such Facility until the Developer has cured such objections to title to the satisfaction of the City.

Section 6.03. Facilities Constructed on City Land. If the Facilities to be acquired are on land owned by, or the subject of an easement granted to, the City, upon request of the Developer the City will issue to the Developer a permit 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.

Section 6.04. Maintenance and Warranties. The Developer shall maintain each Facility (and any Discrete Components thereof) in good and safe condition until the Acceptance Date of the Facility. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Facility (and any Discrete Components thereof). On or before the Acceptance Date of the Facility, 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. 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 Director as part of the transfer of title.

Following the Acceptance Date for a Facility, the Developer shall provide the improvement security for such Facility as described in Sections 16 and 17 of the Subdivision Improvement Agreement, and shall correct any defects as described in Section 19(a) of the Subdivision Improvement Agreement; subject in any event to any applicable provisions of the Development Agreement.

ARTICLE VII

INSURANCE

Section 7.01. Insurance Requirements. The Developer shall, at all times prior to the final Acceptance Date of all Facilities, procure and maintain, at the Developer's expense, insurance of the character and quality described in Sections 24 and 25 of the Subdivision Improvement Agreement.

Section 7.02. General. The requirements of this Article VII as to the types, limits and City approval of insurance coverage to be maintained by the Developer are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Developer under this Acquisition Agreement.

ARTICLE VIII

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 8.01. Representations, Covenants and Warranties of the Developer. The Developer represents and warrants for the benefit of the City as follows:

A. Organization. The Developer is a Delaware limited liability company duly organized and validly existing under the laws of the State of Delaware, is qualified to do business in and is in compliance with all applicable laws of the State, 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 in this Acquisition Agreement.

B. Authority. The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. Binding Obligation. This Acquisition 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.

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

E. 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 Acquisition Agreement with respect to the Payment Requests.

F. Financial Records. Until the final acceptance of the Facilities by the City, 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 related to the construction of the Facilities and the costs related thereto shall be maintained in accordance with generally accepted accounting principles or other accounting basis consistently applied, and such books of record and account related to the construction of the Facilities and the costs related thereto shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

G. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities and any Discrete Components thereof to be acquired from the Developer hereunder, it will comply with all City requirements relating to the payment of prevailing wages (including as required by Section 6.1(j) of the agreement referenced in clause (a) of the definition "Development Agreement" in Section 1.01 hereof), as well as all other applicable State laws and regulations relating to the payment of prevailing wages. The Developer acknowledges that compliance includes, but is not limited to, the duty of each contractor and subcontractor to keep an accurate payroll record in accordance with Division 2, Part 7, Article 2 of the California Labor Code and as otherwise needed to comply with applicable City prevailing wage requirements, and to furnish such records in a timely manner upon request by the Director, the City Attorney or the California Department of

Industrial Relations. Such compliance also includes the duty of the Developer to investigate, and, if substantiated, cause to be corrected, any alleged violation of applicable prevailing wage rules, regulations of statutes, or if not corrected to cooperate with the City to identify and impose such penalties as allowed by applicable State or City law or regulation. In furtherance of the foregoing, the Developer agrees to provide the Director, promptly following receipt of a written request therefor, with a certified payroll for all work for which payment has been or is then being requested under this Acquisition Agreement.

H. Plans. The Developer represents that it has obtained or will obtain approval of the Plans for the Facilities listed in Exhibit B to be acquired from the Developer hereunder from all appropriate departments of the City and any applicable utilities and agencies. The Developer further agrees that the Facilities listed in Exhibit B to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved Plans and any supplemental agreements (change orders) thereto, as approved in the same manner.

I. Land Owners. The Developer agrees that in the event that it sells any interest in any land owned by it within the boundaries of the CFD, the Developer will (a) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement and the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, (b) notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and (c) otherwise comply with any applicable conditions of Section 3-70.73 of the Law. In addition, the Developer shall notify the City in writing of any such sale, indicating the legal description (or County Assessor's parcel numbers) of the property sold and the purchaser of the property.

J. Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the Original Purchasers (as defined in the Fiscal Agent Agreement) of the Bonds or the City related to the status of construction of improvements within the CFD, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the Bonds.

K. Continuing Disclosure. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any of the Bonds.

L. Local Hire Requirements. The Developer agrees, when entering into any contract for labor or hiring any labor for work related to the Facilities, preference may be given to contractors, mechanics, artisans or other laborers of any class, who shall have actually resided in the City for a period of six months preceding the date of their engagement to perform labor, quality and price of work being equal, as provided in Section 3.17 of the City's Charter.

Section 8.02. Indemnification and Hold Harmless. The Developer shall indemnify, defend and hold harmless the City, the CFD, members of the City Council of the City, their officers, officials, employees and agents and each of them, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from (a) the breach of any provision of this Acquisition Agreement by the Developer, (b) the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Developer hereunder, (c) 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 (d) any claims of persons employed by the Developer or its agents to construct the Facilities. Notwithstanding the foregoing, no defense, indemnification or hold harmless shall be required hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts, willful or other actionable misconduct, or negligence of the City, or its officers, directors, employees or agents hereunder. In the event of any conflict between the terms of this Section 8.02 and the provisions of the Development Agreement or the Subdivision Improvement Agreement, the conflict shall be resolved as provided in Section 10.08 below.

Notwithstanding the foregoing, the Developer shall be relieved of any obligation by reason of clause (b) of the preceding paragraph from and after such times as the City receives an unconditional assignment of the rights of the Developer to proceed against the respective entity that designed, engineered and/or constructed, as applicable, the respective Facility and the entity has acknowledged such assignment and the rights of the City to proceed directly against such entity. At the written request of the Developer, the City shall acknowledge in writing the receipt of any such unconditional assignment which so relieves any such obligation of the Developer.

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

ARTICLE IX

TERMINATION

Section 9.01. No Bonds. If, for any reason, the City does not form the CFD and issue the first series of the Bonds for the CFD by December 31, 2017, this Acquisition Agreement shall terminate and be null and void and of no further effect.

Section 9.02. Mutual Consent. This Acquisition Agreement may be terminated by the mutual, written consent of the City and the Developer, 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 Fund to pay for same, and the Developer shall have no claim or right to any further payments for the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent.

Section 9.03. City Election for Cause. The following events shall constitute grounds for the City, at its option, to terminate this Acquisition Agreement, without the consent of the Developer:

(a) The Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(b) The Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer, or shall suffer an attachment or levy of execution to be made against the property it owns within the CFD (if any) unless, in any of such cases, such circumstance shall have been terminated or released within ninety (90) days thereafter.

(c) So long as funds are on deposit in the Improvement Fund, the Developer shall abandon construction of the Facilities. Failure for a period of three consecutive months to undertake substantial work related to the construction of at least a portion of the Facilities being financed by the proceeds of an outstanding issue of Bonds, other than for a reason specified in Section 9.04 hereof, shall constitute an example of such abandonment.

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

(e) The Developer shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the City.

(f) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any preliminary official statement, official statement or bond purchase contract used in connection with the sale of any series of the Bonds or in any certificate attesting to the accuracy of sections in any such preliminary official statement or official statement.

(g) The Developer or any of its Affiliates 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 Rate and Method of Apportionment of the Special Taxes for the CFD.

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 Director and other appropriate City staff and consultants within ten (10) 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 Acquisition Agreement by the City. If the City elects to terminate this Acquisition 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) days to eliminate or mitigate to the satisfaction of the Director the grounds for such termination. Such period may be extended if the Developer, to the reasonable 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 completely mitigated such grounds, to the satisfaction of the City, the City may then terminate this Acquisition Agreement.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through and including (g) 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 under Article V hereof until such time as such event has been cured or otherwise eliminated to the satisfaction of the City.

Section 9.04. Force Majeure. Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, terrorism, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, material shortages, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

ARTICLE X

MISCELLANEOUS

Section 10.01. Limited Liability. The Developer agrees that any and all obligations of the City arising out of or related to this Acquisition Agreement are special and limited obligations of the City and the City's obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Improvement Fund and from no other source. No member of the City Council, or 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.

The City agrees that any and all obligations of the Developer arising out of or related to this Acquisition Agreement are obligations of the Developer and not of any director, officer or employee of the Developer, and none of them shall incur any liability hereunder to the City or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 10.02. Excess Costs. The Developer agrees to pay all costs of the Facilities that it is obligated to construct pursuant to the Conditions of Approval that are in excess of the moneys available therefor in the Improvement Fund. The foregoing provisions of this Section 10.02 shall not in any way waive or affect any financial obligations of the City under the Development Agreement.

Section 10.03. Audit. The Director and/or the Director of Finance of the City shall have the right, at any reasonable time during regular business hours on reasonable notice provided to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in to any of the Facilities (or any Discrete Components thereof), and any bids taken or received for the construction thereof or materials therefor.

Section 10.04. Attorney's Fees. In the event that any action or suit is instituted by either party against the other arising out of this Acquisition 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.

Section 10.05. Notices. Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission, or three Business Days following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

City or CFD:

City of Alameda
Department of Public Works
950 West Mall Square, #110
Alameda, CA 94501
Attention: Public Works Director

with a copy to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: Finance Director

and a copy to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attention: City Attorney

Developer:

Catellus Alameda Development, LLC
c/o Catellus Development Corporation
66 Franklin Street, #200
Oakland, CA 94607
Attention: Director of Development

with a copy to:

Cox, Castle & Nicholson LLP
555 California Street, 10th Floor
San Francisco, CA 94104-1513
Attention: Stephen C. Ryan, Esq.

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

Section 10.06. Severability. If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

Section 10.07. Successors and Assigns. This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall 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, the assignee's express assumption of all obligations of the Developer hereunder, and/or upon any other factor which the City deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned, and shall not be effective until approved in writing by the City. An assignment, if consented to by the City in writing, shall release the Developer from its obligations so assigned under this Acquisition Agreement.

Section 10.08. Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the CFD. Nothing in this Acquisition Agreement (including but not limited to in Sections 3.03, 3.04, 4.02 and 10.02 hereof) shall be construed as affecting, and nothing in this Acquisition Agreement (including but not limited to in Sections 3.03, 3.04, 4.02 and 10.02 hereof) shall affect, the City's or the Developer's rights, or duties to perform their respective obligations, under other agreements (including but not limited to the Development Agreement and the Subdivision Improvement Agreement), use regulations, subdivision requirements or the Conditions of Approval relating to the development of the lands in the CFD. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which either or both are a party.

Notwithstanding the foregoing or any other provision of this Acquisition Agreement to the contrary, in the event of (a) a conflict between any specific provision of this Acquisition Agreement and the provisions of the Development Agreement, the provisions of the Development Agreement shall prevail; (b) a conflict between any specific provision of this Acquisition Agreement and the provisions of the Subdivision Improvement Agreement, the provisions of the Subdivision Improvement Agreement shall prevail; and (c) a conflict between

any specific provision of this Acquisition Agreement and the provisions of the Development Agreement and the provisions of the Subdivision Improvement Agreement, the provisions of the Development Agreement shall prevail.

Section 10.09. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition 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 Acquisition Agreement thereafter.

Section 10.10. 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 Acquisition Agreement shall be binding.

Section 10.11. Parties in Interest. Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City, the CFD and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the City, the CFD or the Developer shall be for the sole and exclusive benefit of the City, the CFD and the Developer.

Section 10.12. Amendment. This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the City and the Developer.

Section 10.13. Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 10.14. Governing Law. The provisions of this Acquisition Agreement shall be governed by the laws of the State applicable to contracts made and performed in the State.

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

CATELLUS ALAMEDA DEVELOPMENT,
LLC, a Delaware limited liability company

By: CATELLUS HOLDING, LLC, a Delaware
limited liability company,
its managing member

By: _____

Its: _____

By: _____

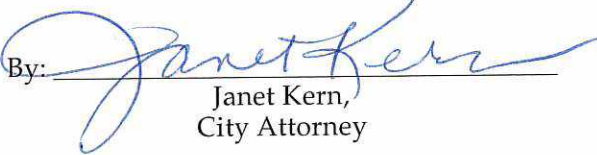
Its: _____

CITY OF ALAMEDA, for itself and on behalf of
the CITY OF ALAMEDA COMMUNITY
FACILITIES DISTRICT 12-1 (ALAMEDA
LANDING PUBLIC IMPROVEMENTS)

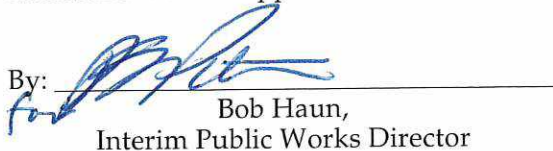
By: _____

John A. Russo,
City Manager

Approved as to form:

By: 
Janet Kern,
City Attorney

Recommended for approval:

By: 
Bob Haun,
Interim Public Works Director

01019.19;J11895

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

CATELLUS ALAMEDA DEVELOPMENT,
LLC, a Delaware limited liability company

By: CATELLUS HOLDING, LLC, a Delaware
limited liability company,
its managing member

By: 
Its: EVP

By: _____
Its: _____

CITY OF ALAMEDA, for itself and on behalf of
the CITY OF ALAMEDA COMMUNITY
FACILITIES DISTRICT 12-1 (ALAMEDA
LANDING PUBLIC IMPROVEMENTS)

By: _____
John A. Russo,
City Manager

Approved as to form:

By: _____
Janet Kern,
City Attorney

Recommended for approval:

By: _____
Bob Haun,
Interim Public Works Director

01019.19:J11895

ACQUISITION AGREEMENT

EXHIBIT A

DESCRIPTION OF FACILITIES ELIGIBLE FOR FINANCING BY THE CFD

The CFD shall be eligible to finance all or a portion of the costs of the following:

The acquisition and construction of: roadways, sanitary sewer systems and any components thereof, stormwater drainage systems and any components thereof, water systems and any components thereof, curbs, gutters and sidewalks, and street lights and traffic signals, all within and in the vicinity of the CFD; including the acquisition of any related right-of-way and other land needed for the installation of any such improvements, demolition of existing structures and site leveling needed for the installation of any such improvements, erosion control, landscaping, joint trench, acquisition and installation of street furniture, and other appurtenances.

The facilities eligible to be financed shall include the costs of design, engineering and planning, the costs of any environmental or other studies, surveys or reports, the cost of any required environmental mitigation, soils testing, permits, plan check and inspection fees, insurance, legal and related overhead costs, coordination and supervision, City of Alameda staff and consultant costs, and any other costs or appurtenances related to any of the public improvements to be financed or any of the foregoing.

ACQUISITION AGREEMENT

EXHIBIT B

DESCRIPTION OF FACILITIES, DISCRETE COMPONENTS AND BUDGETED COSTS

Facility	Discrete Component	Discrete Component Budget
Demolition & Site Leveling	Abatement of Building 4	\$6,706
	Demolition of Building 4	58,401
	Mass Grading, Demo, Site Leveling	1,010,499
	Subtotal	\$1,075,606
Union Pacific ROW	UP ROW Acquisition	\$1,667,728
	Subtotal	\$1,667,728
Erosion control / Demolition	Mitchell Avenue (From Mariner Sq Loop to Cul-de-sac)	\$161,556
	Fifth Street	165,561
	Mariner Square Loop	204,877
	Stargell	10,748
	Subtotal	\$542,742
Sanitary Sewer	Mitchell Avenue (From Mariner Sq Loop to Cul-de-sac)	\$219,782
	Fifth Street	478,241
	Mariner Square Loop	25,346
	Stargell	-
	Raising Iron	-
	Subtotal	\$723,369
Storm Sewer	Mitchell Avenue (From Mariner Sq Loop to Cul-de-sac)	\$1,611,237
	Fifth Street	1,588,118
	Mariner Square Loop	26,754
	Stargell	36,631
	Raising Iron	-
	Subtotal	\$3,262,740
Water	Mitchell Avenue (From Mariner Sq Loop to Cul-de-sac)	\$420,633
	Fifth Street	472,891
	Mariner Square Loop	722,243
	Stargell	388,049
	Clorine & Pressure	-
	Subtotal	\$2,003,816
Joint Trench	Mitchell Avenue (From Mariner Sq Loop to Cul-de-sac)	\$718,108
	Fifth Street	837,779
	Mariner Square Loop	736,274
	Stargell	102,010
	Subtotal	\$2,394,171

Facility	Discrete Component	Discrete Component Budget
Paving/Roadway Curb/Gutter/ Sidewalks	Mitchell Avenue (From Mariner Sq Loop to Cul-de- sac) Fifth Street Mariner Square Loop Stargell Pavement Markings / Striping Subtotal	\$925,890 882,049 465,030 35,341 72,513 \$2,380,823
Landscape	Mitchell Avenue (From Mariner Sq Loop to Cul-de- sac) Fifth Street Mariner Square Loop Stargell Subtotal	\$294,399 460,320 2,033 3,281 \$760,033
Street Lights	Mitchell Avenue (From Mariner Sq Loop to Cul-de- sac) Fifth Street Mariner Square Loop Stargell Subtotal	\$343,879 411,283 82,288 7,501 \$844,951
Traffic Signals	Mitchell Avenue (From Mariner Sq Loop to Cul-de- sac) Fifth Street Mariner Square Loop Stargell Subtotal	\$366,855 597,157 336,146 - \$1,300,158
Parks	Village Green Subtotal Total for all Facilities	\$250,000 \$250,000 \$17,206,135

ACQUISITION AGREEMENT

EXHIBIT C

FORM OF PAYMENT REQUEST

PAYMENT REQUEST NO. _____

The undersigned (the "Developer"), hereby requests payment in the total amount of \$_____ for the Facilities (as defined in the Acquisition Agreement, dated as of November 1, 2013, between the City of Alameda (the "City"), for and on behalf of the City of Alameda Community Facilities District No. 13-1 (Alameda Landing Public Improvements), or Discrete Components thereof (as described in Exhibit B to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the City as follows:

1. He(she) is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed Facility (as defined in the Acquisition Agreement referenced above), the Developer has submitted to the Public Works Director of the City as-built drawings or similar plans and specifications, in both printed format and in an electronic format approved by the Director, for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Discrete Component (as defined in the Acquisition Agreement referenced above), the Developer has in his construction office a marked set of drawings or similar plans and specifications for the Discrete Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date. The Developer will provide copies of all such drawings, plans and specifications to the City upon written request of the Director of Public Works of the City.

3. The Developer has submitted to the Public Works Director of the City soils reports and certifications by its engineer or surveyor with respect to the Facilities or Discrete Components thereof for which payment is requested.

4. The Developer has submitted to the Public Works Director of the City a copy of each construction contract for each of the Facilities or Discrete Components thereof for which payment is requested, along with a copy of each bid notice for each such contract and a copy of any supplemental agreement (change order) applicable to each such contract, together with the written approval of each such supplemental agreement if required by Section 4.06 of the Acquisition Agreement.

5. All costs of the Facilities or Discrete Components thereof for which payment is requested hereby are true and correct Actual Costs (as defined in the Acquisition Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the City.

6. The Developer has submitted or submits herewith to the Public Works Director of the City invoices, receipts, worksheets and other evidence of costs to construct the Facilities

or Discrete Components thereof for which payment is requested, which are in sufficient detail to allow the Public Works Director of the City to verify the Actual Cost thereof and, if any of such invoices, receipts, worksheets or other evidence of costs include costs for facilities other than such Facilities or Discrete Components for which payment is requested, the Developer has submitted or submits herewith to the Public Works Director of the City 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 the Facilities or Discrete Components for which payment is requested, together with evidence that such allocation is appropriate, correct and reasonable.

7. The Developer has submitted or submits herewith to the Public Works Director of the City evidence that each of the invoices, receipts, worksheets and other evidence of costs referred to in paragraph 6 above has been paid in full, which evidence is in the form of copies of cancelled checks, bank wire reports or such other form as the Public Works Director 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 Facility or Discrete Component for which payment is requested which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing by operation of law.

9. The Developer has submitted or submits herewith to the Public Works Director of the City copies of unconditional lien releases from all contractors, subcontractors and materialmen for all work with respect to each Facility or Discrete Component for which payment is requested.

10. The Developer represents and warrants that, as of the date hereof, there is not present on, under or in any Facility or Discrete Component for which payment is requested or the property on which such Facility or Discrete Component is located, or any portion thereof, any Hazardous Materials (as defined in the agreement referred to in clause (a) of the definition "Development Agreement" in Section 1.01 of the Acquisition Agreement), except for (a) any types or amounts that do not require remediation or mitigation under federal, state or local laws, ordinances, regulations, rules or decisions, (b) those that have been remediated or mitigated in full compliance with applicable federal, state or local laws, ordinances, regulations, rules or decisions, (c) 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, (d) any types of amounts that do not present a human health risk or hazard to the public, and (e) if such property was, at the time of commencement of the acquisition, construction and installation of such Facility or Discrete Component, property of the City and, from such time of commencement through and including the date hereof, remained property of the City, those that were present on, under or in such property at such time of commencement.

11. The work in respect of each Facility or Discrete Component for which payment is requested is in compliance with all City requirements pertaining to the payment of prevailing wages, as well as any other applicable California laws relating to prevailing wages for the work to construct the Facilities or Discrete Components thereof for which payment is requested, and accurate payroll records have been maintained and all known governmental requests for certified payrolls have been satisfied.

12. The Facilities or Discrete Components thereof for which payment is requested were constructed (a) in accordance with all applicable City standards (or, with respect to Facilities to be owned by a public entity other than the City, the applicable standards of that

public entity) (b) in accordance with the requirements of the Acquisition Agreement, and (c) in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

13. The Developer is in compliance with the terms and provisions of the Acquisition Agreement and no portion of the amount being requested to be paid was previously paid.

14. The Purchase Price for each Facility or Discrete Components thereof (a detailed calculation of which is shown in an Attachment 2 hereto for each such Facility or Discrete Components thereof), has been calculated in conformance with the terms of Section 5.06 of the Acquisition Agreement.

15. Neither the Developer nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or special taxes or special assessments levied in the CFD (as defined in the Acquisition Agreement), except as follows: _____.

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

DEVELOPER:

CITY:

CATELLUS ALAMEDA DEVELOPMENT, LLC,
a Delaware limited liability company

Payment Request Approved for
Submission to the City Finance Director

By: CATELLUS HOLDING, LLC,
a Delaware limited liability company,
its sole member

By: _____
Public Works Director

By: _____
Authorized Representative
of the Developer

Date: _____

By: _____
Authorized Representative
of the Developer

Date: _____

**ATTACHMENT 1
EXHIBIT C**

*[list here all Facilities or Discrete Components for which payment is requested,
and attach support documentation]*

**ATTACHMENT 2
EXHIBIT C**

CALCULATION OF PURCHASE PRICE

[Use a separate sheet for each Facility or Discrete Component
for which payment is being requested]

1. Description (by reference to Exhibit B to the Acquisition Agreement) of the Facility or Discrete Component _____
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): \$ _____
3. Holdback for Lien releases (see Section 5.06(B) of the Acquisition Agreement) \$ _____
4. Total amount requested in respect of Facility or Discrete Component (amount listed in 2 less amount, if any, listed in 3) \$ _____

EXHIBIT D

PUBLIC WORKS BID PROCEDURES

The City and the Developer hereby agree that the following procedure shall be followed prior to the award of construction contracts for Facilities and Discrete Components thereof that are subject to the Acquisition Agreement. The City acknowledges that the following procedures are not consistent with the City's otherwise applicable Administrative Policies and Procedures, and that the following procedures shall supercede Administrative Policies and Procedures and a waiver is hereby granted to the extent that these procedures differ from the City's Administrative Policies and Procedures.

1. Pre-qualification of Contractors. The Developer will, after consultation with the Director, develop prequalification standards, and create a list of not less than five (5) (unless mutually agreed to by the Director and the Developer to have fewer bidders, but not in any event less than three (3)), and not more than eight (8), contractors that are prequalified to bid for each contract related to the construction of a Facility or any Discrete Component thereof. All entities that are prequalified shall have all licenses, equipment, experience (of both the prime contractor and any key subcontractors) and bonding capacity necessary for the performance of the applicable work. The Developer will solicit bids from those contractors who met the pre-qualification requirements. The Developer shall provide the bid packages to any such pre-qualified contractors requesting the same. If bids are sought prior to pre-qualifying contractors, the Developer will include pre-qualification screening/criteria/application in the applicable bid package and require contractors to complete the pre-qualification application fully and accurately in order to be considered a responsive bidder.

2. Content of Bid Packages. The Developer shall submit proposed bid packages to the Director for review and comment not less than thirty (30) days prior to the dissemination of bid packages to prospective bidders, and shall address, to the satisfaction of the Director, any reasonable concerns or comments the Director has with respect to any bid package prior to its dissemination to prospective bidders. The Director shall promptly review all bid packages submitted to the Director, and shall work in good faith with the Developer to address any concerns or questions that the Director has with respect to the bid packages.

In order to expedite the bidding process, where appropriate the Developer shall provide any contractors that pre-qualify with a preliminary bid package for the purpose of preparing their bids while final bid documents are being completed, approved and signed. Bid packages shall contain any terms required by this Acquisition Agreement and applicable law. Final bid documents will be issued as an addendum to the preliminary bid documents.

3. Type of Contract Requested. Each bid package will require that the contracts will be bid on a unit price basis, with an estimate of bid quantities included on the applicable bid sheet, consistent with the MDIGP. Upon written request of the Developer, the Director may agree, on a case-by-case basis, that bids may alternatively be made on the basis of all inclusive lump sum prices, with provisions for deductions based on unit prices and bid quantities that are less than originally estimated. Contracts shall provide that a ten percent retention shall be held on contractors. The retention will be released upon acceptance of the related Facility and/or Discrete Component by the City as described in this Acquisition Agreement. While contractor suggested alternatives will be encouraged, any exclusions or exceptions to the base bid package will constitute a non-responsive bid that may be rejected.

4. Receipt of Bids. The bids will be received by the Developer by the deadline set forth in the bid package. All bid information will be available for review by the Director.

5. Award of the Bid. The Developer shall award the construction contract to the lowest responsible bidder, except that upon mutual agreement of the Developer and the Director, the Developer may award the contract to a bidder that was not the low bidder. The Developer shall submit to the Director a report summarizing the bid process, the reasons for awarding to other than the low bidder, and the results thereof.