

**RESOLUTION NO. 66-18**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
(1) AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY (THE “AUTHORITY”) TO FORM A COMMUNITY  
FACILITIES DISTRICT WITHIN THE TERRITORIAL LIMITS OF THE CITY OF  
RICHMOND TO FINANCE CERTAIN PUBLIC IMPROVEMENTS AND  
DEVELOPMENT IMPACT FEES; (2) EMBODYING A JOINT COMMUNITY  
FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF  
THE COMMUNITY FACILITIES DISTRICT FINANCING; (3) APPROVING AN  
ACQUISITION AGREEMENT AMONG THE AUTHORITY, THE CITY AND THE  
DEVELOPER; AND (4) AUTHORIZING STAFF TO COOPERATE WITH THE  
AUTHORITY AND ITS CONSULTANTS IN CONNECTION THEREWITH**

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**WHEREAS**, the City of Richmond (the “City”) is a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the “State”); and

**WHEREAS**, the California Statewide Communities Development Authority (the “Authority”) is a California joint-exercise of powers authority lawfully formed and operating within the State pursuant to an agreement (the “Joint Powers Agreement”) entered into as of June 1, 1988 under the authority of Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code; and

**WHEREAS**, the City is a party to the Joint Powers Agreement and by virtue thereof a member (a “Program Participant”) of the Authority; and

**WHEREAS**, the Joint Powers Agreement was entered into to establish the Authority as an agency authorized to issue bonds to finance projects within the territorial limits of its Program Participants; and

**WHEREAS**, the Joint Powers Agreement authorizes the Authority to undertake financing programs under any applicable provisions of State law to promote economic development, the stimulation of economic activity, and the increase of the tax base within the jurisdictional boundaries of its Program Participants; and

**WHEREAS**, the “Mello-Roos Community Facilities Act of 1982,” being Chapter 2.5, Part 1, Division 2, Title 5 (beginning with Section 53311) of the Government Code of the State (the “Act”) is an applicable provision of State law available to, among other things, finance public improvements necessary to meet increased demands placed upon local agencies as a result of development; and

**WHEREAS**, there is a development project known as “Terminal One” in the City that has been proposed by Terminal One Development LLC and approved by the City (respectively, the “Development Project” and the “Developer”) and the Developer has requested the City to consider formation of a community facilities district for the Development Project under the Act; and

**WHEREAS**, the City does not desire to allocate City resources and City staff time to the formation and administration of a community facilities district and to the issuance of bonds; and

**WHEREAS**, the Development Project will promote economic development, the stimulation of economic activity, and the increase of the tax base within the City; and

**WHEREAS**, both the Authority and the City are “local agencies” under the Act; and

**WHEREAS**, the Act permits two or more local agencies to enter into a joint community facilities agreement to exercise any power authorized by the Act; and

**WHEREAS**, the City desires to enter into such an agreement with the Authority to authorize the Authority to form a community facilities district within the territorial limits of the City to finance certain public improvements (including improvements funded from development impact fees, the “Improvements”) and fees (the “Fees”) required of the Development Project; and

**WHEREAS**, a form of Acquisition Agreement (the “Acquisition Agreement”) among the Authority, the City and the Developer has been presented to the City Council and is on file with the City Clerk; and

**WHEREAS**, nothing herein constitutes the City’s approval of any applications, Development Project entitlements and/or permits, and such, to the extent required in the future, are subject to and contingent upon City Council approval following, to the extent applicable, environmental review in compliance with the California Environmental Quality Act; and

**WHEREAS**, nothing herein affects, without limitation, requirements for and/or compliance with any and all applicable and/or necessary improvement standards, land use requirements or subdivision requirements relating to the Development Project or any portion thereof, which obligations are and shall remain independent and subsisting; and

**WHEREAS**, the City Council is fully advised in this matter.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Richmond that it does hereby find, determine, declare and resolve as follows:

**Section 1.** The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to municipal affairs of the City and the statements, findings and determinations of the City set forth in the recitals above and in the preambles of the documents approved herein are true and correct.

**Section 2.** This resolution shall constitute full “local approval,” under Section 9 of the Joint Powers Agreement, and under the Authority’s Local Goals and Policies (see below), for the Authority to undertake and conduct proceedings in accordance herewith and under the Act to form a community facilities district (the “Community Facilities District”) with boundaries substantially as shown on Exhibit A, attached hereto, to authorize a special tax for the facilities (the “Special Tax”) and to issue bonds secured by the Special Taxes.

**Section 3.** The Joint Powers Agreement, together with the terms and provisions of this resolution, shall together constitute a joint community facilities agreement between the City and the Authority under the Act. As, without this resolution, the Authority has no power to conduct proceedings under the Act to form the Community Facilities District, adoption by the Commission of the Authority of the Resolution of Intention to form the Community Facilities District under the Act shall constitute acceptance of the terms hereof by the Authority.

**Section 4.** This resolution and the agreement it embodies are determined to be beneficial to the residents/customers of the City and are in the best interests of the residents of the City, and of the future residents of the area within the Community Facilities District.

**Section 5.** The City acknowledges that the Authority has adopted Local Goals and Policies as required by Section 53312.7 of the Act. The City approves the use of those Local Goals and Policies in connection with the Community Facilities District.

**Section 6.** Pursuant to the Act and this resolution, the Authority may conduct proceedings under the Act to form the Community Facilities District and to have it authorize the financing of the Improvements, including improvements to be funded from Fees, set forth on Exhibit B, attached hereto. All of the Improvements, whether to be financed directly or through fees, are facilities that have an expected useful life of five years or longer and are facilities that the City or other local public agencies, as the case may be, are authorized by law to construct, own or operate, or to which they may contribute revenue. The facilities are referred to herein as the “Improvements,” and the Improvements to be owned by the City are referred to as the “City Improvements.” The fees are referred to as the “Fees,” and the Fees paid or to be paid to the City are referred to as the “City Fees.”

**Section 7.** For Fees paid or to be paid to another local agency (any such local agency referred to herein as an “Other Local Agency”), the Authority will obtain the written consent of that Other Local Agency before issuing bonds to fund such Fees, as required by the Act. For the Improvements to be owned by an Other Local Agency, the Authority will separately identify each in its proceedings, and will enter into joint community facilities agreements with each Other Local Agency prior to issuing bonds to finance Improvements, as required by the Act. Each joint community facilities agreement with an Other Local Agency will contain a provision that the Other Local Agency will provide indemnification to the City to the same extent that the City provides indemnification to the Other Local Agency under the terms of this resolution.

**Section 8.** The City Council certifies to the Commission of the Authority that all of the City Improvements, including the improvements to be constructed or acquired with the proceeds of City Fees, are necessary to meet increased demands placed upon the City as a result of development occurring or expected to occur within the Community Facilities District. Joint community facilities agreements with each Other Local Agency shall each contain a certification with respect to the Improvements to be owned by, and Fees paid or to be paid to, the Other Local Agency equivalent to that made by the City in this paragraph.

**Section 9.** Prior to issuance of bonds, the Authority will apply the Special Tax collections within the Community Facilities District to fund City Improvements and City Fees as provided in the Acquisition Agreement. Following the issuance of bonds, the Authority will apply the Special Tax collections initially as required by the documents under which any bonds are issued; and, to the extent not provided in the bond documents, may pay its own reasonable administrative costs incurred in the administration of the Community Facilities District. The Authority will remit any Special Tax revenues remaining after the final retirement of all bonds to the City and to each Other Local Agency in the proportions specified in the Authority’s proceedings. The City will apply any such Special Tax revenues it receives for authorized City Improvements and its own administrative costs only as permitted by the Act. The joint community facilities agreements with each Other Local Agency must require such Other Local Agency to apply the Facilities Special Tax revenues they receive for their authorized Improvements and Fees under the Community Facilities District and for their own related administrative costs only as permitted by the Act.

**Section 10.** The Authority will administer the Community Facilities District, including employing and paying all consultants, annually levying the Special Tax and all aspects of paying and administering the bonds, and complying with all State and Federal requirements appertaining to the proceedings, including the requirements of the United States Internal Revenue Code. The City will cooperate fully with the Authority in respect of the requirements of the Internal Revenue Code and to the extent information is required of the City to enable the Authority to perform its disclosure and continuing disclosure obligations with respect to the bonds, although the City will not participate in nor be considered to be a participant in the proceedings respecting the Community Facilities District (other than as a party to the agreement embodied by this resolution) nor will the City be or be considered to be an issuer of the bonds. The Authority shall obtain a provision equivalent to this paragraph in the joint community facilities agreement with each Other Local Agency.

**Section 11.** Upon the first levy of Special Taxes within the Community Facilities District prior to the issuance of bonds or in connection with the issuance of the bonds, the Authority shall establish and maintain a special fund to be known as the “City of Richmond Terminal One Project Community Facilities District Acquisition and Construction Fund.” Special Taxes collected prior to the issuance of bonds shall be deposited in a separate account of the Acquisition and Construction Fund. If the Authority issues bonds and bond proceeds become available to finance the Improvements, the Authority shall deposit the portion of bond proceeds which is intended to be utilized to finance the Improvements and Fees in a separate account of the Acquisition and Construction Fund. The Acquisition and Construction Fund will be available both for City Improvements and City Fees and for the Improvements and Fees pertaining to each Other Local Agency. Amounts in the Acquisition and Construction Fund shall be disbursed in accordance with the provisions of the Acquisition Agreement and any applicable bond documentation.

**Section 12.** As respects the Authority and the other local agencies, the City agrees to fully administer, and to take full governmental responsibility for, the construction or

acquisition of the City Improvements and for the administration and expenditure of the City Fees including but not limited to environmental review, approval of plans and specifications, bid requirements, performance and payment bond requirements, insurance requirements, contract and construction administration, staking, inspection, acquisition of necessary property interests in real or personal property, the holding back and administration of retention payments, punch list administration, and the Authority and the other local agencies shall have no responsibility in that regard. The City reserves the right, as respects the Developer, to require the Developer to contract with the City to assume any portion or all of this responsibility. The Authority shall obtain a provision equivalent to this paragraph in the joint community facilities agreement with each Other Local Agency.

**Section 13.** The City agrees to indemnify and to hold the Authority, its other members, and its other members' officers, agents and employees, and the Other Local Agencies and their officers, agents and employees (collectively, the "Indemnified Parties") harmless from any and all claims, suits and damages (including costs and reasonable attorneys' fees) arising out of the design, engineering, construction and installation of the City Improvements and the improvements to be financed or acquired with the City Fees. The City reserves the right, as respects the Developer, to require the Developer to assume by contract with the City any portion or all of this responsibility. The Authority shall obtain a provision equivalent to this paragraph in each joint community facilities agreement with each Other Local Agency naming the City and its officers, agents and employees as Indemnified Parties with respect to such Other Local Agency's Improvements and the improvements to be constructed or acquired with the Other Local Agency's Fees.

**Section 14.** As respects the Authority and each Other Local Agency, the City agrees – once the City Improvements are constructed according to the approved plans and specifications, and the City and the Developer have put in place their agreed arrangements for the funding of maintenance of the City Improvements – to accept ownership of the City Improvements, to take maintenance responsibility for the City Improvements, and to indemnify and hold harmless the Indemnified Parties to the extent provided in the preceding paragraph from any and all claims, etc., arising out of the use and maintenance of the City Improvements. The City reserves the right, as respects the Developer, to require the Developer by contract with the City to assume any portion or all of this responsibility. The Authority shall obtain a provision equivalent to this paragraph in the joint community facilities agreement with each Other Local Agency identifying the City and its officers, agents and employees as Indemnified Parties

**Section 15.** The City acknowledges the requirement of the Act that if the City Improvements are not completed prior to the adoption, by the Commission of the Authority, of the Resolution of Formation of the Community Facilities District, the City Improvements must be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City. The City acknowledges that this means all City Improvements, including City Improvements funded from City Fees, must be constructed under contracts that require the payment of prevailing wages as required by Section 1720 and following of the Labor Code of the State of California. The Authority makes no representation that this requirement is the only applicable legal requirement in this regard. The City reserves the right, as respects the Developer, to assign appropriate responsibility for compliance with this paragraph to the Developer.

**Section 16.** The form of the Acquisition Agreement attached hereto as Exhibit C is hereby approved, and each of the City Manager, Assistant City Manager, or such person as the City Manager or Assistant City Manager shall designate (each, an "Authorized Officer") is authorized to execute, and deliver to the Developer, the Acquisition Agreement on behalf of the City in substantially that form, with such changes as shall be approved by the Authorized Officer after consultation with the City Attorney and the Authority's bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 17.** After completion of the City Improvements and appropriate arrangements for the maintenance of the City Improvements, or any discrete portion thereof as provided in Section 53313.51 of the Act and in the Acquisition Agreement, to the satisfaction of the City, and in conjunction with the City's acceptance thereof, acquisition of the City Improvements shall be undertaken as provided in the Acquisition Agreement.

**Section 18.** The City hereby consents to the formation of the Community Facilities District in accordance with this resolution and consents to the assumption of jurisdiction by the Authority for the proceedings respecting the Community Facilities District with the understanding that the Authority will hereafter take each and every step required for or suitable for consummation of the proceedings, the levy, collection and enforcement of the Special Tax, and the issuance, sale, delivery and administration of the bonds, all at no cost to the City and without binding or obligating the City's general fund or taxing authority.

**Section 19.** The terms of the Agreement embodied by this resolution may be amended by a writing duly authorized, executed and delivered by the City and the Authority, except that no amendment may be made after the issuance of the bonds by the Authority that would be detrimental to the interests of the bondholders without complying with all of the bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding bonds.

**Section 20.** Except to the extent of the indemnifications extended to the Other Local Agencies in the Agreement embodied by this resolution, and the City's agreement to take responsibility for and ownership of the City Improvements, no person or entity, including the Developer, shall be deemed to be a third party beneficiary of this resolution, and nothing in this resolution (either express or implied) is intended to confer upon any person or entity other than the Authority and the City (and their respective successors and assigns) any rights, remedies, obligations or liabilities under or by reason of this resolution.

**Section 21.** The City shall be identified as a third party beneficiary of all joint community facilities agreements between the Authority and the Other Local Agencies to the extent of the indemnification provisions and the provisions whereby the Other Local Agency agree to take responsibility for and ownership of their Improvements.

**Section 22.** This resolution shall remain in force until all bonds have been retired and the authority to levy the Special Tax conferred by the Community Facilities District proceedings has ended or is otherwise terminated.

**Section 23.** The City Council hereby authorizes and directs each Authorized Officer and other appropriate City staff to cooperate with the Authority and its consultants and to do all things necessary and appropriate to carry out the intent of this resolution and the Community Facilities District financing, and to execute any and all certificates and documents in connection with the bond issuance as shall be approved by an Authorized Officer after consultation with the City Attorney and the Authority's bond counsel.

**Section 24.** The City Council hereby approves delivery of a certified copy of this resolution to the Authority's Bond Counsel, Orrick, Herrington & Sutcliffe LLP.

**Section 25.** This Resolution shall take effect upon its adoption.

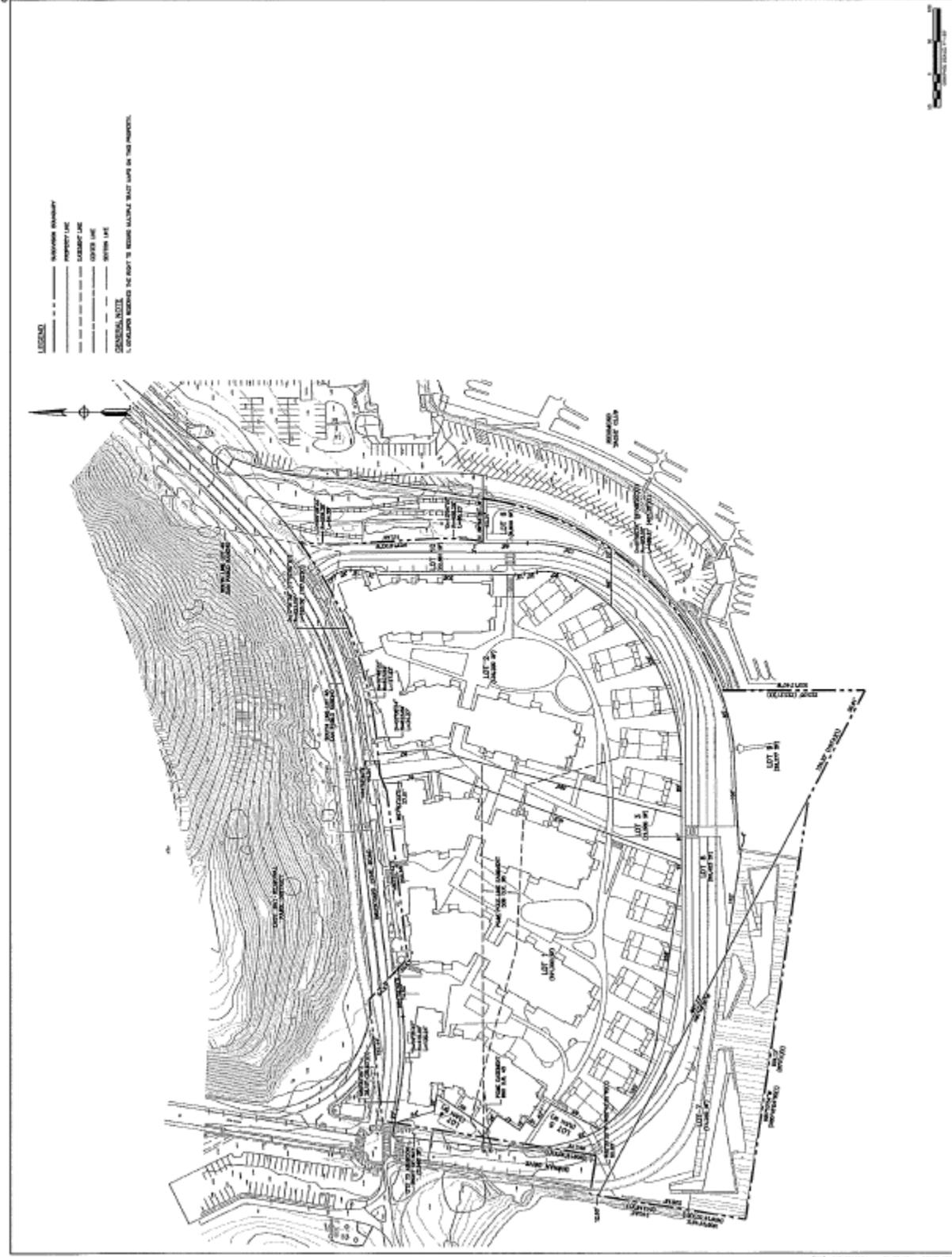
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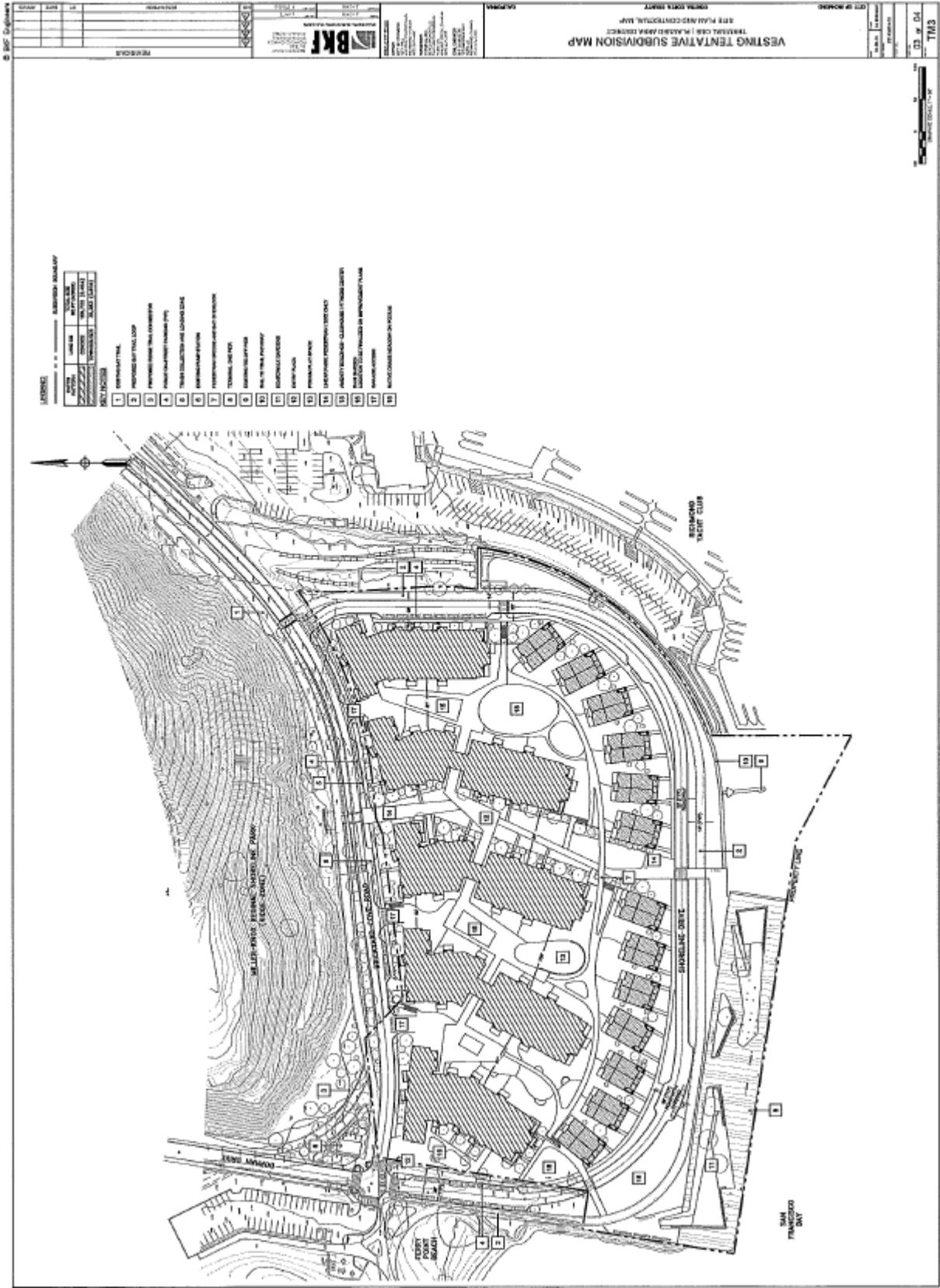


**EXHIBIT A**

**COMMUNITY FACILITIES DISTRICT BOUNDARIES**









## **EXHIBIT B**

### **AUTHORIZED IMPROVEMENTS AND FEES**

#### **Authorized Improvements**

Authorized Improvements that may be funded through the proposed community facilities district serving the Terminal One Project (the “Terminal One CFD”) include the following on-site and off-site public Improvements:

#### 1. Transportation Improvements

Authorized Improvements include:

- Construction of Shoreline Drive (see also discussion of “Park and Open Space Improvements”);
- Modifications/improvements to Brickyard Cove Road and Dornan Drive;
- Construction of the Brickyard Cove Road/Dornan Drive/Shoreline Drive intersection and the Brickyard Cove Road/Shoreline Drive intersection; and
- Other public roadway-related improvements as contemplated by the Master Plan and Design Framework for the Terminal One Project approved by the Richmond City Council on July 19, 2016 (the “Terminal One Master Plan”) and the Design Review Plan Set approved by the Richmond Design Review Board on February 14, 2018 (the “DRB Plan Set”).

These eligible transportation-related Improvements include, but may not be limited to: base and finished paving; joint trench work and underground utilities (including electrical improvements); curbs, gutters, and sidewalks; streetlights and signalization; raised speed table pedestrian crossings; on-street public parking and loading/drop-off/pick-up zones; enhanced paving treatments; bus turnouts; driveway improvements at the entry to/exit from the Miller/Knox Regional Shoreline parking facility as well as the Terminal One parking garages; signage and stripping; erosion control; landscaping and irrigation; entry features and monumentation; barriers; retaining walls and soundwalls; right-of-way purchase; reimbursement to the City of Richmond (the “City”) or the East Bay Regional Park District (the “EBRPD”) for any costs incurred in constructing any of the authorized transportation facilities; and other improvements as well as appurtenant work related thereto.

#### 2. Water Systems Improvements

Authorized Improvements include any and all potable water system-related public improvements serving the Terminal One Waterfront Park or the Latitude residential development including, but not limited to, water transmission/distribution facilities such as waterlines and appurtenances; tie-ins to existing main lines; gate valves; pressure reducing and/or enhancing stations; back-flow prevention devices; flow meters; fire protection systems including fire hydrants, fire control valves, and fire pumps; manholes; evacuation and construction de-watering; and other improvements related thereto as well as reimbursement to East Bay Municipal Utility District

(“EBMUD”) and/or Shea Homes for costs incurred in constructing any of the authorized water system-related Improvements.

### 3. Drainage System Improvements

Authorized Improvements include any and all drainage and storm drain system-related public improvements serving the Terminal One Waterfront Park or the Latitude residential development including, but not limited to, the cleaning and rehabilitation of existing drainage facilities to serve the Terminal One site including the 54”± storm drain line and outfall; abandonment of existing storm drain facilities; construction of new pipelines and appurtenances; tie-ins to existing main lines; inlets; temporary drainage facilities; storm water detention/retention facilities; storm water quality facilities including storm water treatment gardens, bio-retention/remediation swales, and flow-through planters; manholes; excavation and construction de-watering; and other improvements related thereto.

### 4. Wastewater System Improvements

Authorized Improvements include any and all wastewater system-related public improvements serving the Terminal One Waterfront Park or the Latitude residential development including, but not limited to, pipelines and appurtenances, tie-ins to existing main lines and pump station, improvements to the existing pump station, manholes, excavation and construction de-watering, and other improvements related thereto as well as reimbursement to the City of Richmond Municipal Sewer District (“RMSD”) for costs incurred in constructing any of the authorized wastewater system-related public improvements.

### 5. Electrical System Improvements

Authorized Improvements include any and all electrical system-related public improvements serving the Terminal One Waterfront Park or the Latitude residential development including, but not limited to, distribution lines, vaults, transformers, and other improvements related to the electrical infrastructure as well as reimbursement to Pacific Gas and Electric Company (“PG&E”) for any costs incurred in constructing any of the authorized electrical system Improvements.

### 6. Park and Open Space Improvements

Authorized Improvements include the following public park-related improvements, all as contemplated by the Terminal One Master Plan, the DRB Plan Set, and the “Terminal One Waterfront Park Illustrative Project Description” approved by the Bay Conservation and Development Commission (the “Waterfront Park Project Description”):

- Terminal One Wharf (including Rip-Rap Extension);
- Bay Trail Shoreline Extension (also referenced as the Bay Trail Loop);
- Shoreline Drive (see also prior discussion of “Transportation Improvements”);
- Entry Plaza (including Public Art);
- Central Promenade;
- Rails-to-Trails Pathway;

- Native Coastal Gardens and other Landscape improvements;
- Bay Tidelands Area;
- On-Street Visitor Parking – Shoreline Drive; and
- Other public park improvement-related costs.

Authorized Improvements also include the following public open space-related improvements, all as contemplated by the Terminal One Master Plan, the DRB Plan Set, and the Waterfront Park Project Description:

- Bay Trail Commuter Extension;
- On-Street Visitor Parking – Brickyard Cove Road;
- Off-site landscape improvements adjacent to Brickyard Cove Road and Dornan Drive, including irrigation facilities; and
- Other public open space improvement-related costs.

## 7. Other Eligible Improvement-Related Costs

In addition to the authorized Improvements listed and described above, other Improvement-related costs which are eligible for funding through the Terminal One CFD as authorized by the Mello-Roos Community Facilities Act of 1982 (the “Mello-Roos Act”) include, but are not limited to, expenses associated with:

- The provision of design and engineering/surveying services;
- Permits and fees, including plan review and inspection fees and charges;
- Project management;
- Mobilization
- Site stabilization work including deep soil mixing, surcharge, and other seismic mitigation strategies;
- Site remediation including soil testing, groundwater monitoring, slurry wall construction, and other clean-up related remedial action measures;
- Demolition and material recycling, including both the existing warehouse as well as on-site and off-site hardscape elements;
- Site preparation work including utility relocation, tree removal, protective/security fencing, clearing and grubbing, staking, erosion control, and grading;
- Construction-related surety bonds or like security instruments; and
- Other costs incidental to the construction and/or acquisition of the authorized Improvements.

Also eligible for funding through the Terminal One CFD are costs (including the costs of legal services) associated with carrying out the authorized purposes of the Terminal One CFD including, but not limited to, the costs involved in and incidental to the formation of the Terminal One CFD; the issuance of bonds; the determination of the amount of special taxes to be levied; the levy, payment, and collection of the special taxes; and the construction, completion, inspection, and acquisition of the authorized Improvements. In this regard, it is anticipated that the following incidental expenses and bond issuance costs may be incurred in the formation and administration of the Terminal One CFD:

- Engineering services;
- Special tax consultant services;
- City review and administration;
- Bond counsel services;
- Bond counsel out-of-pocket expenses;
- Independent financial advisor services;
- Appraiser services;
- Initial bond transfer agent, fiscal agent, registrar and paying agent fees;
- Rebate calculation service set-up charge;
- Bond printing costs;
- Offering memorandum printing and mailing costs;
- Costs of publishing, mailing and posting of notices;
- Underwriter's discount;
- Bond reserve fund;
- Capitalized interest;
- Bond syndication costs;
- Government notification and filing costs;
- Credit enhancement costs;
- Real estate acquisition costs;
- Special disclosure counsel services; and
- Rating agency fees.

In addition, the annual costs that may be included in each annual special tax levy include:

- Annual bond transfer agent, fiscal agent, registrar and paying agent fees;
- Annual rebate calculation costs;
- Special tax consultant costs;
- Other necessary consultant costs;
- Costs of posting and collecting the special taxes;
- Personnel costs to the City;
- Arbitrage rebate; and
- Rating agency fees.

#### Authorized Fees

Authorized Fees that may be funded through the Terminal One CFD include City of Richmond fees, Contra Costa County fees, and any other agency fees associated with or incidental to development within the Terminal One CFD as allowed by the Mello-Roos Act including, but not limited to:

- Building Permit, Plan Check, and Inspection Fees as they apply to construction of the authorized Improvements;
- Public Facility Impact Fees, including but not limited to fees associated with:
  - Storm drainage;
  - Library facilities;

- Police facilities;
- Fire facilities;
- Sewer;
- Traffic;
- Schools;
- Aquatic center;
- Affordable/inclusionary housing;
- Sub-regional transportation mitigation; and
- Utility Connection Fees/Utility Charges, including but not limited to:
  - Water (EBMUD);
  - Electrical (PG&E); and
  - Sewer (RMSD).

**EXHIBIT C**

**FORM OF ACQUISITION AGREEMENT**

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**ACQUISITION AGREEMENT**

BY AND AMONG

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY,

CITY OF RICHMOND

AND

TERMINAL ONE DEVELOPMENT LLC

Dated as of \_\_\_\_\_, 2018

## ACQUISITION AGREEMENT

### Recitals

A. The parties to this Acquisition Agreement (the “Agreement”) are the California Statewide Communities Development Authority (the “Authority”), City of Richmond (the “City”), and Terminal One Development LLC, a Delaware limited liability company (the “Developer”).

B. The Developer and the City entered into that certain Terminal One Land Disposition Agreement dated August 6, 2014 (the “LDA”) which, among other things, makes provision for the Developer’s purchase of the Property (as defined in the LDA) for the development of the Acquisition Improvements (defined below) and residential project (the “Terminal One Project”).

C. The effective date of this Agreement is \_\_\_\_\_, 2018.

D. As a component of the Terminal One Project, the Developer is required to construct certain public capital improvements (each, an “Acquisition Improvement” and collectively, the “Acquisition Improvements”), and has applied for the financing of such Acquisition Improvements as well as certain governmentally-imposed development fees and financial contributions (collectively, the “Fees”) through the Authority. The Fees will themselves finance public capital improvements. The Acquisition Improvements are to be owned and operated by the City, and the financing is to be accomplished through a Community Facilities District which will be established and administered by the Authority under and pursuant to the Mello-Roos Community Facilities Act of 1982 – California Government Code Sections 53311 and following (the “Act”). On [\_\_\_\_\_], 2018, the City adopted Resolution No. [\_\_\_\_\_] authorizing the Authority to form a community facilities district (the “Community Facilities District”) within the territorial limits of the City to finance the Acquisition Improvements and Fees. On [\_\_\_\_\_], 2018, the Authority formed the Community Facilities District and, on the same date, a landowner election was conducted in which all of the votes were cast unanimously in favor of conferring the Community Facilities District authority on the Authority Commission.

E. The Authority intends to levy special taxes for facilities and issue bonds in one or more series, to fund, among other things, all or a portion of the Fees and the Acquisition Improvements. The portion of the proceeds of such special taxes (including prepayments) and bonds allocable to the cost of the Fees and Acquisition Improvements, together with interest earned thereon, is referred to herein as the “Available Amount”.

F. The Community Facilities District will provide financing for the Fees and the acquisition by the City of the Acquisition Improvements and the payment of the Acquisition Price (as defined herein) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A is a description of the Fees and the Acquisition Improvements, which includes authorized discrete and usable portions, if any, of the Acquisition Improvements, pursuant to Section 53313.51 of the Act, to be acquired from the Developer.

G. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement, the City will acquire the completed Acquisition Improvements. All or any of the Fees may be paid by the Developer and reimbursed from the Available Amount, or paid directly from the Available Amount.

H. Any and all monetary obligations of the City arising out of this Agreement are the special and limited obligations of the City payable only from the Available Amount, and no other funds whatsoever of the City shall be obligated therefor under any circumstances.

I. Attached to this Agreement are Exhibit A (Description of the Acquisition Improvements and the Eligible Portions thereof and Fees), Exhibit B-1 (Disbursement Request Form for Acquisition Improvements), Exhibit B-2 (Disbursement Request Form for Fees) and Exhibit C (Bidding, Contracting and Construction Requirements for Acquisition Improvements), all of which are incorporated into this Agreement for all purposes.

## Agreement

### ARTICLE I

#### DEFINITIONS; COMMUNITY FACILITIES DISTRICT FORMATION AND FINANCING PLAN

Section 1.01. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

“Acceptable Title” means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except (i) those items which are reasonably determined by the City Public Works Director not to interfere with the intended use and therefore are not required to be cleared from the title, and (ii) the lien of the Community Facilities District or any other community facilities district or assessment district provided that the property owned by the City is exempt from such taxation or assessment.

“Acquisition and Construction Fund” means each “City of Richmond Terminal One Community Facilities District Acquisition and Construction Fund” established by the Authority pursuant to the Resolution and Section 1.03 hereof for the purpose of paying the Acquisition Price of the Acquisition Improvements and funding Fees.

“Acquisition Improvement” means a public capital improvement described in Exhibit A hereto.

“Acquisition Price” means the total amount eligible to be paid to the Developer upon acquisition of an Acquisition Improvement as provided in Section 2.03, not to exceed the Actual Cost of the Acquisition Improvement.

“Actual Cost” means the total cost of an Acquisition Improvement, as documented by the Developer to the satisfaction of the City and as certified by the City Public Works Director in an Actual Cost Certificate including, without limitation, (a) the Developer’s cost of constructing such Acquisition Improvement including grading, labor, material and equipment costs, (b) the

Developer's cost of designing and engineering the Acquisition Improvement, preparing the plans and specifications and bid documents for such Acquisition Improvement, and the costs of inspection, materials testing and construction staking for such Acquisition Improvement, (c) the Developer's cost of any performance, payment and maintenance bonds and insurance, including title insurance, required hereby for such Acquisition Improvement, (d) the Developer's cost of any real property or interest therein that is either necessary for the construction of such Acquisition Improvement (e.g., temporary construction easements, haul roads, etc.), or is required to be conveyed with such Acquisition Improvement in order to convey Acceptable Title thereto to the City or its designee, (e) the Developer's cost of environmental evaluation or mitigation required for such Acquisition Improvement, (f) the amount of any fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Acquisition Improvement, (g) the Developer's cost for construction and project management, administration and supervision services for such Acquisition Improvement, (h) the Developer's cost for professional services related to such Acquisition Improvement, including engineering, accounting, legal, financial, appraisal and similar professional services, and (i) the costs of construction financing incurred by the Developer with respect to such Acquisition Improvement.

“Actual Cost Certificate” means a certificate prepared by the Developer detailing the Actual Cost of an Acquisition Improvement, or an Eligible Portion thereof, to be acquired hereunder, as may be revised by the City Public Works Director pursuant to Section 2.03.

“Agreement” means this Acquisition Agreement, dated as of [\_\_\_\_\_], 20\_\_.

“Authority” means the California Statewide Communities Development Authority.

“Authority Trust Agreement” means a Trust Agreement entered into by the Authority and an Authority Trustee in connection with the issuance of bonds.

“Authority Trustee” means the financial institution identified as trustee in an Authority Trust Agreement.

“Available Amount” shall have the meaning assigned to the term in Recital E.

“Bonds” means bonds or other indebtedness issued by the Authority that is to be repaid with Special Taxes.

“City” means the City of Richmond, California.

“City Public Works Director” means the Public Works Director of the City or his/her designee who will be responsible for administering the acquisition of the Acquisition Improvements hereunder.

“Code” means the Government Code of the State of California.

“Community Facilities District” shall have the meaning assigned to the term in Recital D.

“Developer” means Terminal One Development LLC, a Delaware limited liability company, and its successors and assigns.

“Disbursement Request Form” means (i) a requisition for payment of funds from an Acquisition and Construction Fund for an Acquisition Improvement, or an Eligible Portion thereof in substantially the form contained in Exhibit B-1 hereto and (ii) a requisition for payment of funds from an Acquisition and Construction Fund for Fees in substantially the form contained in Exhibit B-2 hereto.

“Eligible Portion” shall have the meaning ascribed to it in Section 2.03 below.

“Installment Payment” means an amount equal to ninety percent (90%) of the Actual Cost of an Eligible Portion.

“Project” means the development of the property in the Community Facilities District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within the Community Facilities District.

“Resolution” means City of Richmond Resolution No. [\_\_\_\_], adopted [\_\_\_\_], 2018 authorizing the execution and delivery of this Agreement.

“Special Taxes” means annual special taxes for facilities, and prepayments thereof, authorized by the Community Facilities District to be levied by the Commission of the Authority.

“Title Documents” means, for each Acquisition Improvement acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements or rights of way), or an irrevocable offer of dedication of such real property with interests therein necessary to the operation, maintenance, rehabilitation and improvement by the City of the Acquisition Improvement (including, if necessary, easements for ingress and egress) and a bill of sale or similar instrument evidencing transfer of title to the Acquisition Improvement (other than said real property interests) to the City, where applicable.

Section 1.02. Establishment of Community Facilities District. Developer has requested the City to permit the Authority to provide for financing of the Acquisition Improvements and Fees through the establishment and authorization of the Community Facilities District and the City agreed by its adoption of the Resolution. The Community Facilities District was established by the Authority on [\_\_\_\_], 2018, and through the successful landowner election held that same day, the Commission of the Authority is authorized to levy the Special Taxes and to issue the Bonds to finance the Acquisition Improvements and Fees. Developer and the City agree to reasonably cooperate with one another and with the Authority in the completion of the financing through the issuance of the Bonds in one or more series.

Section 1.03. Deposit and Use of Available Amount.

(a) Prior to the issuance of Bonds, Special Taxes collected by the Authority (including from prepayments of Special Taxes) shall be deposited in the Acquisition and

Construction Fund established by the Resolution, and may be disbursed to pay the Acquisition Price of Acquisition Improvements in accordance with Article II of this Agreement and to finance Fees in accordance with Article III of this Agreement. All funds in the Acquisition and Construction Fund shall be considered a portion of the Available Amount, and upon the issuance of the Bonds the Acquisition and Construction Fund shall be transferred to the Authority Trustee to be held in accordance with the Authority Trust Agreement.

(b) Upon the issuance of the Bonds, the Authority will cause the Authority Trustee to establish and maintain the Acquisition and Construction Fund for the purpose of holding all funds for the Acquisition Improvements and Fees. All earnings on amounts in the Acquisition and Construction Fund shall remain in the Acquisition and Construction Fund for use as provided herein and pursuant to the Authority Trust Agreement. Money in the Acquisition and Construction Fund shall be available to respond to delivery of a Disbursement Request Form and to be paid to the Developer or its designee to pay the Acquisition Price of the Acquisition Improvements, as specified in Article II hereof, or to be paid to the Developer or City for Fees, as specified in Article III hereof. Upon completion of all of the Acquisition Improvements and the payment of all costs thereof, and upon funding of all Fees, any remaining funds in the Acquisition and Construction Fund (less any amount determined by the City as necessary to reserve for claims against the account) (i) shall be applied to pay the costs of any additional Acquisition Improvements eligible for acquisition with respect to the Project, or applicable Fees, as approved by the Authority and, to the extent not so used, (ii) shall be applied by the Authority to call Bonds or to reduce Special Taxes as the Authority shall determine.

Section 1.04. No City Liability; City Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the City or any actual or alleged omission or failure to act by the City with respect to the Authority subject the City to monetary liability therefor. Further, nothing in this Agreement shall be construed as affecting the Developer's or the City's duty to perform their respective obligations under any other agreements, public improvement standards, land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the City's rights and obligations under this Agreement.

## ARTICLE II

### DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Section 2.01. Letting and Administering Design Contracts. The Developer has awarded and administered, or will award and administer, engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the City or directly to the design consultant) shall be reimbursed at the time of acquisition of the Acquisition Improvements. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of the acquisition of Acquisition Improvements.

Section 2.02. Letting and Administration of Construction Contracts; Indemnification. State law requires that all Acquisition Improvements not completed prior to the formation of the Community Facilities District shall be constructed as if they were constructed under the direction and supervision, or under the authority, of the City. In order to assure compliance with those provisions, except for any contracts entered into prior to the date hereof, Developer agrees to comply with the requirements set forth in Exhibit C hereto with respect to the bidding and contracting for the construction of the Acquisition Improvements. The Developer agrees that all the contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California and shall be subject to the City's contracting and employment opportunity requirements. The Developer's indemnification obligation set forth in Section 4.01 of this Agreement shall also apply to any alleged failure to comply with the requirements of this Section, and/or applicable State and local laws regarding public contracting and prevailing wages. Such indemnification obligations shall survive the termination or expiration of this Agreement.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the City each Acquisition Improvement to be constructed by Developer (including any rights-of-way or other easements necessary for the Acquisition Improvements, to the extent not already publicly owned), when the Acquisition Improvement is completed to the satisfaction of the City for an amount not to exceed the lesser of (i) the Available Amount from time to time or (ii) the Actual Cost of the Acquisition Improvement. Exhibit A, attached hereto and incorporated herein, contains a list of the Acquisition Improvements. Portions of an Acquisition Improvement eligible for Installment Payments prior to completion of the entire Acquisition Improvement are described as eligible, discrete and usable portions in Exhibit A (each, an "Eligible Portion"). At the time of completion of each Acquisition Improvement, or Eligible Portion thereof, the Developer shall deliver to the City Public Works Director a written request for acquisition, accompanied by an Actual Cost Certificate, and by executed Title Documents for the transfer of the Acquisition Improvement where necessary. In the event that the City Public Works Director finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and eligible work, the City Public Works Director shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If the further documentation is still not adequate, the City Public Works Director may revise the Actual Cost Certificate to delete any disallowed items and the determination shall be final and conclusive.

Certain soft costs for the Acquisition Improvements, such as civil engineering, may have been incurred pursuant to single contracts that include work relating also to the private portions of the Project. In those instances, the total costs under such contracts will be allocated to each Acquisition Improvement as approved by the City Public Works Director. Where a specific contract has been awarded for design or engineering work relating solely to an Acquisition Improvement, one hundred percent (100%) of the costs under the contract will be allocated to that Acquisition Improvement. Amounts allocated to an Acquisition Improvement will be further allocated among the Eligible Portions of that Acquisition Improvement, if any, in the same proportion as the amount to be reimbursed for hard costs for each Eligible Portion bears to the amount to be reimbursed for hard costs for the entire Acquisition Improvement. Costs will be allocated to each Acquisition Improvement as approved by the City Public Works Director.

The costs of certain environmental mitigation required to mitigate impacts of the public and private portions of the Project will be allocated to each Acquisition Improvement as approved by the City Public Works Director.

Section 2.04. Conditions Precedent to Payment of Acquisition Price. Payment to the Developer or its designee of the Acquisition Price for an Acquisition Improvement from the Acquisition and Construction Fund shall in every case be conditioned first upon the determination of the City Public Works Director, pursuant to Section 2.03, that the Acquisition Improvement satisfies all City regulations and ordinances and is otherwise complete and ready for acceptance by the City, and shall be further conditioned upon satisfaction of the following additional conditions precedent:

(a) The Developer shall have provided the City with lien releases or other similar documentation satisfactory to the City Public Works Director as evidence that none of the property (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvement, to the extent not already publicly owned) comprising the Acquisition Improvement, and the property which is subject to the special taxes of the Community Facilities District, is not subject to any prospective mechanics lien claim respecting the Acquisition Improvements.

(b) The Developer shall be current in the payment of all due and payable general property taxes, and all special taxes of the Community Facilities District, on property owned by the Developer or under option to the Developer within the Community Facilities District.

(c) The Developer shall certify that it is not in default with respect to any loan secured by any interest in the Project.

(d) The Developer shall have provided the City with Title Documents needed to provide the City with title to the site, right-of-way, or easement upon which the subject Acquisition Improvement is situated. All such Title Documents shall be in a form acceptable to the City and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the City Public Works Director and the City Attorney insuring the City as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not required by another agreement between the City and the Developer. Each title insurance policy required hereunder shall be in the amount equal to the Acquisition Price. The amount paid to the Developer or its designee upon satisfaction of the foregoing conditions precedent shall be the Acquisition Price less all Installment Payments paid previously with respect to the Acquisition Improvement.

Section 2.05. Payment for Eligible Portions. The Developer may submit an Actual Cost Certificate to the City Public Works Director with respect to any Eligible Portion. Payment to the Developer or its designee from the Acquisition and Construction Fund of an Installment Payment with respect to such Eligible Portion shall in every case be conditioned first upon the determination of the City Public Works Director, pursuant to Section 2.03, that the Eligible Portion has been completed in accordance with the applicable plans and specifications and that the Eligible Portion satisfies all City regulations and ordinances and is otherwise

complete and, where appropriate, is ready for acceptance by the City, and shall be further conditioned upon satisfaction of the following additional conditions precedent:

(a) The Developer shall have provided the City with lien releases or other similar documentation satisfactory to the City Public Works Director as evidence that the property (including any rights-of-way or other easements necessary for the operation and maintenance of the Eligible Portion, to the extent not already owned by the City) comprising the Eligible Portion is not subject to any prospective mechanics lien claim respecting the Eligible Portion.

(b) The Developer shall be current in the payment of all due and payable general property taxes, and all special taxes of the Community Facilities District, on property owned by the Developer or under option to the Developer within the Community Facilities District.

(c) The Developer shall have provided the City with Title Documents needed to provide the City with title to the site, right-of-way, or easement upon which the subject Eligible Portion is situated. All such Title Documents shall be in a form acceptable to the City Public Works Director and shall be sufficient, upon completion of the Acquisition Improvement of which the Eligible Portion is a part, to convey Acceptable Title.

(d) Payment and performance bonds, from a bonding company with an A.M. Best rating of at least "A-" or its equivalent, applying to plans and specifications for the Acquisition Improvement approved by the City, shall be in place to secure completion of the Acquisition Improvement of which the Eligible Portion is a part.

Section 2.06. Disbursement Request Form. Upon a determination by the City Public Works Director to pay the Acquisition Price of an Acquisition Improvement pursuant to Section 2.04 or to pay an Installment Payment for an Eligible Portion pursuant to Section 2.05, the City Public Works Director shall cause a Disbursement Request Form substantially in the form attached hereto as Exhibit B-1 to be submitted to the Authority and Authority Trustee, and the Authority or Authority Trustee shall make payment directly to the Developer or its designee of the amount requested from an Acquisition and Construction Fund. The City and the Developer acknowledge and agree that the Authority or Authority Trustee shall make payment strictly in accordance with the Disbursement Request Form and shall not be required to determine whether or not the Acquisition Improvement or Eligible Portion has been completed or what the Actual Costs may be with respect to the Acquisition Improvement or Eligible Portion. The Authority or Authority Trustee shall be entitled to rely on the executed Disbursement Request Form on its face without any further duty of investigation.

In the event that the Actual Cost of an Acquisition Improvement or the Installment Payment for an Eligible Portion is in excess of the Available Amount, the Authority or Authority Trustee shall withdraw all funds remaining in the Acquisition and Construction Fund and shall transfer those amounts to the Developer or its designee. The unpaid portion of the Actual Cost shall be paid from funds that may subsequently be deposited in the Acquisition and Construction Fund from a subsequent issuance of Bonds, from prepayments of Special Taxes to be used for financing Acquisition Improvements, or from Special Tax revenues, if any of those occurs.

Section 2.07. Limitation on Obligations. In no event shall the City be required to pay the Developer or its designee more than the amounts held in the Acquisition and Construction Fund.

### ARTICLE III

#### FEES

Section 3.01. Funding of Fees. The Developer may submit a written request to the City Public Works Director for the reimbursement of Fees paid previously with respect to the Project or for a disbursement to the City of funds from an Acquisition and Construction Fund in satisfaction of Fees with respect to the Project. With each such written request, the Developer shall also submit to the City Public Works Director a Disbursement Request Form in the form attached hereto as Exhibit B-2 completed and executed by the Developer. Within five (5) business days of receipt of each such written request, the City Public Works Director shall execute the Disbursement Request Form on behalf of the City and submit it to the Authority and Authority Trustee for payment. The Authority or Authority Trustee shall make payment directly to the Developer or its designee, or the City in the amount requested from the applicable Acquisition and Construction Fund. The City and Developer agree that the Authority or Authority Trustee shall make payment strictly in accordance with the Disbursement Request Form and shall not be required to determine any of the items specified in the Disbursement Request Form. The Authority or Authority Trustee shall be entitled to rely on the executed Disbursement Request Form on its face without any further duty of investigation. The City shall provide a credit against the applicable Fees for property located within the Community Facilities District to Developer or its designee(s) equal to the amount of the money disbursed to the City pursuant to the Disbursement Request Form for a particular Fee divided by the per dwelling unit/equivalent dwelling unit/acre amount of the Fee at the time of the disbursement.

Some of the Acquisition Improvements to be constructed by Developer may be one of the public improvements that is eligible to be financed with one of the Fees. Developer shall be entitled to full credit against the applicable Fees for the Developer's construction of Acquisition Improvements whether or not such Acquisition Improvements are funded from the Available Amount. If Developer receives a credit against a Fee as the result of Developer's construction of any other public improvement, Developer shall only be entitled to fund pursuant to the terms of this Agreement, Developer's remaining obligation for such Fee, net of such credit amount.

### ARTICLE IV

#### MISCELLANEOUS

Section 4.01. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the City, the Authority and their respective officers, directors, employees and agents, including the Authority Trustee, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its agents and employees arising out of any contract for the design, engineering and construction of the Acquisition Improvements entered into by the

Developer or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the City or the Authority's underwriter, financial advisor, appraiser, district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the Authority financing (provided that the Developer shall have been furnished a copy of the official statement and shall not have objected thereto); and provided, further, that nothing in this Section 4.01 shall limit in any manner the City's rights against any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 4.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 4.01 shall be understood or construed to mean that the Developer agrees to indemnify the City, the Authority or any of their respective officers, directors, employees or agents, for any wrongful acts or omissions to act of the Authority or its officers, employees, agents or any consultants or contractors, including the Authority Trustee, and for any wrongful acts, willful misconduct, active negligence or omissions to act of the City, or its officers, employees, agents or any consultants or contractors, including the Authority Trustee.

Section 4.02. Audit. The City shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement pursuant to this Agreement) in constructing the Acquisition Improvements.

Section 4.03. Cooperation. The City and the Developer agree to cooperate with respect to the completion of the financing of the Acquisition Improvements by the Authority through the levy of the Community Facilities District Special Taxes and issuance of Bonds. The City and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

Section 4.04. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that the consent, approval or acceptance not be unreasonably withheld or delayed, unless the provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 4.05. Third Party Beneficiaries. The Authority's officers, employees, agents or any consultants or contractors are expressly deemed third party beneficiaries of this Agreement with respect to the provisions of Section 4.01. It is expressly agreed that, except with respect to the provisions of Section 4.01, there are no third party beneficiaries of this Agreement, including without limitation any owners of bonds, any of the City's or the Developer's contractors for the Acquisition Improvements and any of the City's, the Authority's or the Developer's agents and employees.

Section 4.06. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the City from any condition of development or requirement imposed by any other agreement between the City and the Developer, including the LDA, and, in the event of a conflicting provision, the other agreement shall prevail unless the conflicting provision is specifically waived or modified in writing by the City and the Developer.

Section 4.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the City:

City of Richmond  
450 Civic Center Plaza  
Richmond, CA 94804  
Attention: Finance Director

If to the Authority:

California Statewide Communities Development Authority  
1100 K Street Suite 101  
Sacramento, CA 95814  
Attention: Treasurer

If to the Developer:

Terminal One Development LLC  
c/o Laconia Development LLC  
1981 North Broadway, Suite 415  
Walnut Creek, CA 94596  
Attention: Paul Menzies/Robert Kagan

Any party may change its address by giving notice in writing to the other parties.

Section 4.08. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 4.09. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. This Agreement is made in Contra Costa County, California, and any action relating to this Agreement shall be instituted and prosecuted in the courts of Contra Costa County, California.

Section 4.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

Section 4.11. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 4.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 4.13. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the City.

Section 4.14. Remedies in General. It is acknowledged by the parties that the City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof, other than for the payment to the Developer of any (i) moneys owing to the Developer hereunder, or (ii) moneys paid by the Developer pursuant to the provisions hereof which are misappropriated or improperly obtained, withheld or applied by the City.

Section 4.15. Non-Liability of Authority. The Authority shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Acquisition Agreement, except only to the extent amounts are received for the payment thereof from the Special Tax.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the City shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer other than for the payments to the Developer specified in the preceding paragraph. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

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

CITY OF RICHMOND

By: \_\_\_\_\_  
[Authorized Officer]

ATTEST:  
City Clerk

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

**TERMINAL ONE DEVELOPMENT LLC,**  
a Delaware limited liability company

By: **Terminal One Management LLC**  
A Wyoming limited liability company  
its Development Manager

By: **Laconia Development LLC**  
a California limited liability company  
Its Manager

By: \_\_\_\_\_  
Paul D. Menzies, its Manager

**CALIFORNIA STATEWIDE  
COMMUNITIES DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
[Authorized Officer]

**EXHIBIT A TO THE ACQUISITION AGREEMENT**

DESCRIPTION OF ACQUISITION IMPROVEMENTS, ELIGIBLE PORTIONS AND FEES

ACQUISITION IMPROVEMENTS

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FEES

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**EXHIBIT B-1 TO THE ACQUISITION AGREEMENT**

**DISBURSEMENT REQUEST FORM  
(Acquisition Improvement or Eligible Portion)**

To: [Authority Trustee]  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

Re: CSCDA Community Facilities District No. \_\_\_\_

The undersigned, a duly authorized officer of the CITY OF RICHMOND hereby requests a withdrawal from the City of Richmond Terminal One Project Community Facilities District Acquisition and Construction Fund, as follows:

Request Date: [Insert Date of Request]  
Name of Developer: Terminal One Development LLC  
Withdrawal Amount: [Insert Acquisition Price/Installment Payment]  
Acquisition Improvements: [Insert Description of Acquisition Improvement(s)/Eligible Portion(s) from Exhibit A]  
Payment Instructions: [Insert Wire Instructions or Payment Address for Developer or Developer's designee as provided by the Developer]

The undersigned hereby certifies as follows:

The Withdrawal is being made in accordance with a permitted use of the monies pursuant to the Acquisition Agreement and the Withdrawal is not being made for the purpose of reinvestment.

None of the items for which payment is requested have been reimbursed previously from the Acquisition and Construction Fund.

If the Withdrawal Amount is greater than the funds held in the Acquisition and Construction Fund, the Authority Trustee is authorized to pay the amount of such funds and to pay remaining amount(s) as funds are subsequently deposited in the Acquisition and Construction Fund, should that occur.

The amounts being disbursed pursuant to this request are being used to finance or refinance certain public infrastructure and facilities (the "Improvements"). The City will own, and for the entire useful life of such Improvements reasonably expects to own, all of such Improvements. To the extent any of such Improvements are sold to an entity that is not a state or

local government agency, the City will seek the advice and approval of bond counsel to the Authority prior to any such sale. The City will not allow any of such Improvements to be used (for example, by lease or other contract) in the trade or business of any nongovernmental persons (other than in their roles as members of the general public). All of such Improvements will be used in the performance of essential governmental functions of the City or another state or local government agency. The average expected useful life of such Improvements is at least 20 years. The representations and covenants contained in this paragraph are intended to support the conclusion that the interest paid on the bonds issued to finance the Improvements is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code").

CITY OF RICHMOND

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

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

**EXHIBIT B-2 TO THE ACQUISITION AGREEMENT**

**DISBURSEMENT REQUEST FORM**

**(Fees)**

To: [Authority Trustee]  
Attention: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

Re: CSCDA Community Facilities District No. \_\_\_\_

The undersigned, a duly authorized officer of the CITY OF RICHMOND hereby requests a withdrawal from the City of Richmond Terminal One Project Community Facilities District Acquisition and Construction Fund, as follows:

Request Date: [Insert Date of Request]  
Name of Developer: Terminal One Development LLC  
Withdrawal Amount: \$ \_\_\_\_\_  
Fees: [Insert Breakdown of Withdrawal Amount by Fees]  
Payment Instructions: [For reimbursement of Fees insert Wire Instructions or Payment Address for Developer or Developer's designee as provided by the Developer. For funding of Fees insert Wire Instructions for City ]

The undersigned hereby certifies as follows:

The withdrawal is being made in accordance with a permitted use of the monies pursuant to the Acquisition Agreement and the Withdrawal is not being made for the purpose of reinvestment.

None of the items for which payment is requested have been reimbursed previously from the Acquisition and Construction Fund.

If the Withdrawal Amount is greater than the funds held in the Acquisition and Construction Fund, the Authority Trustee is authorized to pay the amount of such funds and to pay remaining amount(s) as funds are subsequently deposited in the Acquisition and Construction Fund, should that occur.

[For prepaid fees to be reimbursed to developer at closing][The fees referenced above have been spent by the City for a permitted use of the listed fees for public capital improvements as of the date hereof.]/[For fees funded by bond proceeds][The amounts to be disbursed hereunder (i) are reimbursing the City for amounts spent by the City for public capital improvements within the timing period described in the City's tax certification with respect to the bonds that financed the public capital improvements, (ii) will be used by the City to make a

payment to a person unrelated to the City for costs of the public capital improvement no later than three days after the disbursement, or (iii) are being disbursed directly to a third party at the direction of the City to pay the cost of the public capital improvements.]

The amounts being disbursed pursuant to this request are being used to finance or refinance certain public infrastructure and facilities (the "Improvements"). The City will own, and for the entire useful life of such Improvements reasonably expects to own, all of such Improvements. To the extent any of such Improvements are sold to an entity that is not a state or local government agency, the City will seek the advice and approval of bond counsel to the Authority prior to any such sale. The City will not allow any of such Improvements to be used (for example, by lease or other contract) in the trade or business of any nongovernmental persons (other than in their roles as members of the general public). All of such Improvements will be used in the performance of essential governmental functions of the City or another state or local government agency. The average expected useful life of such Improvements is at least 20 years. The representations and covenants contained in this paragraph are intended to support the conclusion that the interest paid on the bonds issued to finance the Improvements is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code").

CITY OF RICHMOND

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

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

## **EXHIBIT C TO THE ACQUISITION AGREEMENT**

### **BIDDING, CONTRACTING AND CONSTRUCTION REQUIREMENTS FOR ACQUISITION IMPROVEMENTS**

Bids for construction shall be solicited in compliance with applicable provisions of Chapter 2.52 of the Richmond Municipal Code (Contracting and Purchasing Procedures). The Developer may also directly solicit bids. The bid package may consist of preliminary plans and specifications.

The bidding response time shall be not less than ten (10) working days.

An authorized representative of the City shall be provided a copy of the tabulation of bid results upon request.

Contract(s) for the construction of the public Acquisition Improvements shall be awarded to the qualified contractor(s) submitting the lowest responsible bid(s), as determined by the Developer.

The Developer shall and the contractor to whom a contract is awarded shall be required to pay not less than the prevailing rates of wages as those wages are determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations, and to comply with all other applicable federal, State and local laws, regulations and ordinances pertaining to labor standards insofar as those laws, regulations and ordinances apply to the performance of this Agreement, including any applicable City of Richmond employment requirements, including but not limited to the City's Living Wage Ordinance (Richmond Municipal Code Chapter 2.60), the City's Business Opportunity Ordinance (Richmond Municipal Code Chapter 2.50), the City's Local Employment Program Ordinance (Richmond Municipal Code Chapter 2.56), and the City's Ordinance Banning the Requirement to Provide Criminal Convictions on All Applications (Richmond Municipal Code Chapter 2.65). During the performance of the Acquisition Improvement work, Developer and/or its contractor shall post at the Property the applicable prevailing rates of per diem wages.

Developer shall and/or shall cause its contractor to maintain accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker and others employed on the Acquisition Improvements. Each payroll record shall contain or be verified by a written declaration made under penalty of perjury, stating both of the following: (1) the information contained in the payroll record is true and correct, and (2) the employer has complied with the requirements of Labor Code Section 1771 (prevailing wage provisions), Section 1811 (eight-hour day, forty-hour week provisions), and Section 1815 (overtime compensation) for any work performed by his or her employees on the Acquisition Improvements. Developer shall and/or shall cause its contractor to provide certified payroll records to the City each week, no later than ten (10) days after the end of a weekly pay period. Payroll records shall be maintained and made available in accordance with Labor Code Section 1776. In addition, Developer shall and/or shall cause its contractor promptly to deliver to the City, upon request, documents verifying compliance with the Living Wage Ordinance, which include documents which evidence that each affected employee has been notified regarding the wages required to be paid pursuant to the Living Wage Ordinance. Such wages shall also be

posted at the Property. The requirements set forth in this Exhibit C shall survive the termination or expiration of this Agreement.