

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF FRESNO, CALIFORNIA APPROVING AN ACQUISITION AGREEMENT BETWEEN THE CITY OF FRESNO AND FANCHER CREEK PROPERTIES, LLC, FOR THE ACQUISITION OF CERTAIN PUBLIC IMPROVEMENTS BEING CONSTRUCTED WITHIN THE FANCHER CREEK TOWN CENTER PROJECT

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

WHEREAS, the California Statewide Communities Development Authority (Authority) is a California joint-exercise of powers authority lawfully formed and operating within the State pursuant to an agreement (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 (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

Date Adopted:
Date Approved:
Effective Date:

City Attorney Approval:

227853v1



Resolution No.

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 (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 Fancher Creek Town Center (Development Project) in the City being developed by Fancher Creek Properties, LLC, a California limited liability company (Developer) and the Developer requested the City to consider formation of a community facilities district for the Development Project under the Act; and

WHEREAS, the City previously adopted its Resolution 2022-117 authorizing the Authority to form a community facilities district to finance public improvements and fees required of the Development Project and the Commission (Commission) of the Authority conducted proceedings under and pursuant to the terms and provisions of the Act, among other things, (i) to form a community facilities district comprising three neighboring improvement areas within the City, designated and known as “California Statewide Communities Development Authority Community Facilities District No. 2022-08 (Fancher Creek), City of Fresno, County of Fresno, State of California” (Community Facilities District), including Improvement Area No. 1 (Improvement Area No. 1), Improvement Area No. 2 (Improvement Area No. 2) and Improvement Area No. 3 (Improvement Area No. 3), and (ii) to authorize levying a special tax therein to finance and refinance certain public improvements (including improvements eligible for payment from development impact fees, the “Improvements”); and

WHEREAS, a form of Acquisition Agreement (Acquisition Agreement) between the City and the Developer whereby the City will acquire certain Improvements constructed by the Developer for the benefit of Improvement Area No. 2 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 (CEQA); 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 Fresno as follows:

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.

2. The form of the Acquisition Agreement attached hereto as Exhibit A is hereby approved, and the City Manager or any such officer's designee (each, an Authorized Officer) are each individually 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.

3. The City Council hereby authorizes and directs the Authorized Officers 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 the Authorized Officers after consultation with the City Attorney and the Authority's bond counsel.

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

5. This resolution shall be effective upon final approval.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2024.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2024
Mayor Approval/No Return: _____, 2024
Mayor Veto: _____, 2024
Council Override Vote: _____, 2024

TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Jennifer M. Quintanilla Date
Senior Deputy City Attorney

Attachment: Exhibit A – Acquisition Agreement

EXHIBIT A

[Attached]

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY DEVELOPMENT PROGRAM

ACQUISITION AGREEMENT

BY AND AMONG

THE CITY OF FRESNO,

THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY

AND

FANCHER CREEK PROPERTIES, LLC

Dated as of June 1, 2024

ACQUISITION AGREEMENT

Recitals

- A. The parties to this Acquisition Agreement (the “Agreement”) are the CITY OF FRESNO (the “City”), the California Statewide Communities Development Authority (the “Authority”) and FANCHER CREEK PROPERTIES, LLC, a California limited liability company. Fancher Creek Properties, LLC and its wholly-owned affiliate, Fancher Creek Town Center, LLC, a California limited liability company, are individually and collectively, as applicable, referred to herein as the “Developer.”
- B. The effective date of this Agreement is June 1, 2024.
- C. The Developer has applied for the financing of certain public capital improvements, some of which are to be owned and operated by the City, and for which financing is to be accomplished through a community facilities district (the “Community Facilities District”), which will be 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 May 12, 2022, the City adopted Resolution No. 2022-117 authorizing the Authority to form the Community Facilities District within the territorial limits of the City to finance certain development impact fees (the “Fees”) and authorizing the acquisition of certain public capital improvements (the “Acquisition Improvements”) to be constructed by the Developer. On July 7, 2022, the Authority formed the Community Facilities District, including Improvement Area No. 1, Improvement Area No. 2 and Improvement Area No. 3 therein, and, on the same date, a landowner election was conducted in which all of the votes were cast unanimously in favor of conferring the specified powers of the Community Facilities District on the Authority Commission. On December 7, 2023, at the request of the Developer, the Authority conducted change proceedings for Improvement Area No. 2 to remove territory from the boundaries of Improvement Area No. 2 and to adjust the rate and method of apportionment of the special tax. At a landowner election conducted on the same date, all the votes were cast unanimously in favor of the change proceedings.
- D. The Authority Commission intends to levy special taxes for the purpose of repaying bonds which the Authority will issue to fund all or a portion of the costs of the Fees and the acquisition price of the Acquisition Improvements and associated authorized incidental expenses. The bond proceeds allocable to reimburse the cost of the Fees and Acquisition Improvements, together with interest earned thereon, is referred to herein as the “Available Amount.”
- E. The Authority 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, including authorized discrete and usable portions thereof, if any, pursuant to Section 53313.51 of the Act, to be acquired from the Developer.

- F. Subject to the terms and conditions of this Agreement, the City will acquire the completed Acquisition Improvements for the benefit of Improvement Area No. 2 at this time. The completed Acquisition Improvements are more particularly described in Exhibit A attached hereto. Any other Acquisition Improvements will be acquired by the City by separate agreement.
- G. 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 therefore under any circumstances.
- H. In consideration of Recitals A through G, inclusive, and the mutual covenants, undertakings and obligations set forth below, the Authority, the City and the Developer agree as stated below.
- I. Attached to this Agreement are Exhibit A (the Fees and the Acquisition Improvements) and Exhibit B (form of Requisition).

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 title free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the City Engineer not to interfere with the intended use and therefore are not required to be cleared from the title.

"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 Engineer in an Actual Cost Certificate. Actual Cost includes, without limitation, (a) the Developer's cost of constructing such Acquisition Improvement (including grading for such construction), including 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 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 Engineer pursuant to Section 2.03.

“Acquisition Account” means the “City of Fresno Fancher Creek Project 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.

“Acquisition Improvement” means a public 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, or in the case of a development fee, the actual amount paid by the Developer, or the amount of a development fee to be paid on behalf of the Developer from bond or special tax proceeds, in every case not to exceed the Actual Cost of the Acquisition Improvement.

“Agreement” means this Acquisition Agreement.

“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 D.

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

“City Engineer” means the City Engineer of the City of Fresno or his/her designee who will be responsible for administering the acquisition of the City's Acquisition Improvements hereunder.

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

“Community Facilities District” means the Mello-Roos community facilities district established by the Authority pursuant to the Resolution and which includes the Developer’s property for which the Acquisition Improvements are being funded.

“Developer” means Fancher Creek Properties, LLC, a California limited liability company, and/or, as applicable, Fancher Creek Town Center, LLC, a California limited liability company, and their respective successors and assigns.

“Disbursement Request Form” means a requisition for payment of funds from the Acquisition Account for an Acquisition Improvement, or an Eligible Portion thereof in substantially the form contained in Exhibit B hereto.

“Fees” means all those development impact fees to be financed through the formation of the Community Facilities District, as stated in Recital C.

“Project” means the Developer’s 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 Fresno Resolution No. 2022-117, adopted May 12, 2022, authorizing formation of the Community Facilities District and embodying a Joint Community Facilities Agreement.

“Special Taxes” means the annual special taxes authorized to be levied by the Community Facilities District for the Acquisition Improvements.

“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 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 applied through the City to the Authority for financing of the Fees and Acquisition Improvements through the establishment and authorization of the Community Facilities District and the application has been approved by the City. The Community Facilities District, including Improvement Area No. 1, Improvement Area No. 2 and Improvement Area No. 3 therein, was established by the Authority on July 7, 2022, and through the successful landowner election held that same day, is authorized to levy the Special Tax and to issue the Bonds to finance the Fees and Acquisition Improvements. Developer, the City and the Authority agree to reasonably cooperate with one another in the completion of the financing through the issuance of the Bonds in one or more series.

Section 1.03. Deposit and Use of Available Amount. Upon the issuance of the first series of Bonds, the Authority will cause the Authority Trustee to establish and maintain the

Acquisition Account for the purpose of holding that portion of the Bond proceeds allocated for the acquisition of the Acquisition Improvements. All earnings on amounts in the Acquisition Account shall remain in the Acquisition Account for use as provided herein and pursuant to the Authority Trust Agreement. Money in the Acquisition Account is 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. Upon the payment of all costs of Acquisition Improvements, any remaining funds in the Acquisition Account (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 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 Community Facilities District 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, 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 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 City's requirements with respect to the bidding and contracting for the construction of the Acquisition Improvements. The Developer agrees that all the contracts for the construction of the Acquisition Improvements which are acquired under this Agreement shall call for, or have called for, payment of prevailing wages as required by the Labor Code of the State of California. The City makes no representation or assurance regarding the applicability or non-applicability of any federal, state and local labor laws and requirements, including prevailing wage requirements, that may otherwise apply. The Developer's

indemnification obligation set forth in Section 3.01 of this Agreement shall also apply to any alleged failure to comply with the requirements of this Section, and/or applicable State laws regarding public contracting and prevailing wages.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the City each Acquisition Improvement constructed by Developer (including any rights-of-way or other easements necessary for the Acquisition Improvements, to the extent not already publicly owned), when arrangements for maintenance of the Acquisition Improvement have been completed and put in place to the satisfaction of the City, for an amount not to exceed the lesser of (i) the Available Amount or (ii) the Actual Cost of the Acquisition Improvement. Exhibit A, attached hereto and incorporated herein, contains a list of the Acquisition Improvements. The Developer shall deliver to the City Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Acquisition Improvement, where necessary. In the event that the City Engineer 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 Engineer 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 Engineer 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, 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 based on the methodology specified in Exhibit A, or as otherwise approved by the City Engineer. 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. Costs will be allocated to each Acquisition Improvement based on the methodology specified in Exhibit A, or as otherwise approved by the City Engineer. 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 based on the methodology specified in Exhibit A, or as otherwise approved by the City Engineer.

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 by the Authority from the Acquisition Account shall in every case be conditioned first upon the determination of the City Engineer, 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 Engineer as evidence that 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) is not subject to any prospective mechanics lien claim.

(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 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 Engineer 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.

Section 2.05. Disbursement Request Form. Upon a determination by the City Engineer to pay the Acquisition Price of an Acquisition Improvement pursuant to Section 2.04, the City Engineer shall cause a Disbursement Request Form substantially in the form attached hereto as Exhibit B to be submitted to the Authority Trustee, and the Authority Trustee shall make payment directly to the Developer or its designee of the amount pursuant to the Authority Trust Agreement. The Authority, the City and the Developer acknowledge and agree that the 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 has been completed or what the Actual Costs may be with respect to the Acquisition Improvement. The 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 for an Eligible Portion is in excess of the Available Amount, the Authority Trustee shall withdraw all funds remaining in the Acquisition Account and shall transfer that 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 Account from a subsequent issuance of Bonds, if that occurs.

Section 2.06. Limitation on Obligations. In no event shall the City or the Authority be required to pay the Developer or its designee more than the amounts held in the Acquisition Account.

ARTICLE III

MISCELLANEOUS

Section 3.01. 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 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 3.01 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 3.01, 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 3.01 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, including the Authority Trustee, for any wrongful acts or omissions to act of the City, the Authority or their officers, employees, agents or any consultants or contractors, including the Authority Trustee.

Section 3.02. Audit. The City and the Authority 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 3.03. Cooperation. The City, the Authority and the Developer agree to cooperate with respect to the completion of the financing of the Acquisition Improvements by means of the Community Facilities District through the levy of Special Taxes and issuance of Bonds. The City, the Authority 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 3.04. 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 3.05. No Third-Party Beneficiaries. It is expressly agreed that there are no third-party beneficiaries of this Agreement, including without limitation any owners of bonds, any of 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 3.06. 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, 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 3.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the City:

CITY MANAGER
CITY OF FRESNO
2600 Fresno Street
Second Floor
Fresno, CA 93721-3600

If to the Authority:

CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY
2033 North Main Street, Suite 700
Walnut Creek, CA 94596

If to the Developer:

FANCHER CREEK PROPERTIES, LLC
855 M Street, Suite 1110
Fresno, CA 93721

-and-

FANCHER CREEK PROPERTIES, LLC
255 E. River Park Circle, Suite 120
Fresno, CA 93720

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

Section 3.08. 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 3.09. 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.

Section 3.10. 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 the party's right to insist upon and demand strict compliance by the other party with the terms of this Agreement.

Section 3.11. 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 3.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 3.13. 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 and Authority, which consent shall not be unreasonably withheld. In no event shall any successor-in-interest or assignee have any liability on account of any acts, omissions or liabilities of a prior owner (including the Developer), or for any acts, omissions or events that occur after the date on which such successor owner ceases to own such property. Without limiting and subject to the foregoing, the obligations described in Section 3.01 hereof shall apply to all assignees and successors-in-interest only with respect to acts, omissions or events occurring after the date of assignment or succession through the date on which such successor owner ceases to own such property; provided that the Developer and all assignees and successors-in-interest shall remain liable for their respective obligations under Section 3.01 and this Section 3.13 notwithstanding any subsequent assignment or succession. Additionally, any mortgagee or other person that acquires the property within the District owned by the Developer pursuant to a foreclosure or trustee's sale or pursuant to a deed-in-lieu of foreclosure shall have the right to become the "Developer" (as a successor to the original Developer) under this Agreement.

Section 3.14. 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.

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.

Section 3.15. Amendments and Waivers. Any term of this Agreement may be amended or waived only with the written consent of all of the parties hereto.

Section 3.16. Sole Agreement. This Agreement, including Exhibits A and B hereto, constitute the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

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

CITY OF FRESNO,
A California municipal corporation

CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY, a joint powers
authority created by the California Legislature in
1988

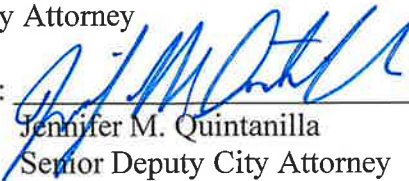
By: _____
Georgeanne A. White
City Manager

By: _____

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

Name: _____

Title: _____

By:  _____ 6/20/24
Jennifer M. Quintanilla Date
Senior Deputy City Attorney

Fancher Creek Properties, LLC,
a California limited liability company

By: Kashian Enterprises, a California limited
partnership

Its: Member

By:  _____
Edward M. Kashian

Title: General Partner


ATTEST:
TODD STERMER, CMC
City Clerk

Fancher Creek Properties, LLC,
a California limited liability company

By: _____
Deputy Date

By: Africal Development, L.P., a California
limited partnership

Its: Member

By:  _____
Thomas G. Richards, as Trustee of the
Thomas G. Richards Living Trust, dated
September 7, 2005

Its: General Partner

EXHIBIT A

DESCRIPTION OF ACQUISITION IMPROVEMENTS, ELIGIBLE PORTIONS AND ESTIMATED COST

Acquisition Improvements - Summary	Estimated Costs
I. Construction	
A. Street Construction	\$1,127,121.98
B. Sewer Construction	\$361,617.04
C. Argyle Sewer Construction	\$453,974.85
D. Street Lights Construction	\$272,731.50
E. Park	\$660,216.50
Subtotal	\$2,875,661.87
II. City Construction Fees	
A. City Plan Check Fee	\$35,225.58
B. City Inspection Fee	\$99,473.50
Subtotal	\$134,699.08
III. Design and Construction Costs	
A. Design Engineering	\$100,648.17
B. Construction Staking	\$71,891.55
C. Soil Engineering	\$28,756.62
Subtotal	\$201,296.33
IV. Right-of-Way Cost	
A. Onsite	\$4,605,249.60
Subtotal	\$4,605,249.60
TOTAL	\$7,816,906.87

Acquisition Improvements - Detail	Estimated Costs	Acquisition Improvements - Detail	Estimated Costs
I. Construction		II. City Construction Fees	
A. Street Construction		A. City Plan Check Fee	
1. Tulare streets	\$412,776.80	1. Dry & Wet Utilities Plans (1.59%)	\$12,967.91
2. Tulare curb & gutter	\$95,875.80	2. Street Plans (1.59%)	\$17,921.24
3. Salma, Marie, Terry streets	\$379,860.75	3. Street Lights Plans (1.59%)	\$4,336.43
4. Salma, Marie, Terry curb & gutter	\$103,938.63	Subtotal City Plan Check Fees	\$35,225.58
5. Salma sidewalks	\$62,670.00		
6. Marie sidewalks	\$72,000.00	B. City Inspection Fee	
Subtotal Street Construction	\$1,127,121.98	1. Dry & Wet Utilities Plans (4.49%)	\$36,620.08
B. Sewer Construction		2. Street Plans (4.49%)	\$50,607.78
1. Sewer	\$320,616.00	3. Street Lights Plans (4.49%)	\$12,245.64
2. General Requirements / Supervision	\$12,604.17	Subtotal City Inspection Fees	\$99,473.50
3. Overhead & Profit	\$21,268.93		
4. General Liability Insurance	\$3,547.70	Total Construction Fees	\$134,699.08
5. Bond	\$3,580.24		
Subtotal Sewer Construction	\$361,617.04	III. Design and Construction Costs	
C. Argyle Sewer Construction		A. Design Engineering (3.5%)	\$100,648.17
1. Argyle sewer	\$673,750.00	B. Construction Staking (2.5%)	\$71,891.55
2. Offset manhole	\$24,464.66	C. Soil Engineering (1.0%)	\$28,756.62
3. Subgrade, paving, sidewalks, curb & gutter	\$204,099.03	Total Design Costs	\$201,296.33
4. Debris removal	\$5,636.00		
Subtotal Argyle Sewer Construction	\$453,974.85	IV. Right-of-Way Cost	
D. Street Lights Construction		A. Onsite (\$8.73/SF)	
1. Tulare Street Lights	\$108,215.40	1. Clovis Avenue (60,391 SF)	\$527,213.43
2. Podium Street Lights	\$164,516.10	2. E. Tulare Street (137,892 SF)	\$1,203,797.16
Subtotal Street Lights Construction	\$272,731.50	3. N. Salma Avenue (78,787 SF)	\$687,810.51
E. Park		4. N. Terry Richards Avenue (39,308 SF)	\$343,158.84
1. Construction Costs	\$660,216.50	5. N. Fancher Creek Boulevard (211,142 SF)	\$1,843,269.66
Subtotal Park Construction	\$660,216.50	Total Right of Way Costs	\$4,605,249.60
Total Construction	\$2,875,661.87		
		Total Estimated Costs	\$7,816,906.87

EXHIBIT B

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

To: [Authority Trustee]

Attention: _____

Phone: _____

Fax/Email: _____

Re: CSCDA (Fresno Fancher Creek) Community Facilities District Financing

The City of Fresno (the “City”) and Fancher Creek Properties, LLC (the “Developer”) have entered into that certain Acquisition Agreement, dated and effective as of June 1, 2024, in connection with the above-referenced bonds (the “Bonds”). The undersigned, a duly authorized officer of the City hereby requests a withdrawal from the Acquisition and Construction Fund established pursuant to that certain Indenture, by and between yourselves, as trustee, and the California Statewide Communities Development Authority (the “Authority”) in connection with the Bonds, as follows:

Request Date:	[Insert Date of Request]
Name of Developer:	Fancher Creek Properties, LLC
Withdrawal Amount:	[Insert Acquisition Price]
Acquisition Improvements:	[Insert Description of Acquisition Improvement(s)/ Eligible Portions(s) from Exhibit A]
Payment Instructions:	[Insert Wire Instructions 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 purpose of reinvestment.

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

If the Withdrawal Amount is greater than the funds held in the Acquisition Account, 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.

The amounts being disbursed pursuant to this request are being used to finance the acquisition of the Facilities. The City will own, and for the entire useful life of the Facilities reasonably expects to own, all of the Facilities. To the extent any of the Facilities 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 the Facilities 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 the Facilities 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 the Facilities 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 fund the Facilities and the Participation (the "Bonds") is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code").

CITY OF FRESNO

By: _____

Title: _____