

## ACQUISITION AGREEMENT

Relating to:

**City of Dublin  
Community Facilities District No. 2015-1  
(Dublin Crossing)**

THIS ACQUISITION AGREEMENT (this "Agreement"), dated as of July 18, 2017, is by and between the City of Dublin, a municipal corporation and a political subdivision of the State of California (the "City"), and Dublin Crossing, LLC, a Delaware limited liability company (the "Developer").

### RECITALS

A. Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them under the heading "Definitions" herein.

B. The City Council of the City (the "City Council") has established the City of Dublin Community Facilities District No. 2015-1 (Dublin Crossing) (the "CFD") under the Mello-Roos Community Facilities Act of 1982 for the financing, among other things, of certain authorized public facilities (the "Authorized Facilities") and certain authorized capital facility fees (the "Authorized Fees") generally described in the Resolution of Formation and described in more detail in Exhibit A, attached hereto and by this reference incorporated herein.

C. The City and Dublin Crossing Venture LLC, a Delaware limited liability company (the "Developer's Predecessor"), entered into that certain Development Agreement, dated November 19, 2013 (the "Original Development Agreement"), pertaining to implementation of a development project (the "Project") on the land described in Exhibit A to the Original Development Agreement (the "Property"), a portion of which land is presently within the boundary of the CFD and the balance of which land is designated as "Future Annexation Area" of the CFD, as shown on the Boundary Map.

D. The Original Development Agreement was amended by the First Amendment, thereby creating the "Original Development Agreement, as Amended."

E. The Developer's Predecessor and the Developer entered into an Assignment and Assumption of Development Agreement (the "DA Assignment"), pursuant to which the Developer's Predecessor assigned and the Developer assumed all of the rights, duties and obligations of the Developer's Predecessor under the Original Development Agreement, as Amended, with the express written approval of the City Manager of the City (the "City Manager") as set forth on page 4 of the DA Assignment.

F. The Original Development Agreement, as Amended, was further amended by the Second Amendment. All references hereafter in this Agreement to the "Development Agreement" shall be deemed to refer to the Original Development Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, and any future amendments thereto.

G. As recited in Exhibit G of the Development Agreement (“Exhibit G”), the Property is being acquired in phases from the United States of America, represented by The Department of the Army (the “Army”), pursuant to an Exchange Agreement, dated March 4, 2011, between the Developer’s Predecessor and the Army (the “Exchange Agreement”), subject to the terms and conditions set forth in the Exchange Agreement. The phases are identified in Exhibit G as Phase 1A, 1B, 2, 3, 4 and 5. Property is to be conveyed in phases upon the completion of certain improvements by the Developer (as successor to the Developer’s Predecessor). Phase 1A and 1B have heretofore been conveyed and comprise Improvement Area No. 1 of the CFD, with the subsequent phases comprising the Future Annexation Area. Exhibit G provides that, as each additional phase is conveyed, it will be annexed into the CFD, with each of Phases 2, 3, 4 and 5 expected to become a new Improvement Area, identified as Improvement Area No. 2 (Phase 2), 3 (Phase 3), 4 (Phase 4) and 5 (Phase 5), respectively. The provisions of Exhibit G summarized in the foregoing sentence represent the current expectations of the parties, but the actual assignment of phases to improvement areas may differ from the current expectations.

Upon the annexation of a portion of the Future Annexation Area to the CFD, the provisions of this Agreement shall extend to the Developer (as said term is defined herein to include transferees of the Developer) of the annexed portion of the Property without the necessity of any amendment of this Agreement or the execution of any additional such agreement pertaining to the annexed portion.

H. The Authorized Facilities and Authorized Fees are necessary to mitigate impacts arising from development occurring in the CFD, and the City will benefit from a coordinated plan of design, engineering and construction of the Authorized Facilities and the development of the Property.

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

J. As a result of a special election conducted on June 2, 2015, the City has been authorized to levy a special tax on property within the CFD (the “Special Tax”) and to issue special tax bonds and other debt obligations (the “Bonds”) in one or more series, which Bonds shall be payable as to principal and interest from proceeds of the Special Tax, as provided by the Act.

K. Each series of the Bonds, when issued, will be secured by and will be payable solely from the proceeds of the Special Tax levied upon the taxable property within a specified Improvement Area. However, proceeds of the Bonds may be expended to pay the Purchase Price of Authorized Facilities or Discrete Components or to reimburse for Authorized Fees which have been paid in accordance with this Agreement irrespective of whether they are situated within or adjacent to the boundary of that specified Improvement Area.

## DEFINITIONS

Capitalized terms used in this Agreement, in addition to those defined elsewhere in this Agreement, shall have the following meanings:

“Acceptance Date” means the date upon which the City or other public entity or public utility accepts fee simple title or an irrevocable offer of dedication of one or more Authorized Facilities.

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code.

“Actual Cost” means, with respect to an Authorized Facility or a Discrete Component, an amount equal to the sum of (a) the Developer’s actual, reasonable cost of constructing such Authorized Facility or Discrete Component, including labor, material, and equipment costs, (b) the Developer’s actual, reasonable cost of preparing the Plans for such Authorized Facility or Discrete Component, (c) the Developer’s actual, reasonable cost of environmental evaluations required in the City’s reasonable determination specifically for such Authorized Facility or Discrete Component, (d) the amount of the fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses, or other necessary governmental approvals for such Authorized Facility or Discrete Component, (e) the Developer’s actual, reasonable cost for construction management services respecting the construction and installation of any Authorized Facility or Discrete Component, (f) the Developer’s actual, reasonable cost for professional services directly related to the construction and installation of such Authorized Facility or Discrete Component, including engineering, inspection, construction staking, materials testing, and similar professional services, (g) the Developer’s actual, reasonable cost of any title insurance, escrow fees or costs, or like expenses incurred with respect to transfer of ownership of any such Authorized Facility or Discrete Component, and (h) the Developer’s actual, reasonable cost of any real property or interest therein acquired from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Authorized Facility or Discrete Component (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Authorized Facility or Discrete Component in order to convey acceptable title thereto to the City or other applicable public entity or public utility, as specified in a Payment Request that has been reviewed and approved by the Director of Public Works or his designee who will be responsible for administering the acquisition of the Authorized Facility or Discrete Component; provided, however, that no item of cost relating to an Authorized Facility or Discrete Component shall be included in more than one category of cost under this definition; and provided further, however, that each item of cost shall be chargeable to the capital account for the Authorized Facility under generally accepted accounting principles.

“Agreed-Upon Allocation” shall have the meaning ascribed to it in Section 6(e)(vi) herein.

“Agreement” means this Acquisition Agreement, dated as of July 18, 2017, by and between the City and the Developer.

“Army” means the Department of the Army of the United States of America.

“Authorized Facility” and “Authorized Facilities” mean one or more of the public capital facilities generally described in the Resolution of Formation, as amended by Resolution No. 93-17, adopted by the City Council on June 20, 2017, and described in more detail in Exhibit A hereto.

“Authorized Fees” means the capital facility fees generally described in the Resolution of Formation, as amended by Resolution No. 92-17, adopted by the City Council on June 20, 2017, and described in more detail in Exhibit A hereto.

“Bonds” means limited obligation bonds or other debt obligations, whether taxable or tax-exempt, fixed-rate or variable-rate, issued by the City with respect to the CFD the principal of and interest on which are payable from proceeds of Special Taxes levied upon the taxable property within a specified Improvement Area.

“Boundary Map” means the boundary map of the CFD containing the matters prescribed by the Act, approved by Resolution No. 54-15, adopted by the City Council on April 21, 2015, and recorded on May 4, 2015, in Book 18 of Maps of Assessment and Community Facilities Districts, at page 61, official records of the County Recorder, as supplemented by Annexation Map No. 1, approved by Resolution No. 93-17, adopted by the City Council on June 20, 2017, and recorded on June 26, 2017, in Book 317 of Maps of Assessment and Community Facilities Districts, at page 60, official records of the County Recorder.

“CFD” means the City of Dublin Community Facilities District No. 2015-1 (Dublin Crossing) and Improvement Area No. 1, as shown on the Boundary Map; provided that the area shown on the Boundary Map as “Future Annexation Area” may be annexed to the CFD in phases from time-to-time in accordance with the Act, and all references herein to the CFD shall be deemed to include such portions of the Future Annexation Area as have been so annexed, including any such Improvement Areas designated out of such Future Annexation Area.

“City” means the City of Dublin, California.

“City Council” means the legislative body of the City.

“City Manager” means the person who is the duly appointed and acting City Manager of the City.

“Conditions of Approval” means the conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements for the development the Project, and any subdivision improvement, owner participation agreement, development or other agreement with the City relating to the development of the Project, the installation of the Authorized Facilities or the payment of Authorized Fees, including but not limited to those set forth in the Development Agreement.

“Continuing Disclosure Undertaking” means the written instrument to be executed by the Developer in connection with the issuance of any series of Bonds for an Improvement Area by which the Developer agrees to provide such information pertaining to the Property in such Improvement Area, development of the Property in such Improvement Area, and the Developer’s financing plan for the development of the Property in such Improvement Area, as shall be prescribed by such instrument, all in furtherance of enabling the City’s bond underwriter to comply with disclosure obligations imposed upon the bond underwriter under federal securities laws.

“County Recorder” means the County Recorder of the County of Alameda, State of California.

“DA Assignment” means that certain agreement entitled “Assignment and Assumption of Development Agreement,” entered into between the Developer’s Predecessor and the Developer, made and effective as of August 28, 2015, and recorded in the official records of the County Recorder on August 28, 2015, as Document No. 2015239932.

“Developer” means, initially, Dublin Crossing, LLC, and its successors; provided that in the event that the Developer transfers its rights and obligations respecting any portion of the Property and the associated Authorized Facilities and/or Authorized Fees, pursuant to and in compliance with the terms and conditions of Section 20 of the Development Agreement and pursuant to an assignment and assumption agreement substantially in the form of the DA Assignment and entered into between the Developer and the transferee and approved in writing by the City Manager, the term “Developer” as used in this Agreement shall be deemed to include such transferee to the extent applicable to the Authorized Facilities (or Discrete Components thereof) and/or Authorized Fees, and the provisions of this Agreement respecting the financing of Authorized Facilities and/or Authorized Fees shall become applicable to such transferee, subject to the terms and conditions hereof, except as otherwise provided in the DA Assignment.

“Developer Allocation” shall have the meaning ascribed to it in Section 6(e)(vi) herein.

“Developer’s Predecessor” means Dublin Crossing Venture LLC, a Delaware limited liability company.

“Development Agreement” means the Original Development Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, and any further amendment thereto

“Director of Public Works” means the Public Works Director of the City or such other official of the City acting in such capacity, or the designee of such official.

“Discrete Component” means a component of an Authorized Facility described in Exhibit A attached hereto, which is a functional segment of an Authorized Facility costing more than \$1.0 million, that can be separately identified and inspected and that can be the subject of a Payment Request. Discrete Components do not have to be accepted by the City (or other applicable public entity or public utility to which ownership will be transferred) as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the Director of Public Works. Exhibit A may be modified at any time by the Developer for the purpose of identifying Discrete Components of Authorized Facilities, subject to the written approval of the Director of Public Works, without City Council approval.

“Exchange Agreement” means the agreement dated March 4, 2011, between the Developer’s Predecessor and the Army.

“First Amendment” means that certain agreement entered into between the City and the Developer’s Predecessor, dated June 16, 2015, and recorded in the official records of the County Recorder on July 22, 2015, as Document No. 2015202606, which amends the Original Development Agreement.

“Fiscal Agent” means the bank, trust company or other authorized fiduciary serving as Fiscal Agent under the applicable Fiscal Agent Agreement.

"Fiscal Agent Agreement" means an indenture, fiscal agent agreement, resolution or other instrument under which one or more series of Bonds for an Improvement Area are issued, as such Fiscal Agent Agreement may be supplemented from time to time to accommodate additional bond issuances for the applicable Improvement Area or as it may be amended from time to time.

"Fiscal Agent Agreements" means the total set of individual Fiscal Agent Agreements pertaining to all of the Improvement Areas of the CFD.

"Funding Sources" means, collectively, (A) Net Proceeds, (B) proceeds of Special Taxes levied and collected prior to the issuance of Bonds for an Improvement Area and not needed for the payment of the principal of or the interest on Bonds, (C) proceeds of prepayments of Special Taxes collected prior to the issuance of the first series of Bonds for an Improvement Area pursuant to the applicable Rate and Method, (D) proceeds of prepayments of Special Taxes otherwise allocated for Authorized Facilities or Authorized Fees under the applicable Rate and Method, as further described in Section 3 herein, and (E) proceeds of Special Taxes collected to directly finance Authorized Facilities and/or Authorized Fees under the applicable Rate and Method and which are allocated to fund such Authorized Facilities and/or Authorized Fees in the discretion of the City, as further described in Section 4 herein.

"Future Annexation Area" means that portion of the Property which is designated as Future Annexation Area on the Boundary Map and which is intended to be annexed into the CFD in the future, whether as land added to an existing Improvement Area or as land establishing a new Improvement Area.

"Improvement Area" shall mean that portion of the area within the CFD boundary designated as a separate improvement area, as provided under the Act, Improvement Area No. 1 having been shown on the Boundary Map to include all of the Property currently within the CFD, and with intention to (a) annex additional portions of the Property to Improvement Area No. 1 and (b) establish Improvement Areas No. 2 through 5, inclusive, to include portions of the Property designated as "Future Annexation Area" on the Boundary Map and intended to be annexed in the future.

"Improvement Area No. 1" means Improvement Area No. 1 of the CFD.

"Improvement Fund" means the fund to be established under each Fiscal Agent Agreement, whether by that name or a similar name (such as "Construction Fund"), into which the monies from the Funding Sources are to be deposited and from which the monies from the Funding Sources and the investment earnings thereon are to be disbursed to provide for the financing of Authorized Facilities, Discrete Components or Authorized Fees. To facilitate the tracking of expenditures for federal tax purposes, the Improvement Fund shall consist of separate subaccounts for the deposit of (i) Net Proceeds and (ii) all other Funding Sources.

"Improvement Funds" means, collectively, the total set of individual Improvement Funds established under each of the individual Fiscal Agent Agreements.

"Land" shall have the meaning ascribed to it in Section 7(a) herein.

"Net Proceeds" means the proceeds of sale of any series of Bonds prescribed for deposit into the applicable Improvement Fund after first depositing the prescribed portion of

such proceeds of sale into the applicable reserve fund, administrative expense fund or any like fund or account established under the applicable Fiscal Agent Agreement for purposes other than financing of Authorized Facilities, Discrete Components or Authorized Fees.

“Original Development Agreement” means that certain agreement entitled “Development Agreement,” dated November 19, 2013, between the City and the Developer’s Predecessor, and recorded in the official records of the County Recorder on June 4, 2014, as Document No. 2014134795.

“Original Development Agreement, as Amended” means the Original Agreement, as amended by the First Amendment.

“Payment Request” means a written request submitted to the City by the Developer in substantially the form and containing the information prescribed by Exhibit B to this Agreement.

“Plans” means the plans, specifications, schedules and related construction contracts for the Authorized Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the City or other public entity or public utility that will own, operate or maintain a prescribed portion of the Authorized Facilities when completed and acquired.

“Project” means the land development project which the Developer intends to implement on the Property in phases as described in the Development Agreement.

“Property” means the land described in Exhibit A to the Original Development Agreement.

“Purchase Price” means the amount payable by the City to the Developer for an Authorized Facility and/or any Discrete Component thereof determined in accordance with this Agreement.

“Rate and Method” means the rate and method of apportionment of the Special Tax, established pursuant to the Act and pertaining to that portion of the Property situated within a given Improvement Area, as set forth in Exhibits B through F, inclusive, of the Resolution of Formation, said Exhibits B through F corresponding to the proposed Improvement Areas No. 1 through 5, respectively.

“Remainder Taxes” means, for an Improvement Area, the amount of Special Taxes levied and collected for a given Fiscal Year, determined as of September 15 following the June 30 conclusion of the Fiscal Year, which exceeds the total of the amounts included in the Special Tax Requirement for such Fiscal Year on account of (a) Bond principal and/or interest payable during the calendar year which began during such Fiscal Year, (b) replenishing the reserve fund for the Bonds as required by the applicable Fiscal Agent Agreement and (c) administrative expenses.

“Remaining Facilities Amount” means the amount of prepaid special taxes received by the City as part of a prepayment of Special Taxes on account of Remaining Facilities Costs, as determined in accordance with Section I of the applicable Rate and Method.

“Resolution of Formation” means Resolution No. 96-15, adopted by the City Council on June 2, 2015, by which the CFD was established.

“Second Amendment” means that certain agreement entered into between the City and the Developer, made and entered into on February 9, 2016, and recorded in the official records of the County Recorder on March 8, 2016, as Document No. 2016056821, which amends the Original Development Agreement, as Amended.

“Special Tax” shall have the meaning ascribed to it in Recital J herein.

“Special Tax Requirement” shall have the meaning ascribed to it in the applicable Rate and Method.

“State” means the State of California.

“Transferee” shall have the meaning ascribed to it in Section 10(b)(iv) herein.

## **AGREEMENT**

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

1. Recitals; Applicability.

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

b. Applicability. This Agreement applies to the CFD, including Improvement Area No. 1 and, upon the annexation of a portion of the Future Annexation Area to the CFD, to the annexed portion of the Future Annexation Area (and any Improvement Area in which the annexed property is designated), without the necessity of any amendment of this Agreement or the execution of any additional such agreement pertaining to the annexed portion.

2. Sale of Bonds.

a. City Proceedings. From time to time and in consultation with the Developer, the City shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of one or more series of Bonds; provided that such proceedings and the principal amount, rates, terms and conditions and timing of the sale of each series of Bonds shall be in all respects subject to the final approval of the City Council. Nothing herein shall be construed as modifying the provisions of the Development Agreement in general and of Exhibit G to the Development Agreement in particular with respect to the establishment of the CFD, the issuance, sale and delivery of Bonds and the application of the Net Proceeds and the proceeds of Special Taxes to finance Authorized Facilities, Discrete Components or Authorized Fees. In the event of any conflict between the provisions of the Development Agreement (including Exhibit G thereto) and the provisions of this Agreement, the provisions of the Development Agreement shall prevail and govern.

b. Principal Amount. The maximum principal amount of the Bonds that is authorized for the CFD is \$150,000,000. The City can provide no assurances that it will be able to issue or sell the entire authorized principal amount of the Bonds.

### 3. Use of Financing Proceeds.

a. Prepayments. The proceeds of any prepayments of Special Taxes shall be administered as provided in the applicable Rate and Method. Without limiting the generality of the foregoing, the portion of any prepayment representing the "Remaining Facilities Amount" shall be deposited in the Improvement Fund for payment when due under this Agreement of the costs of acquisition of Authorized Facilities and Discrete Components thereof or for the financing of Authorized Fees. In the event that proceeds of prepayments of Special Taxes are received by the City prior to issuance of Bonds, the City shall establish and maintain an Improvement Fund for the applicable Improvement Area. Following issuance of Bonds, the City shall transfer any balance in the Improvement Fund to the Fiscal Agent for deposit into the Improvement Fund to be established pursuant to the applicable Fiscal Agent Agreement.

Amounts deposited into any Improvement Fund held by the City prior to Bond issuance shall be withdrawn therefrom, in accordance with the provisions of this Agreement and the Development Agreement, for payment of any amounts payable to the Developer (as defined herein to include transferees of the Developer) under the terms of this Agreement on account of costs of acquisition of Authorized Facilities and Discrete Components thereof or for the financing of Authorized Fees.

b. Bond Proceeds. The proceeds of each series of Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the applicable Fiscal Agent Agreement. The Net Proceeds of each series of Bonds shall be set aside under the applicable Fiscal Agent Agreement in the Improvement Fund. For each Improvement Area, moneys in the Improvement Fund shall be withdrawn therefrom, in accordance with the provisions of the applicable Fiscal Agent Agreement and this Agreement, for payment of all or a portion of the costs of acquisition of Authorized Facilities and Discrete Components thereof or for the financing of Authorized Fees. The City makes no warranty, express or implied, that the Net Proceeds of the Bonds deposited and held in the Improvement Fund, along with other Funding Sources, will be sufficient for payment of the Purchase Price of all of the Authorized Facilities and for financing all of the Authorized Fees.

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

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

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

4. Special Taxes. The City shall levy and collect Special Taxes on all taxable property within each applicable Improvement Area as provided by the applicable Rate and Method. The proceeds of such Special Taxes levied and collected prior to issuance of Bonds shall be administered by the City in accordance with the applicable Rate and Method and this Agreement, and, following the issuance of Bonds, the proceeds of such Special Taxes shall be administered by the City as provided in this Agreement and the Fiscal Agent Agreement.

Without limiting the generality of the foregoing, the City shall deposit any Remainder Taxes received prior to Bond issuance in an Improvement Fund to be established, maintained and administered by the City and applied in the same manner as prescribed by Section 3(a) above with respect to Remaining Facilities Amounts. Following Bond issuance, the City shall transmit any Remainder Taxes to the Fiscal Agent for deposit into the Improvement Fund established under the applicable Fiscal Agent Agreement.

5. Construction of the Facilities.

a. Plans. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City, from any other applicable public entity or public utility which will become the owner of any Authorized Facilities or Discrete Components and from any other public entity having jurisdiction with respect to approval of Plans for any Authorized Facility or Discrete Component. The Developer further represents that the Authorized Facilities have been or will be constructed in full compliance with such Plans and any change orders thereto, as approved in the same manner. Copies of all Plans shall be provided by the Developer to the Director of Public Works.

b. Duty of Developer to Construct Authorized Facilities and to Pay Authorized Fees. All Authorized Facilities to be acquired hereunder shall be constructed by or at the direction of the Developer in accordance with the approved Plans and the Conditions of Approval, and all Authorized Fees shall be paid by the owner of the Property when due. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Authorized Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ, or cause to be employed, at all times adequate staff or consultants, with the requisite experience necessary (i) to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Authorized Facilities and (ii) to determine the Actual Cost of Authorized Facilities and/or Discrete Components and the amount of Authorized Fees that have been paid and (iii) to then prepare and submit Payment Requests hereunder.

The Developer shall be obligated: (i) to construct with its own funds, or cause to be constructed, and cause conveyance to the City or other applicable public entity or public utility

all Authorized Facilities (including Discrete Components thereof) and (ii) to pay, or cause to be paid, the Authorized Fees, both in accordance with the Conditions of Approval and the Developer's timing of development of the Property, subject to seeking recoupment of the Purchase Price of the Authorized Facilities and the Authorized Fees from available Funding Sources by the submission of Payment Requests as provided in this Agreement.

The Developer shall not be relieved of its obligation to construct, or cause to be constructed, each Authorized Facility (including Discrete Components thereof) and convey, or cause to be conveyed, each such Authorized Facility to the City or other applicable public entity or public utility in accordance with the terms hereof, even if there are insufficient Funding Sources at the time to pay the Purchase Price thereof, and, in any event, this Agreement shall not affect any obligation of any owner of land in the CFD under any Conditions of Approval or any governmental approval to which any portion of the Property is subject, with respect to the public improvements required in connection with the development of the Property.

c. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Authorized Facilities, it will assure complete compliance with State law pertaining to the payment of prevailing wages for such construction.

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

Notwithstanding the foregoing, the Developer shall solicit at least three (3) competitive bids for each contract for construction of Authorized Facilities and award all contracts for construction of the Authorized Facilities (including any Discrete Components thereof), in each case consistent with the Plans and the Conditions of Approval, to the lowest responsible bidder among the competitive bids received.

e. Performance and Payment Bonds. The Developer agrees to comply with all applicable performance and payment bonding requirements of the City (and other applicable public entities or public utilities) with respect to the construction of the Authorized Facilities. All contractors and/or subcontractors employed by the Developer in connection with construction of the Authorized Facilities shall provide a labor and materials bond and a performance bond that names the City as an additional insured.

f. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Authorized Facilities. All such contracts and change orders shall be submitted to the Director of Public Works for review and approval as to cost and quantity and quality of work.

g. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City. The City shall not be responsible for making any payments to any contractor, subcontractor, agent, employee or supplier of the Developer.

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

6. Payment for the Facilities. The Developer hereby agrees to sell the Authorized Facilities to the City or other applicable public entity or public utility, and the City hereby agrees to use Funding Sources, as available from time to time, to pay the Purchase Price thereof to the Developer, subject to the terms and conditions hereof.

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

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

(i) Substantiation of Actual Costs. The Developer shall provide documentation satisfactory to the Director of Public Works to substantiate the Actual Cost of the Authorized Facilities and to determine that the Authorized Facilities are consistent with the approved Plans. With respect to a Payment Request pertaining to financing of Authorized Fees, the documentation shall demonstrate that such Authorized Fees have been paid by the Developer. There shall be a presumption of reasonableness as to costs incurred under a construction contract (or change order) entered into as a result of a call for bids by the Developer (or similar procedure approved by the Director of Public Works), provided that no extraordinary limitations or requirements (such as a short time frame) are imposed by the Developer on the performance of such contracts. For any Authorized Facility to be acquired by a public entity or utility other than the City, the Developer shall provide written evidence of the approval of such cost substantiation and approval of such Authorized Facility from such entity or utility when requesting payment.

(ii) Payment of Claims. In order to receive the Purchase Price for a completed Authorized Facility or Discrete Component, inspection thereof under Section 6(a) shall have been made and the Developer shall deliver to the Director of Public Works: (A) a payment request for such Authorized Facility or Discrete Component, together with all supporting documentation required by this Agreement to be included therewith, and (B) if payment is requested for a completed Authorized Facility, (1) if the property on which the Authorized Facility is located is not owned by the City (or other applicable public entity that will own the Authorized Facility) at the time of the request, a copy of the recorded documents conveying to the City (or other applicable public entity or public utility that will own the Authorized Facility) title to the real property on, in or over which such Authorized Facility is located, as described in Section 7 hereof, (2) a copy of the recorded notice of completion of such Authorized Facility (for an Authorized Facility or the final Discrete Component only, if applicable), (3) to the extent paid for with the proceeds of the Bonds or the proceeds of Special Taxes, an assignment to the City for the benefit of the CFD of any reimbursements that may be payable with respect to the Authorized Facility, such as public utility reimbursements, and (4) an assignment of the warranties and guaranties for such Authorized Facility, as described in Section 7 hereof, in a form acceptable to the City.

c. Conditions for Acceptance. The City shall not be obligated to pay the Purchase Price of any Authorized Facility or Discrete Component until the Authorized Facility or Discrete Component is constructed and the processing requirements of this Section 6 for such Authorized Facility or Discrete Component have been satisfied. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not accept an Authorized Facility of which a Discrete Component is a part until the entire Authorized Facility has been completed. The City acknowledges that the Discrete Components do not have to be accepted by the City as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been constructed in accordance with the Plans therefor, as determined by the Director of Public Works. In any event, the City shall not be obligated to pay the Purchase Price for any Authorized Facility or Discrete Component except from the Funding Sources.

d. Purchase Price. The Purchase Price shall be based upon Actual Cost, as evidenced by documentation provided by the Developer and submitted to the Director of Public Works. The Purchase Price paid hereunder for any Authorized Facility or Discrete Component thereof may be paid in any number of installments as Funding Sources become available.

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

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

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

(iii) Retainage. From each payment requested, a 5% retainage shall be held by the City in the Improvement Fund for the cost of any Authorized Facility or Discrete

Component thereof being acquired by the City pending final completion and acceptance of the related Authorized Facility or Discrete Component thereof. Any such retention will be released to the Developer upon final completion and acceptance of the related Authorized Facility and the expiration of a maintenance period consistent with applicable City policy thereafter. However, no such retainage shall be required if the Developer provides a completion bond that is satisfactory to the City for this purpose. Unless otherwise provided in writing, there shall be no such retainage required for Authorized Facilities or Discrete Components thereof to be acquired by other public entities or public utilities. In lieu of such retainage, the Developer shall at any time have the option of providing the City with either a completion bond, letter of credit or other guaranty in form and substance satisfactory to the Director of Public Works, upon receipt of which the City shall promptly release such retainage.

As of the Acceptance Date of an Authorized Facility or the inspection and approval of a Discrete Component, the completion bond provided by the Developer for such Authorized Facility or Discrete Component shall be reduced in accordance with the City's standard requirements for subdivision improvements and, if applicable, shall serve as a completion bond to guarantee that such Authorized Facility or Discrete Component will be free from defects due to faulty workmanship or materials for the period required by the City's standard requirements for subdivision improvements, or the Developer may elect to provide a new completion bond in such an amount. As of the Acceptance Date of an Authorized Facility, the Developer shall provide a completion bond to guarantee that such Authorized Facility will be free from defects due to faulty workmanship or materials for the period required by the City's standard requirements for subdivision improvements, which completion bond shall be in the amount required by the City's standard requirements for subdivision improvements.

(iv) Requests for Payment. Any Payment Request shall be submitted by the Developer to the Director of Public Works in the form attached to this Agreement as Exhibit B, accompanied by the supporting documentation herein specified. Within 10 business days following receipt of a Payment Request, the Director of Public Works shall review such request and advise the Developer in writing whether the Payment Request is deemed complete. In the event that the Payment Request is deemed incomplete, the Director of Public Works shall advise the Developer as to what is missing, and no further action with respect to the Payment Request shall be required until the Director of Public Works deems the submission complete. In the event that the Payment Request is deemed complete, the Director of Public Works shall advise the Developer in writing, within 10 business days following such determination, whether the Payment Request is approved or denied, in whole or in part, and in the case of denial setting forth the reasons for denial. The Developer shall be entitled to resubmit any request or portion thereof which is deemed incomplete or which is denied if it is able to address the reasons for the incompleteness or denial. Failure of the Director of Public Works to deny any request within the stated period of 10 business days following the determination that the Payment Request is complete shall constitute approval of the request.

(v) Payment by the City. The City shall cause payment to be made to the Developer pursuant to the applicable provisions of this Agreement and the Fiscal Agent Agreement within 30 calendar days of either (a) approval of a Payment Request or (b) receipt of any completed Payment Request that is not denied. The City may make any payment on a Payment Request jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or

solely to any such third party, if the Developer so requests the same in writing or as the City otherwise determines such joint or third party payment is necessary to obtain lien releases. If there are insufficient Funding Sources to pay the full amount of an approved Payment Request, then the City shall pay as much of the amount on the Payment Request as there are Funding Sources available, and the payment of the balance of the Payment Request shall be deferred until there are sufficient Funding Sources available to the remaining balance of the Payment Request. Promptly following the availability of Funding Sources, the City shall, from time to time and in as many installments as necessary, pay the remaining balance of the Payment Request. Payment Requests may be paid (i) in any number of installments as Funding Sources become available and (ii) irrespective of the length of time of such deferral of payment.

(vi) Allocation of Costs. If Developer incurs costs that (1) apply to more than one Authorized Facility or Discrete Component (e.g., soft costs) or (2) apply to both Authorized Facilities or Discrete Components and improvements other than the Authorized Facilities or Discrete Components (e.g., grading), Developer shall allocate, or cause the contractor to reasonably allocate, such costs between the Authorized Facilities or Discrete Components (in the case of clause (1)) or between the Authorized Facilities or Discrete Components and the improvements other than the Authorized Facilities or Discrete Components (in the case of clause (2)) (the "Developer Allocation"). The Developer Allocation shall be presumed to be reasonable and shall be accepted for all purposes of this Agreement unless the City notifies Developer of its good-faith reasonable disapproval of the allocation within ten (10) business days of submittal of the payment request. If the City has properly disapproved the Developer Allocation, then the City and Developer shall promptly allocate such costs, on a reasonable basis, between the Authorized Facilities or Discrete Components (in the case of clause (1)) or between the Authorized Facilities or Discrete Components and the improvements other than the Authorized Facilities or Discrete Components (in the case of clause (2)) (the "Agreed-Upon Allocation"). Based on the Developer Allocation or the Agreed-Upon Allocation, if applicable, the City shall include the costs allocated to a specific Authorized Facility or Discrete Component as part of the Actual Costs of such Authorized Facility or Discrete Component when such Authorized Facility or Discrete Component is subject to a payment request.

(vii) Expectations of the Parties. The Developer and the City understand and agree that (i) the Developer will be constructing Authorized Facilities or Discrete Components prior to the availability of Funding Sources that will be used to pay for such Authorized Facilities or Discrete Components, (ii) the City or the other public entities or public utilities that will own and operate such Authorized Facilities or Discrete Components may be inspecting such Authorized Facilities or Discrete Components and processing and completing payment requests for the payment on such Authorized Facilities or Discrete Components with knowledge that there may be insufficient Funding Sources available at such time, (iii) the Authorized Facilities or Discrete Components may be conveyed to and accepted by the City or other public entity or public utility that will own and operate such Authorized Facilities or Discrete Components when there are insufficient Funding Sources to pay the Purchase Price of such Authorized Facilities or Discrete Components, and (iv) in any such case, the payment of any approved payment requests for the Purchase Price of such Authorized Facilities or Discrete Components will be deferred until there are sufficient Funding Sources available to pay the Purchase Price of such Authorized Facilities or Discrete Components, at which time the City will make such payments in accordance with this Agreement. At all times, the Developer will

be constructing such Authorized Facilities or Discrete Components with the expectation that the Purchase Price for such Authorized Facilities or Discrete Components will be paid from the Funding Sources. The conveyance of Authorized Facilities or Discrete Components to the City or other applicable public entity or public utility that will own and operate such Authorized Facilities or Discrete Components prior to receipt of the Purchase Price for such Authorized Facilities or Discrete Components shall not be construed as a gift or a waiver of the payment of the Purchase Price, or any part thereof, for such Authorized Facilities or Discrete Components.

7. Ownership and Transfer of the Authorized Facilities; Maintenance; Warranties. Any of the Authorized Facilities to be owned by public entities or public utilities other than the City shall be conveyed in accordance with the entity's or utility's policies and procedures. For the Authorized Facilities to be owned by the City, the following applies:

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

b. Authorized Facilities Constructed on Private Land. If Authorized Facilities to be acquired are located on privately-owned Land, the owner thereof shall retain title to the Land and the completed Authorized Facilities until acquisition under Subsection 7(a) above, which shall apply to such transfer. Pending the completion of such transfer and where the Developer has received any payment for such Authorized Facilities, the Developer shall be responsible for maintaining the land and any Authorized Facilities in good and safe condition.

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

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

On or before the Acceptance Date, the Developer shall assign to the City all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of

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

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

8. Limitation of Liability; Excess Costs; Surplus in the Improvement Fund. The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City and the City’s obligations to make any payments hereunder are restricted entirely to the Funding Sources and shall not extend to any other source. The Developer agrees to pay all costs of the Authorized Facilities it is constructing that are in excess of the Funding Sources. No City Council member, City staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

If the construction and acquisition of all the Authorized Facilities listed on Exhibit A have been completed and the Purchase Price (including any retentions described above) with respect thereto has been paid, and Funding Sources remain or become available through, among other things, the issuance of additional Bonds, the City and the Developer may designate in a supplement hereto, Authorized Facilities (and/or Discrete Components thereof) to be constructed and acquired with such remaining or additional Funding Sources to be selected from the list of Authorized Facilities; provided, however, the City shall determine the use of such funds consistent with the terms of the Fiscal Agent Agreement. If the City and the Developer do not so designate another use in a supplement hereto, the Funding Sources will be used to redeem Bonds.

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

The Developer shall assume the defense of and indemnify and save harmless the City and the City’s consultants, Councilmembers, officers, employees and agents, from and against any and all claims, losses, damage, expenses and liability of every kind, nature, and description, directly or indirectly arising from any breach by the Developer of this Agreement, the performance of the work covered by this Agreement, from the Developer’s or any other entity’s negligent design, engineering and/or construction of any of the Authorized Facilities acquired

from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Authorized Facilities, or any claims of persons employed by the Developer or its agents to construct the Authorized Facilities, and from any and all claims, losses, damage, expenses, and liability, howsoever the same may be caused, resulting directly, or indirectly from any breach by the Developer of this Agreement or the nature of the work covered by this Agreement, to the fullest extent permitted by law. In accordance with Civil Code section 2782, nothing in this Section shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the active or sole negligence or willful misconduct of the City, and its consultants, and its Councilmembers, agents, servants or independent contractors who are directly responsible to the City, or for defects in design furnished by such persons. Moreover, nothing in this Section 9 shall apply to impose on the Developer, or to relieve the City from, liability for active negligence of the City, or its consultants as delineated in Civil Code Section 2782. Any relief for determining the City's sole or active negligence shall be determined by a court of law.

The City does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the City, or deposit with the City by the Developer of any insurance policies required by the City. The hold harmless agreement by the Developer set forth in this Section 9 shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

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

#### 10. Representations and Covenants of the Developer.

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

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

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

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

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

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

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

(i) Financial Records. Until the final acceptance of the Authorized Facilities, the Developer covenants to maintain proper books of record and account for the construction of the Authorized Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

(ii) Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Authorized Facilities to be acquired from the Developer hereunder, it will assure complete compliance with State law pertaining to the payment of prevailing wages under the California Labor Code, including any and all reporting requirements.

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

(iv) Transfers of Ownership of any Portion of the Property. The Developer agrees that in the event that it sells or otherwise transfers ownership of any of the Property to another party (in each case, a "Transferee"), pursuant to and in accordance with the provisions of Section 20 of the Development Agreement, the Developer will (i) notify the City in writing within 30 calendar days of the transfer, identifying the legal name of and mailing address for the Transferee, the applicable County Assessor's parcel number or numbers for and the acreage of the portion of the Property transferred, (ii) notify the Transferee in writing prior to the closing of any such transfer of the existence of the Development Agreement and this Agreement and, in general, the Developer's rights and obligations under the Development Agreement and hereunder with respect to the construction of and payment for the Authorized Facilities and the requirement of written approval from the City Manager to any assignment to the Transferee of the Developer's rights and obligations under the Development Agreement, (iii) require such Transferee to comply with the obligation for continuing disclosure to the extent provided by the Continuing Disclosure Undertaking and (iv) notify the Transferee in writing of the existence of the CFD and the foreclosable special tax lien to enforce the

Special Tax payment obligation, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

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

(vi) Disclosure in Connection with Bond Issuance; Continuing Disclosure. The Developer agrees to provide such information about its development, its financing plan and such other matters as may reasonably be requested by the City, the City's bond counsel, the City's disclosure counsel or the City's bond underwriter for the preparation and dissemination of an official statement pertaining to any series of Bonds. The Developer agrees to comply with all of its obligations under the Continuing Disclosure Undertaking.

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

11. Limitation. Nothing in this Agreement shall be construed as affecting the Developer's or the City's duty to perform their respective obligations under any other agreements, land use regulations, or subdivision requirements related to the Property, which obligations (if any) are and shall remain independent of the Developer's and the City's right and obligations under this Agreement.

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

13. 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 this Agreement which provide for decisions to be in the sole discretion of the party making the decision.

14. Audit. The Director of Public Works shall have the right, during normal business hours and upon the giving of ten days written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in constructing any of the Authorized Facilities and any bids taken or received for the construction thereof or materials therefor.

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

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

Developer: Dublin Crossing, LLC  
500 La Gonda Way, Suite 100  
Danville, CA 94526  
Attn: Project Manager

City: City of Dublin  
100 Civic Plaza  
Dublin, CA 94568  
Attn: City Manager

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

17. 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.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may not be assigned by the Developer without the prior written consent of the City, set forth in an assignment agreement required by Section 20 of the Development Agreement, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee and upon any other factor which the City deems relevant in the circumstances.

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

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

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

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

23. Governing Law. The provisions of this Agreement shall be governed by the laws of the State.

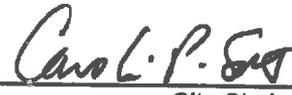
**SIGNATURES ON FOLLOWING PAGE**

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

CITY OF DUBLIN

By:   
City Manager

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

DUBLIN CROSSING, LLC,  
a Delaware limited liability company

By: BrookCal Dublin LLC,  
a Delaware limited liability company  
Its: Member

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

By: SPIC Dublin LLC,  
a Delaware limited liability company  
Its: Member

By: Standard Pacific Investment Corp.,  
A Delaware corporation  
Its: Member

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

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CITY OF DUBLIN

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

DUBLIN CROSSING, LLC,  
a Delaware limited liability company

By: BrookCal Dublin LLC,  
a Delaware limited liability company  
Its: Member

By: \_\_\_\_\_  
(Signature)

Joseph Roden  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Signature)

Gregory Glenn  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

By: SPIC Dublin LLC,  
a Delaware limited liability company  
Its: Member

By: Standard Pacific Investment Corp.,  
A Delaware corporation  
Its: Member

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
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By: \_\_\_\_\_  
(Signature)

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(Print Name)

\_\_\_\_\_  
(Title)

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CITY OF DUBLIN

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

DUBLIN CROSSING, LLC,  
a Delaware limited liability company

By: BrookCai Dublin LLC,  
a Delaware limited liability company  
Its: Member

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
(Signature)

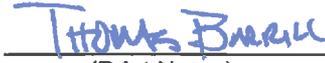
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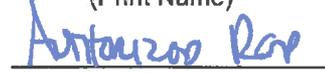
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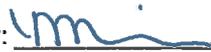
By: SPIC Dublin LLC,  
a Delaware limited liability company  
Its: Member

By: Standard Pacific Investment Corp.,  
A Delaware corporation  
Its: Member

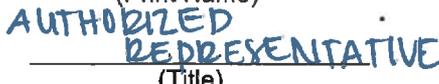
By:   
(Signature)

  
(Print Name)

  
(Title)

By:   
(Signature)

  
(Print Name)

  
(Title)

## EXHIBIT A

### AUTHORIZED FACILITIES AND AUTHORIZED FEES

#### A. City Public Capital Improvements

1. Backbone Storm Drainage
2. Backbone Street Improvements
3. Master Landscaping, Fencing and Signage on Public Property, Including Public Easements and Rights-of-Way

#### B. City-Imposed Impact Fees

1. Fire Impact Fees
2. Freeway Interchange Fees
3. Public Art In-Lieu Fees
4. Residential Traffic Impact Fees – Eastern Dublin Fee
5. Development Agreement Fees:
  - a. ACSPA Contribution
  - b. Iron Horse Trail Bridge Contribution
  - c. Park Construction Payment

#### C. Dublin San Ramon Services District (DSRSD)

1. Capital Improvements
  - a. Backbone Sanitary Sewer
  - b. Backbone Domestic Water
  - c. Backbone Reclaimed Water
2. DSRSD Impact Fees
  - a. Water System Connection Fees
  - b. Water Meter Assembly Fees
  - c. Wastewater Impact Fees

#### D. Zone 7

1. Capital Improvements
  - a. Backbone Storm Drainage
2. Zone 7 Impact Fees
  - a. Water Connection Fees
  - b. Drainage Assessment Fees (Impervious Surface)

Notwithstanding the foregoing lists on page A-1 hereof, in the event that Dublin Crossing, LLC, or any landowner of any portion of the land within CFD No. 2015-1 which is responsible for the construction of any of the listed improvements or payment of any of the listed impact fees enters into a written agreement with the City, DSRSD or Zone 7, as the case may be, to move all or any portion of any of the improvements or impact fees listed above from one category to the other, the subject improvements or impact fees shall remain eligible for financing by CFD No. 2015-1 without the requirement of City Council action to authorize such change. Without limiting the generality of the foregoing, if, for example, the City and Dublin Crossing, LLC (the "Parties"), enter into a written agreement (including but not limited to an agreement amending the Development Agreement between the Parties) pursuant to which the Parties agree that Dublin Crossing, LLC, will construct the City park referenced as Item B(5)(c) above, then that City park shall be eligible for financing by CFD No. 2015-1 as a City Public Capital Improvement.

Similarly, a written agreement to add any additional improvements or impact fees to those listed shall make such improvements or impact fees eligible for financing by CFD No. 2015-1, and a written agreement to delete any improvements or impact fees from those listed shall make such improvements or impact fees ineligible for such financing, in each case without the requirement of City Council action to authorize such change.

## EXHIBIT B

### FORM OF PAYMENT REQUEST

#### City of Dublin Community Facilities District No. 2015-1 (Dublin Crossing)

Pursuant to the Acquisition Agreement, dated as of July 18, 2017 (the "**Acquisition Agreement**"), by and between the City of Dublin (the "**City**") and Dublin Crossing LLC (the "**Developer**"), the Developer hereby requests (a) payment of the Purchase Price of the Authorized Facilities and/or the Discrete Components described in Attachment 1 hereto or (b) reimbursement for the Authorized Fees described in Attachment 1 hereto. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Acquisition Agreement.

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

#### For Authorized Facilities or Discrete Components:

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

2. The Developer has submitted or submits herewith to the Director of Public Works as-built drawings or similar Plans for each of the Authorized Facilities and/or Discrete Components described in Attachment 1, and such drawings or Plans, as applicable, are true, correct and complete representations of the Authorized Facilities and/or Discrete Components listed in Attachment 1.

3. Each of the Authorized Facilities and Discrete Components described in Attachment 1 has been constructed in accordance with the Plans therefor, and in accordance with all applicable City standards and the requirements of the Acquisition Agreement, and the as-built drawings or similar Plans referenced in paragraph 2 above, and none of the Authorized Facilities or Discrete Components described in Attachment 1 has been the subject of any prior Payment Request.

4. The Developer has submitted or submits herewith to the Director of Public Works soils reports and certifications as appropriate with respect to each Authorized Facility or Discrete Component described in Attachment 1.

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

6. The Developer has submitted or submits herewith to the Director of Public Works a copy of each construction contract for each of the Authorized Facilities and/or Discrete Components described in Attachment 1, a copy of the bid notice for each such contract and a copy of each change order applicable to each such contract, together with the written approval of each such change order by the Director of Public Works of the City.

7. The Developer has submitted or submits herewith to the Director of Public Works a letter from the Developer evaluating invoices, receipts, worksheets and other evidence of costs for each of the Authorized Facilities and/or Discrete Components described in Attachment 1,

which are in sufficient detail to allow the Director of Public Works to verify the Actual Cost of such Authorized Facilities and Discrete Components and, if any of such invoices, receipts, worksheets or other evidence of costs include costs for facilities other than such Authorized Facilities and/or Discrete Components, the Developer has submitted or submits herewith to the Director of Public Works a written description as to how the items and amounts in such invoices, receipts, worksheets and other evidence of costs have been allocated among such other Authorized Facilities and/or Discrete Components, together with evidence that such allocation is appropriate, correct and reasonable.

8. The Developer has submitted or submits herewith to the Director of Public Works evidence that each of the invoices, receipts, worksheets and other evidence of costs referred to in the preceding paragraph, has been paid in full, which evidence is in the form of copies of cancelled checks or such other form as the Director of Public Works of the City has approved in writing.

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

10. The Developer has submitted or submits herewith to the Director of Public Works copies of unconditional lien releases from all contractors, subcontractors and materialmen for all work with respect to each of the Authorized Facilities and/or Discrete Components described in Attachment 1, together with the written approval of each such lien release by the City Attorney of the City.

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

12. The Developer represents that it has satisfied the conditions specified in the Acquisition Agreement for the payment of the Purchase Price of Authorized Facilities or Discrete Components.

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

For Authorized Fees:

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

2. The identity and amount of the Authorized Fees are described in Attachment 1.

3. The Developer has submitted or submits herewith to the Director of Public Works evidence that Authorized Fees referred to in the preceding paragraph have been paid in full, which evidence is in the form of copies of cancelled checks or such other form as the Director of Public Works has approved in writing.

4. The representations and warranties of the Developer in Section 10(a) of the Acquisition Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.

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

**SIGNATURES ON FOLLOWING PAGE**

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

DUBLIN CROSSING LLC,  
a Delaware limited liability company

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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

**APPROVAL BY THE DIRECTOR OF PUBLIC WORKS**

I, the undersigned Director of Public Works of the City of Dublin, hereby certify as follows:

(i) Dublin Crossing LLC (the “Developer”), has requested payment of the Purchase Price of the Authorized Facilities and/or the Discrete Components or reimbursement for the Authorized Fees described in Attachment 1 hereto. All references hereafter in this certification to “the Authorized Facilities and/or the Discrete Components” shall be deemed to refer to those Authorized Facilities and/or Discrete Components or those Authorized Fees described in Attachment 1 hereto.

(ii) I or persons working under my supervision have confirmed that each of the Authorized Facilities and/or Discrete Components is complete in accordance with the Plans.

(iii) The Developer has provided me with satisfactory documentation to demonstrate how Actual Cost for the subject Authorized Facilities and/or Discrete Components was calculated, to establish that the Authorized Facilities and Discrete Components are consistent with those presented in the documentation of Actual Cost, and to establish that the Authorized Fees described in Attachment 1 hereto, if any, have been paid by the Developer.

(iv) The Actual Cost of the Authorized Facilities and Discrete Components and the amount of Authorized Fees described in Attachment 1 hereto, if any, have been reviewed, verified and approved by me or persons working under my supervision under the terms specified in Section 5 of the Acquisition Agreement. As such, Payment of the Purchase Price of each of the Authorized Facilities and/or Discrete Components and reimbursement to the Developer for the amount of Authorized Fees described in Attachment 1 hereto is hereby approved.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Acquisition Agreement, dated as of July 18, 2017 (the “Acquisition Agreement”), by and between the City of Dublin (the “City”) and the Developer.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary Huisingsh  
Director of Public Works  
City of Dublin

**ATTACHMENT 1**

<b>Authorized Facility, Discrete Component or Authorized Fees</b>	<b>Actual Cost</b>	<b>Purchase Price</b>
<b>Total</b>		