

**ACQUISITION AGREEMENT**

**by and among**

**CITY OF BEAUMONT,**

**CITY OF BEAUMONT COMMUNITY FACILITIES DISTRICT  
NO. 2021-1 (FAIRWAY CANYON)**

**and**

**SDC FAIRWAY CANYON, LLC**

**Dated as of June 1, 2021**

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THIS ACQUISITION AGREEMENT (the “Acquisition Agreement”), dated as of June 1, 2021, is by and among the CITY OF BEAUMONT, a general law city (the “City”), the CITY OF BEAUMONT COMMUNITY FACILITIES DISTRICT NO. 2021-1 (FAIRWAY CANYON), a community facilities district created pursuant to the Act (defined herein) (the “District”), and SDC FAIRWAY CANYON, LLC, a Delaware limited liability company (the “Owner”).

## RECITALS

A. **The Prior District and Improvement Areas.** Previously, the City formed Community Facilities District No. 93-1 (“**CFD No. 93-1**”) and designated, among other areas, Improvement Area 19D and Improvement Area 19F (each an “**Improvement Area**”) to fund the construction, acquisition and installation of various facilities (the “**Authorized Facilities**”) specified in said proceedings. Previous to this Acquisition Agreement, the City also formed Community Facilities District No. 2016-1 (“**CFD No. 2016-1**”) and issued Bonds (“**Prior Bond Proceeds**”) with respect thereto to finance a part of the costs of the Authorized Facilities.

B. **The District.** The City Council of the City has established the District under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the District therein, which include (i) the Authorized Facilities not financed by CFD No. 93-1 or CFD No. 2016-1, and (ii) the facilities listed in Exhibit A hereto (collectively, the “Facilities”).

C. **The Development.** The land within the District is currently expected to be developed with 529 dwelling units as part of a master-planned community commonly known as “Fairway Canyon,” which is described as Tract 31462-21, lots 1 through 167; Tract 31462-22, lots 1 through 101; Tract 37696, lots 1 through 62; Tract 37697, lots 1 through 73; and Tract 37698, lots 1 through 126.

D. **The Facilities.** As part of the District formation proceedings, the Facilities were authorized to be acquired by the District, and the District proceedings contemplated that acquisition agreements would be entered into from time to time to describe the terms of such acquisition. The Facilities are within or serve the City and the City and the Owner will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land within the District. The facilities that are eligible for acquisition by the City from the Owner under this Acquisition Agreement are only the Facilities listed in Exhibit A hereto, as such Exhibit may be amended and/or supplemented by any Supplement approved by the City and Owner. As indicated in Exhibit A, a portion of the Facilities have already been financed with Prior Bond Proceeds.

E. **The Financing.** In order to, among other things, implement provisions of the Development Agreement, as defined below, the Owner, the District and the City wish to enter into this Acquisition Agreement to finance the acquisition of the Facilities, as defined below, and provide for the payment of the Facilities and Discrete Components thereof as shown in Exhibit A hereto (as it may be amended and supplemented by any Supplement).

F. **The Bonds.** The District may proceed with the authorization and issuance of the Bonds in one or more series under the Act and the Indenture, the proceeds of which Bonds shall be used, in part, to finance the Facilities.

G. **No Advantage to City Construction.** The City, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the

City directly of the Facilities and that the provisions of this Acquisition Agreement require that the Facilities constructed by the Owner and acquired with the funds in the Improvement Fund, as defined below, be constructed as if they had been constructed under the direction and supervision of the City. The Owner hereby represents that it has experience in the supervision of the construction of improvements of the character of the Facilities.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the District and the Owner agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1 Definitions.** The following terms shall have the meanings ascribed to them in this Section 1.1 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Indenture (as hereinafter defined).

“Acceptable Title” means title to land or interest therein, in form acceptable to the Director, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an “Acceptable Title” if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director, (iii) the Director has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Owner commits in writing not to allow any liens to be imposed on such property prior to its acceptance.

“Acceptance Date” means the date the City Council (or other public entity which is to own a Facility) takes final action to accept dedication of or transfer of title to a Facility.

“Acquisition Agreement” means this Acquisition Agreement, together with any Supplement hereto.

“Act” means the Mello-Roos Community Facilities Act of 1982, Section 53311 et seq. of the California Government Code, as amended.

“Actual Cost” means the substantiated cost of a Facility or a Discrete Component, which costs may include: (i) the costs incurred for the construction of such Facility or Discrete Component, (ii) the costs incurred in preparing the Plans for such Facility or Discrete Component and the related costs of environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies or utilities for obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component, (iv) professional costs incurred that are associated with such Facility or Discrete Component, such as construction management and supervision (not to exceed 15% of the costs in (i) above), engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) the costs directly related to the construction and/or acquisition of a Facility or Discrete Component, such as costs of payment, performance and/or

maintenance bonds, and insurance costs (including costs of any title insurance required hereunder) (but excluding the cost of real property unless paid to unrelated third parties).

“Affiliate” means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by any of the Owner and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Owner, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity.

“Bonds” means the bonds to be issued by the District pursuant to the Act in one or more series.

“City” means the City of Beaumont, a general law city.

“Conditions of Approval” means, with respect to any portion of the property within the District, the conditions of approval of all land use entitlements approved by the City and the conditions of any Development Agreement, subdivision improvement agreement or other agreement between the Owner and the City relating to such property which conditions must be satisfied in order to develop such property.

“County” means the County of Riverside, California.

“Development Agreement” means the Development Agreement between the City of Beaumont and LB/L-SunCal Oak Valley LLC, recorded as Instrument No. 2003-977700 in the Riverside County Recorder’s Office on December 5, 2003, as assigned to the Owner.

“Director” means the Director of Public Works of the City, or his or her written designee acting as such under this Acquisition Agreement.

“Discrete Component” means a component of a Facility that the Director has agreed can be separately identified, inspected and completed, and be the subject of a Payment Request hereunder. The Discrete Components are described in Exhibit A hereto.

“District” means the City of Beaumont Community Facilities District No. 2021-1 (Fairway Canyon), created by the City under the Act.

“Facilities” means the facilities described in Exhibit A hereto which are to be acquired with the proceeds of the Special Taxes and Bonds.

“Financing Policies” means the City of Beaumont’s Goals and Policies for Community Facilities Districts, as adopted May 8, 1995 by Resolution No. 1995-23, attached hereto as Exhibit C.

“Improvement Fund” means, (a) prior to the initial issuance of Bonds, the fund or account established by the City for the District, howsoever denominated, into which Net Proceeds of the Special Taxes are to be deposited, and (b) from and after the initial issuance of Bonds, the fund or account established under the Indenture for such Bonds, howsoever denominated, into which Net Proceeds of Bonds and Special Taxes are to be deposited.

“Indenture” means the bond indenture or similar document between the City and the Trustee for the District, providing for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended from time to time.

“Net Proceeds” means (a) with respect to Special Taxes, the proceeds of such Special Taxes received prior to the initial issuance of Bonds and remaining after the payment or setting aside of, or provision for, administrative expenses of the District, and (b) with respect to Bonds, the proceeds of such Bonds remaining after the payment or setting aside of, or provisions for (i) the underwriter’s discount for such Bonds, (ii) the costs of issuance of such Bonds, including the costs of authorizing the Special Taxes and Bonds of the District incurred by the City and Owner, (iii) any required reserve fund deposit for such Bonds, (iv) capitalized interest on such Bonds, and (v) pre funded administrative expenses of the District.

“Owner” means SDC Fairway Canyon, LLC, a Delaware limited liability company, and its successors or assigns to the extent permitted under Section 8.7 hereof.

“Payment Request” means a document, substantially in the form of Exhibit B hereto, to be used by the Owner in requesting payment of a Purchase Price.

“Plans” means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the City.

“Purchase Price” means the amount paid by the District for a Facility and/or any Discrete Components thereof determined in accordance with Article III hereof, being an amount equal to the Actual Cost of such Facility or Discrete Component, but subject to the limitations and reductions provided for in Article III. To the extent that the Owner has already received partial payment for a Facility or Discrete Component thereof from Prior Bond Proceeds, the Purchase Price for such Facility or Discrete Component thereof shall only include the remaining amount to be paid.

“Rate and Method” means the rate and method of apportionment of the Special Taxes of the District approved by the qualified electors of the District.

“Special Taxes” means the special taxes for facilities in the District levied in accordance with the Rate and Method.

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

“Trustee” means a financial institution in its capacity as trustee or fiscal agent under the Indenture, or any successor thereto acting as trustee or fiscal agent under the Indenture.

## **ARTICLE II**

### **FUNDING**

**Section 2.1 Issuance of Bonds.** Upon the written request of the Owner or City, the Owner and the City staff shall meet regarding the amount, timing and other material aspects of each series of the Bonds. The legal proceedings for the issuance of the Bonds and the series, principal amounts, rates, terms, conditions and timing of the sale of the Bonds shall be in all respects be solely determined by

the City Council of the City, acting as the governing body of the District, in accordance with this Acquisition Agreement; provided that, subject to satisfaction of the applicable Financing Policies, sound municipal financing practices and the requirements of this Acquisition Agreement, as soon as possible following the execution of this Acquisition Agreement the City shall use commercially reasonable efforts to cause the District to issue and sell the Bonds in an amount sufficient to fund the Facilities. For purposes of sizing each series of Bonds, the priority annual administrative expense shall be \$30,000 for the District.

Prior to the Bonds being issued for the District, the Owner will be required to provide all information regarding the development of its property within the District, including the financing plan for such development, which is necessary to ensure that the official statement for such Bonds complies with the requirements of all applicable federal and state securities laws, including without limitation Rule 15c2-12 and Rule 10(b)-5 of the Securities and Exchange Commission (the "Commission"). Moreover, each property owner which is responsible for twenty percent (20%) or more of the maximum special tax within the District at the time each series of Bonds are issued (each a "Major Landowner") will be required to enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to the development of the land owned by such Major Landowner in the District as necessary to assist the underwriter of the series of Bonds in complying with the continuing disclosure requirements of Rule 15c2-12 of the Commission and/or in marketing the Bonds. Each Major Landowner shall be required to execute a certificate in connection with each public sale of Bonds pursuant to which the Major Landowner shall indemnify and hold harmless City from claims arising from, or based upon, any untrue statement or alleged untrue statement of a material fact or omission or alleged omission of a material fact in the above-referenced information.

**Section 2.2 Special Taxes and Bonds.** Prior to the issuance of the first series of Bonds for the District, the "Assigned Special Tax" has been and shall continue to be levied in each fiscal year on parcels classified as "Developed Property" pursuant to and as defined in the Rate and Method. The Net Proceeds of such Special Taxes have been and shall continue to be deposited in the Improvement Fund. In addition, the proceeds of each full or partial prepayment of Special Taxes attributable to eligible facilities prior to the issuance of Bonds shall be deposited in the Improvement Fund. The City, the District and the Owner are entering into this Acquisition Agreement and authorized the levy of the Special Taxes for the purpose of creating and allocating certain streams of revenues that are or will be available to pay directly or reimburse the costs of acquisition and construction of the Facilities and to pay debt service on Bonds and other indebtedness of the District. The District hereby irrevocably pledges the Net Proceeds of Special Taxes to the Owner for the reimbursement of costs of the Facilities, subordinate only to the payment of debt service on Bonds issued to fund such costs. Following the issuance of the Bonds, the District shall have no obligation to levy Special Taxes to pay directly for the costs of reimbursing or paying the Owner for the Facilities. The Owner, the City and the District hereby acknowledge and agree that any reduction or termination of the Special Taxes by exercise of the initiative power or the exercise of discretion of the City or the District would constitute a substantial impairment of revenue stream of Special Taxes that the Owner, the City and the District intend to create for the purpose of providing an assured source of funding for such costs.

**Section 2.3 Net Proceeds.** The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Indenture. The Net Proceeds of the Bonds will be set aside under the Indenture in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Indenture and the applicable provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities (including



payment of the Purchase Price of Discrete Components thereof) all as herein provided. Funds in the Improvement Fund shall be reserved and disbursed in accordance with this Acquisition Agreement.

The Owner acknowledges that any lack of availability of amounts in the Improvement Fund to pay the Purchase Price of Facilities or any Discrete Components thereof shall in no way diminish any obligation of the Owner with respect to the construction of or contributions for public facilities and mitigation measures required by the Conditions of Approval or any subdivision, development or other agreement to which the Owner is a party, or any governmental approval to which the Owner or any land within the District are subject.

**Section 2.4 Funding Facilities in Other Fairway Canyon Districts.** Any Facilities that are not funded by the proceeds of Bonds and Special Taxes in the District may be funded by bonds and special taxes of another existing or to-be-formed community facilities district under the Act for the Fairway Canyon project (an “**Other Fairway Canyon District**”). To the extent that the Purchase Price of a Facility is not fully paid by this District, the unpaid Purchase Price of a Facility may be paid by sources available in an Other Fairway Canyon District.

**Section 2.5 Disclosure of Special Tax.** If requested in writing by the City, copies of the executed “Notice of Special Tax” required by California Government Code Section 53341.5 provided to the purchaser of real property within the District shall be provided to the City Director of Finance. The Director of Finance’s receipt of such “Notice of Special Tax” shall not be construed as City or District approval of the form of Notice or in any way make the City or District liable for deficiencies in such “Notice of Special Tax.” Owner agrees to retain copies of the Notice of Special Tax it has provided to homebuyers within the District for a period of three (3) years and to provide them to the City upon City’s written request.

### ARTICLE III

#### CONSTRUCTION AND ACQUISITION OF FACILITIES

**Section 3.1 Duty of Owner to Construct.** All Facilities and Discrete Components thereof to be acquired hereunder shall have been constructed at the direction of the Owner in accordance with the approved Plans following the solicitation of competitive bids. The Owner shall have employed at all times adequate staff or consultants with the requisite experience necessary to bid, administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the City from the Owner hereunder.

**Section 3.2 Inspection.** No payment hereunder shall be made by the City to the Owner for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected and found to be completed in accordance with the Plans by the City or other applicable public entity or utility. However, due to the age of some of the Facilities it is understood that normal wear and tear and aging may have occurred which shall not be a basis for denial. The City shall make or cause to be made periodic site inspections of the Facilities or Discrete Components to be acquired hereunder on a timely basis; provided that in no event shall the City incur any liability for any delay in the inspection of any Facilities or Discrete Components. For Facilities to be acquired by other public entities or utilities, the Owner shall be responsible for obtaining such inspections and providing written evidence thereof to the Director. The Owner agrees to pay all inspection, permit and other similar fees of the City applicable to construction of the Facilities.

**Section 3.3 Agreement to Sell and Acquire Facilities.** The Owner hereby agrees to sell the Facilities and Discrete Components listed in Exhibit A hereto to the City or an applicable utility and the City hereby agrees to use amounts in the Improvement Fund to pay the Purchase Price of each of such Facilities and Discrete Components to the Owner, subject to the terms and conditions hereof. The City shall not be obligated to acquire any Facility or Discrete Component until the Facility or Discrete Component is completed and the Acceptance Date for such Facility (or the final Discrete Component) has occurred; provided that the City has agreed hereunder to make payments to the Owner for certain Discrete Components of Facilities as shown in Exhibit A hereto prior to the Acceptance Date. The Owner acknowledges that the Discrete Components have been identified for payment purposes only, and that the City shall not accept a Facility of which a Discrete Component is a part until the entire 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 completed in accordance with the Plans therefor, as determined by the Director. In any event, the City shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the moneys in the Improvement Fund (subject to Section 2.4).

**Section 3.4 Payment Requests.** In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 3.2 shall have been made and the Owner shall deliver to the Director: (i) a Payment Request in the form of Exhibit B hereto for such Facility or Discrete Component, together with all attachments and exhibits required by Exhibit B and this Section 3.4 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit B), and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the City at the time of the request, a copy of the recorded documents conveying to the City Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 4.1 hereof, (b) to the extent paid for with the proceeds of the Bonds, an assignment to the District of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements, and (c) an assignment of warranties and guaranties for such Facility, as described in Section 4.5 hereof, in a form acceptable to the City.

Upon receipt of a Payment Request (and all accompanying documentation), the Director shall conduct a review in order to confirm that such request is complete, that such Discrete Component or Facility identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component or Facility specified in such Payment Request. The Director shall also conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Owner agrees to cooperate with the Director in conducting each such review and to provide the Director with such additional information and documentation as is reasonably necessary for the Director to conclude each such review. For any Facilities to be acquired by another public entity or utility, the Owner shall provide evidence acceptable to the Director that such Facilities are acceptable to such entity or utility. Within fifteen (15) business days of receipt of any Payment Request, the Director expects to review the request for completeness and notify the Owner whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Director expects to provide a written approval or denial (specifying the reason for any denial) of the request within thirty (30) calendar days of its submittal. However, the Facilities documentation will be delivered by Owner to City in large quantities which may be beyond the ability of City to process, in accordance with the forgoing timeframes. At the request of City or Owner, City may engage an outside contractor to review and process the Facilities documentation on behalf of the City the cost of which shall be borne by Owner subject to a written agreement executed by City and Owner. If a Payment Request seeking reimbursement for more than

one Facility or Discrete Component is denied, the Director shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components shall be processed for payment under Section 3.5 notwithstanding such partial denial. The City's and District's Costs associated with the acquisition of Facilities and processing of Payment Requests shall be reimbursed from the Improvement Fund or from amounts advanced by the Owner to the extent insufficient funds are on deposit in the Improvement Fund, which advances may be later reimbursed to the Owner out of the Improvement Fund.

**Section 3.5 Payment.** Upon approval of the Payment Request by the Director, the Director shall sign the Payment Request and forward the same to the City Director of Finance. Upon receipt of the reviewed and fully signed Payment Request, the City Director of Finance shall, within the then current City financial accounting payment cycle but in any event within fifteen (15) business days of receipt of the approved Payment Request, cause the same to be paid by the Trustee under the applicable provisions of the Indenture, to the extent of funds then on deposit in the Improvement Fund. Any approved Payment Request not paid due to an insufficiency of funds in the Improvement Fund, shall be paid promptly following the deposit into the Improvement Fund of proceeds of any investment earnings or other amounts transferred to the Improvement Fund under the terms of the Indenture.

Subject to Section 2.4, the Purchase Price paid hereunder for any Facility or Discrete Component shall constitute payment in full for such Facility or Discrete Component, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such Facility or Discrete Component, as specified in the Plans.

The City shall withhold payment for any Discrete Component or Facility constructed on land not already owned by the City or other public entity, until Acceptable Title to such land is conveyed to the City or other public entity that will own the respective Facility, as described in Article IV hereof.

The City shall be entitled to withhold any payment hereunder for a Facility or Discrete Component that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Owner for the Facility or Discrete Component that is the subject of a Payment Request, or conditional lien releases (and/or unconditional lien releases) have been provided by the Owner for such Facility or Discrete Component. The City, in its discretion, may waive this limitation upon the provision by the Owner of sureties, undertakings, securities and/or bonds of the Owner or appropriate contractors or subcontractors and deemed satisfactory by the Director to assure payment of such claims.

The City shall be entitled to withhold payment for any Facility (or final Discrete Component) hereunder to be owned by the City until: (i) the Director determines that the Facility is ready for its intended use, and (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 4.1, if applicable to such Facility, have been satisfied. The City hereby agrees that the Owner shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the City to indemnify it for any losses sustained by the City because of any liens that may exist at the time of acceptance of such a Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director. The City shall be entitled to withhold payment for any Facility (or the final Discrete Component of any such Facility) to be owned by other governmental entities, until the Owner provides the Director with evidence that the governmental entity has accepted dedication of and/or title to the Facility. If the Director determines that a Facility is not ready for intended use under (i) above,

the Director shall so notify the Owner as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Owner from contesting in good faith the validity or amount of any mechanics or materialman's lien nor limit the remedies available to the Owner with respect thereto so long as such delay in performance shall not subject the Facilities or any Discrete Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Owner shall only be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien sufficient to cause the release or such lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director.

Subject to the last paragraph of this Section 3.5, the City shall withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each Discrete Component to be paid hereunder other than the final Discrete Component of any Facility. Any such retention will be released to the Owner upon final completion and acceptance of the related Facility.

Notwithstanding the foregoing, the Owner shall be entitled to payment of any such retention upon the completion and acceptance of a Discrete Component, if securities meeting the requirements of the California Public Contracts Code are deposited in lieu thereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefore. No retention shall apply if the Owner proves to the Director's satisfaction that the Owner's contracts for the Discrete Components provide for the same retention as herein provided, so that the Purchase Price paid for the Discrete Component is at all times net of the required retention.

**Section 3.6 Defective or Nonconforming Work.** If any of the work done or materials furnished for a Facility or Discrete Component are found by the Director to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such Facility or Discrete Component hereunder, the City may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director, or (ii) and such finding is made after payment of the Purchase Price of such Facility or Discrete Component, the City and the Owner shall act in accordance with the City's standard specification for public works construction.

## ARTICLE IV

### OWNERSHIP AND TRANSFER OF FACILITIES

**Section 4.1 Facilities to be Owned by the City; Conveyance of Land and Easements to City.** Acceptable Title to all property on, in or over which each Facility to be acquired by the City will be located, shall be deeded over to the City by way of grant deed, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the City as being a sufficient interest therein to permit the City to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Owner to perform its obligations as set forth in this Acquisition Agreement. The Owner agrees to assist the City in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a Facility (or the last Discrete Component thereof) and shall be evidenced by recordation of the acceptance thereof by the City Council or the designee thereof.

**Section 4.2 Facilities to be Owned by the City; Title Evidence.** The Owner shall furnish to the City a preliminary title report for land with respect to Facilities to be acquired by the City and not previously dedicated or otherwise conveyed to the City, for review and approval at least thirty (30) business days prior to the transfer of the Acceptable Title to a Facility to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the land with respect to such Facility or pay the Purchase Price for such Facility (or the last Discrete Component thereof) until the Owner has cured such objections to title to the reasonable satisfaction of the City and caused a standard title insurance policy to be issued to the City with respect to such land in the amount of the Purchase Price. In the event the Owner cannot cure such objections to title, City agrees to consider the use of eminent domain pursuant to Section 4.3 hereof for such purpose.

**Section 4.3 Facilities Constructed on Private Lands.** If any Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed Facilities until acquisition of the Facilities under Article III hereof. Pending the completion of such transfer, the Owner shall not be entitled to receive any payment for any such Facility or the last Discrete Component thereof. The Owner shall, however, be entitled to receive payment for Discrete Components (other than the last Discrete Component) upon making an irrevocable offer of dedication of such land in form and substance acceptable to the Director. Notwithstanding the foregoing, upon written request of the City before payment for any Discrete Component of such a Facility, the Owner shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Sections 4.1 and 4.2 hereof.

It shall be the responsibility of the Owner to acquire all property rights on property which is not owned by the City or the Owner which is necessary for the construction of any of the Facilities. In the event, despite its exercise of best efforts to do so, the Owner is unable to acquire such property rights, the City shall in good faith consider the undertaking of proceedings to acquire such property rights through its exercise of the power of eminent domain, and the costs of such proceedings and acquisition shall be the responsibility of the Owner and shall comprise part of the Purchase Price of the related Facility.

**Section 4.4 Facilities Constructed on City Land.** If the Facilities to be acquired are on land owned by the City, including land as to which the City has acquired sufficient property rights in the manner described in Section 4.3 or otherwise, the City hereby grants to the Owner a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

**Section 4.5 Maintenance and Warranties.** The Owner shall maintain or cause to be maintained each Discrete Component in good and safe condition until the Acceptance Date of the Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Owner shall be responsible for performing any required maintenance on any completed Discrete Component or Facility. On or before the Acceptance Date of the Facility, the Owner shall assign to the City all of the Owner's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Facility. For each Facility to be owned by the City, the Owner shall provide a warranty bond reasonably acceptable in form and substance to the Director to remain in effect for a period of one year from the date of acceptance of each Facility. The City shall

be responsible for maintenance of each Facility from and after the Acceptance Date thereof, except that with respect to landscaping improvements, the Owner shall maintain or cause to be maintained such landscape improvements for a period of one year following the Acceptance Date thereof or shall provide a bond reasonably acceptable in form and substance to the Director for such period and for such purpose (for landscaping improvements only, and for the posting of a warranty bond to remain in effect for one year as to other Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Owner, at its own cost and expense, to the satisfaction of the Director. The Owner shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the City to the Owner, and shall complete such repairs, replacement or correction as soon as practicable. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the City shall be delivered to the Director as part of the transfer of title.

**Section 4.6 Allocation of Costs.** If Owner incurs costs that (1) apply to more than one Facility or Discrete Component (e.g., soft costs) or (2) apply to both Facilities or Discrete Components and improvements other than the Facilities or Discrete Components (e.g., grading), Owner shall allocate, or cause the contractor to reasonably allocate, such costs between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the “**Owner Allocation**”). The Owner Allocation shall be presumed to be reasonable and shall be accepted for all purposes of this Acquisition Agreement unless the City notifies Owner of its good-faith reasonable disapproval of the allocation as part of the City’s written response to the applicable Payment Request. If the City has properly disapproved the Owner Allocation, then the City and Owner shall promptly allocate such costs, on a reasonable basis, between the Facilities or Discrete Components (in the case of clause (1)) or between the Facilities or Discrete Components and the improvements other than the Facilities or Discrete Components (in the case of clause (2)) (the “**Agreed-Upon Allocation**”). Based on the Owner Allocation or the Agreed-Upon Allocation, as applicable, the City shall include the costs allocated to a specific Facility or Discrete Component as part of the Actual Costs of such Facility or Discrete Component when such Facility or Discrete Component is subject to a Payment Request.

**Section 4.7 Expectations of the Parties.** The City understands and agrees that (i) Owner will be constructing Facilities or Discrete Components prior to the availability of sources that will be used to pay for such Facilities or Discrete Components, (ii) the City or the other public agencies that will own and operate such Facilities or Discrete Components may be inspecting such Facilities or Discrete Components and processing and completing payment requests for the payment on such Facilities or Discrete Components with knowledge that there may be insufficient sources available at such time, (iii) the Facilities or Discrete Components may be conveyed to and accepted by the City or other local agency that will own and operate such Facilities or Discrete Components when there are insufficient sources to pay the Purchase Prices of such Facilities or Discrete Components, and (iv) in any such case, the payment of any approved payment requests for the Purchase Prices of such Facilities or Discrete Components will be deferred until there are sufficient sources available to pay the Purchase Prices of such Facilities or Discrete Components, at which time the City will make such payments in accordance with this Acquisition Agreement. At all times, Owner will be constructing such Facilities or Discrete Components with the expectation that the Purchase Prices for such Facilities or Discrete Components will be paid solely from the sources. The conveyance of Facilities or Discrete Components to the City or a local agency that will own and operate such Facilities or Discrete Components prior to receipt of the Purchase Prices for such Facilities or Discrete Components shall not be construed as a dedication or gift, or a waiver of the payment of the Purchase Prices, or any part thereof, for such Facilities or Discrete Components.

## ARTICLE V INSURANCE

**Section 5.1 Insurance Requirements.** The Owner shall, at all times prior to the final Acceptance Date of all Facilities, maintain and deliver to the City evidence of and keep in full force and effect, not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to the Director: (i) Workers Compensation and Employer's Liability - Workers' Compensation - coverage as required by law; Employer's Liability - limits of at least \$1,000,000.00 per occurrence; (ii) Comprehensive General Liability - Combined Single Limit - \$2,000,000.00; (iii) Automobile Liability - Combined Single Limit - \$1,000,000.00; and (iv) Errors and Omissions Insurance - Combined Single Limit - \$2,000,000.00.

All of the Owner's insurance policies shall contain an endorsement providing that written notice shall be given to the City at least 30 calendar days prior to termination or cancellation of coverage of the policy.

The Comprehensive General Liability and Bodily Injury and Property Damage Liability policies shall contain the following:

(a) An endorsement extending coverage to the City and its agents as an additional insured, as respects liabilities arising out of the performance of any work related to the Facilities. Which insurance shall be primary insurance as respects the interest of the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the insurance required hereunder.

(b) Severability of interest clause.

(c) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to contractual liability assumed by the Owner.

Promptly on execution of this Acquisition Agreement by the Owner, the Owner shall deliver to the Director copies of all required certificates of insurance and endorsements thereto on forms which are acceptable to the Director and the City Attorney.

The Owner shall require and verify similar insurance on the part of its contractors and subcontractors.

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

Any policy or policies of insurance that the Owner or its contractors or subcontractors elect to carry as insurance (i) against loss or damage to their construction equipment and tools or other personal property used in fulfillment of this Acquisition Agreement or a contract related to the Facilities shall include a provision waiving the insurer's right of subrogation against the City, and (ii) in fulfillment of this Acquisition Agreement involving a dual obligee bond may contain a clause to the effect that: "provided that Principal and Surety shall not be liable to the Obligees or any of them unless the Obligees or any of them have performed the obligations to the Principal in accordance with the terms

of said contract; and provided, further, that Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.”

**Section 5.2 Standards Applicable.** The Owner may effect such coverage under blanket insurance policies, provided, however, that (i) such policies are written on a per occurrence basis, (ii) such policies comply in all other respects with the provisions of Section 5.1, and (iii) the protection afforded the City under any such policy shall be no less than that which would be available under a separate, policy relating only to this Acquisition Agreement. All policies of insurance shall be with companies licensed or approved by the State of California Insurance Commissioner and rated (i) A or better with respect to primary levels of coverage, and (ii) B+12 or better with respect to excess levels of coverage, in the most recent edition of Best’s Insurance Guide and shall be issued and delivered in accordance with State law and regulations.

**Section 5.3 Evidence of Insurance.** Prior to the Acceptance Date, the Owner shall furnish to the City, from time to time upon request of the Director, a certificate of insurance regarding each insurance policy required to be maintained by the Owner hereunder.

## ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 6.1 Representations, Covenants and Warranties of the Owner.** The Owner represents and warrants for the benefit of the City, as follows:

(a) Organization. Owner is a California limited liability company and is validly doing business and in good standing in the State of California, is in compliance with all applicable laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

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

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

(d) Compliance with Laws. The Owner shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Owner in the District or the 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 lands in the District or the Facilities.

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



(f) Financial Records. Until the final acceptance of the Facilities, the Owner covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Which 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.

(g) Prevailing Wages. The Owner covenants that, with respect to any contracts or subcontracts for the construction of the Facilities to be acquired from the Owner hereunder, it has assured complete compliance with any applicable law or regulation for the payment of prevailing wages for such construction.

(h) Plans. The Owner represents that it has obtained or will obtain approval of the Plans for the Facilities to be acquired from the Owner hereunder from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Owner further agrees that the Facilities to be acquired from the Owner 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.

**Section 6.2 Indemnification and Hold Harmless.** The Owner shall assume the defense of, indemnify and save harmless the City, members of the City Council, their officers, officials, employees and agents and each of them, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Acquisition Agreement by the Owner, the Owner's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Owner hereunder, the Owner's non-payment under contracts between the Owner and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities, any claims of persons employed by the Owner or its agents to construct the Facilities, claims for damages to persons or property related to the actions of Owner contemplated by this Acquisition Agreement or any claims arising out of any alleged misstatement of a material fact or omission of a material fact with respect to provisions in any Official Statement for the Bonds for which the Owner certifies in a customary certificate executed in connection with the printing of the Official Statement for such Bonds. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable solely to the intentional acts or negligence of the City, or its officers, directors, employees or agents hereunder.

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

## **ARTICLE VII TERMINATION**

**Section 7.1 Mutual Consent.** This Acquisition Agreement may be terminated by the mutual, written consent of the City and the Owner, in which event the City may let contracts for any remaining work related to the Facilities not theretofore acquired from the Owner hereunder, and use all or any portion of the monies in the Improvement Fund to pay for same, and the Owner shall have no claim or right to the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent. In any event, this Acquisition Agreement shall

terminate upon the earlier of (i) ten (10) years following the issuance of building permits for all dwelling units expected to be built within the District or (ii) the funding of all Facilities pursuant to this Acquisition Agreement.

**Section 7.2 City Election to Terminate for Cause.** The following events shall constitute grounds for the City, at its option and in its sole discretion, to terminate this Acquisition Agreement, without the consent of the Owner:

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

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

(c) The Owner shall abandon construction of the Facilities. Failure for a period of six consecutive months to undertake substantial work related to the construction of Facilities that are required to be constructed at that time pursuant to the Conditions of Approval, other than for a reason specified in Section 7.3 hereof, shall constitute a non-inclusive example of such abandonment.

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

(e) The Owner shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the City or as otherwise permitted hereunder.

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

If any such event occurs, the City shall give written notice of its knowledge thereof to the Owner, and the Owner agrees to meet and confer with the Director and other appropriate City staff and consultants as to options available to assure timely completion of the Facilities. Such options may include, but not be limited to the termination of this Acquisition Agreement by the City. If the City elects to terminate this Acquisition Agreement, the City shall first notify the Owner (and any mortgagee or trust deed beneficiary specified in writing by the Owner to the City to receive such notice) of the grounds for such termination and allow the Owner a reasonable period (minimum of thirty (30) days) to eliminate or mitigate to the satisfaction of the Director the grounds for such termination. Such period may be extended, at the sole discretion of the City, if the Owner, to the satisfaction of the City, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof, as determined solely by the City), the Owner has not eliminated or completely mitigated such grounds, to the satisfaction of the City, the City may then terminate this Acquisition Agreement.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through and including (f) above has occurred, notice of which has been given by the City to the Owner, and such event has not been cured or otherwise eliminated by the Owner, the City may in its sole discretion

cease making payments for the Purchase Price of Facilities or Discrete Components under Article III hereof.

**Section 7.3 Force Majeure.** Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes, inclement weather or other acts of God, war, civil commotion, riots, strikes, acts of terrorism, pandemic, picketing, other labor disputes, damage to work in progress by casualty, government shutdowns, moratoria or other restrictive laws or regulations, or the acts, omissions or breach of agreement by the other party to this Acquisition Agreement or its agents, contractors or subcontractors, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.1 Limited Liability of City.** The Owner agrees that any and all obligations of the City arising out of or related to this Acquisition Agreement are special and limited obligations of the District and City and the City’s obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Improvement Fund and from no other source. No member of the City Council, or City staff member, employee or agent shall incur any liability hereunder to the Owner or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 8.2 Excess Costs.** Subject to the limitations of this Acquisition Agreement, the Owner agrees to pay all costs of the Facilities that it is obligated to construct in excess of the monies available therefor in the Improvement Fund.

**Section 8.3 Review of Records.** The Director and/or the Finance Manager or other finance officer of the City shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Owner, to review all books and records of the Owner pertaining to the Actual Cost incurred by the Owner in to any of the Facilities, and any bids taken or received for the construction thereof or materials therefor. Owner shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Finance Manager, to review all books and records of the City and District pertaining to the Special Taxes and Bonds.

**Section 8.4 Attorney’s Fees.** In the event that any action or suit is instituted by either party against the other arising out of this Acquisition Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys’ fees.

**Section 8.5 Notices.** Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by overnight delivery an original of the same within twenty-four hours after such transmission), addressed as follows:

City and District:                                          City of Beaumont

550 East 6<sup>th</sup> Street  
Beaumont, CA 92223  
Attention: City Manager, City Clerk

With a copy to: John Pinkney  
Slovak Baron Empey Murphy & Pinkney, LLP  
1800 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

Owner: SDC Fairway Canyon, LLC  
4131 S. Main Street  
Santa Ana, CA 92707  
Attention: Dale Strickland

With a copy to: Argent Management  
4131 S. Main Street  
Santa Ana, CA 92707  
Attention: Rob Starkman

and a copy to: Robert M. Haight, Jr.  
Holland & Knight LLP  
50 California Street, Suite 2800  
San Francisco, CA 94111

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.

**Section 8.6 Severability.** If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

**Section 8.7 Successors and Assigns.** This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Owner, except in whole to an Affiliate, or to any other entity of which the Owner and/or its members or partners will be managing members or general partners which assume all of the Owner's obligations hereunder (which transfer is expressly authorized hereunder, upon prior written notice to the City without further act of the City), without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In connection with any required consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee, the assignee's express assumption of all obligations of the Owner hereunder, and/or upon any other factor which the City deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned, and shall not be effective until approved by the City. Without the City's written consent (except in whole to an Affiliate, or to any other entity of which the Owner and/or its members or partners will be managing members or general partners which assume all of the Owner's obligations hereunder), no assignment shall release the Owner from its obligations and liabilities under this Acquisition Agreement.

**Section 8.8 Other Agreements.** The obligations of the Owner hereunder shall be those of a party hereto and not as an owner of property in the District. Nothing herein shall be construed as affecting the City's or the Owner's rights, or duties to perform their respective obligations, under other agreements, if any, use regulations or subdivision requirements relating to the development of the lands in the District. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

**Section 8.9 Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

**Section 8.10 Merger.** No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

**Section 8.11 Parties in Interest.** Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City, the District and the Owner any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the City, the District or the Owner shall be for the sole and exclusive benefit of the City, the District and the Owner.

**Section 8.12 Amendment.** This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by the City, the District and the Owner; provided, further, that Exhibit A may be modified to add additional authorized facilities or make adjustments to the existing Facilities only with the written approval of the Director and the Owner.

**Section 8.13 Counterparts.** This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 8.14 Termination.** This Acquisition Agreement shall terminate and be of no further force as of December 31, 2030, unless extended by agreement of all the parties. If the Acquisition Agreement is terminated as provided herein, none of the City, the District or the Owner shall have any further responsibility or liability pursuant to this Acquisition Agreement. Upon the termination of this Agreement, the City shall direct the use of any remaining Bond or Special Tax proceeds to complete any remaining authorized facilities, redeem Bonds or use in any way permitted by the Act.

*[Signature Page Follows]*

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

CITY OF BEAUMONT

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

ATTESTED :

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

CITY OF BEAUMONT COMMUNITY FACILITIES  
DISTRICT NO. 2021-1 (FAIRWAY CANYON)

By: \_\_\_\_\_  
City Manager of the City of Beaumont

ATTESTED:

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

*[SIGNATURES CONTINUED ON NEXT PAGE.]*

*[SIGNATURE PAGE CONTINUED]*

SDC FAIRWAY CANYON, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Dale Strickland  
Authorized Signatory

**ACQUISITION AGREEMENT  
(CFD NO. 2021-1)**

**EXHIBIT A**

**DESCRIPTION OF FACILITIES AND DISCRETE COMPONENTS ELIGIBLE FOR  
ACQUISITION FROM THE OWNER**

Facility <sup>1, 2, 3</sup>	Amount Previously Approved by City	Amount Received from Prior Bond Proceeds	Remaining Estimated Cost
Dry Utilities, Phase 1	\$ 716,094.72	\$431,851.45	\$ 206,015.23
Dry Utilities, Phase 3	653,224.00	0	653,224.00
Engineering and Consulting, Phases 1 & 3	1,435,182.80	831,222.74	603,960.06
Street Improvements, Tukwet Canyon Parkway (Champions to Mickelson)	0	0	400,000.00
Sewer & Storm Drainage Improvements, Phase 2	0	0	700,000.00
Tunnel, Phase 2 (Planning Areas 16/19)	0	0	900,000.00
Dry Utilities, Phase 2	0	0	500,000.00
Mickelson Park	0	0	4,800,000.00
Street Improvements Tukwet Canyon Parkway (Mickelson to OVP)	0	0	\$2,800,000.00
Tunnels and Storm Drainage Box Structure Phase 4A (Tukwet Canyon & PA 26)	0	0	2,800,000.00
Sewer Improvements, Phase 4A	0	0	1,300,000.00
Sewer Lift Station, Phase 4A	0	0	3,100,000.00
Storm Drainage Improvements, Phase 4A	0	0	3,000,000.00
Dry Utilities, Phase 4A	0	0	1,800,000.00
<b>TOTAL:</b>			<b><u>\$ 23,563,199.29</u></b>

- <sup>1</sup> The description of the above Facilities shall also include any appurtenant cost required for completion of such Facility including, but not limited to, grading, wet utility improvements, paving, dry utilities, performance bonds, design, planning, and engineering costs, etc.
- <sup>2</sup> Unless agreed to otherwise by the Owner and the City, dry utility cost reimbursements shall not exceed 5% of the proceeds of any series of Bonds.
- <sup>3</sup> The estimated costs of these Facilities represents the current estimates at the time of this Acquisition Agreement. The amount for any Facility may increase to include other costs subsequently submitted by Owner and approved by the City.



**ACQUISITION AGREEMENT**

**EXHIBIT B**

**FORM OF PAYMENT REQUEST (FACILITIES)**

**PAYMENT REQUEST NO. \_\_\_\_**

The undersigned (the “Owner”), hereby requests payment to the Payees listed on Attachment 2 in the total amount of \$\_\_\_\_\_ for the Facilities (as defined in the Acquisition Agreement, dated as of June 1, 2021 by and among the City of Beaumont (the “City”), the City of Beaumont Community Facilities District No. 2021-1 (Fairway Canyon) and the Owner), or Discrete Components thereof (as described in Exhibit A to that Acquisition Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the City as follows:

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

2. All costs of the Facilities or Discrete Components thereof for which payment is requested hereby are Actual Costs (as defined in the Acquisition Agreement referenced above) and have not been inflated or misrepresented in any respect. The amount of the payment requested has not been previously paid by the City.

3. Supporting documentation (such as third party invoices) is attached with respect to each cost for which payment is requested.

4. There has been full compliance with applicable laws relating to prevailing wages for the work to construct the Facilities or Discrete Components thereof for which payment is requested.

5. The Facilities or Discrete Components thereof for which payment is requested were constructed in accordance with all applicable City or other governmental standards, and in accordance with Plans approved by the City.

6. The Owner is in compliance with the terms and provisions of the Acquisition Agreement.

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

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

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

OWNER:  
SDC FAIRWAY CANYON, LLC,  
a Delaware limited liability company

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

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

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

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

CITY:

Payment Request Approved for Submission to  
Finance Manager

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

Director of Public Works

**ACQUISITION AGREEMENT**

**ATTACHMENT 1**

**EXHIBIT B**

[List here all Facilities or Discrete Components thereafter which payment is requested, and attach support documentation.]

**ACQUISITION AGREEMENT**

**ATTACHMENT 2**

**EXHIBIT B**

**CALCULATION OF PURCHASE PRICE**

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

- 1. Description (by reference to Exhibit A to the Acquisition Agreement) of the Facility or Discrete Component \$
  
- 2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): \$
  
- 3. Subtractions from Purchase Price: \$
  - A. Holdback for Lien releases (if any, see Section 3.4 of the Acquisition Agreement) \$
  
  - B. Retention (if any, see Section 3.4 of the Acquisition Agreement) \$
  
- 4. Total disbursement requested (Amount listed in 2, less amounts, if any, listed in 3) \$

Payment shall be directed to following payee(s):

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

**OWNER:**

\_\_\_\_\_

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

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

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

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

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

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

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

**CITY:**

Payment Request Approved for Submission to  
Finance Manager

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

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

Director of Public Works

**ACQUISITION AGREEMENT**

**EXHIBIT C**

**CITY CFD POLICIES**