

**ACQUISITION AGREEMENT**

**by and between**

**CITY OF SALINAS**

**and**

**CANADIAN PACIFIC LAND, LLC**

**and**

**STRACK FARMS LAND, LLC**

**Dated as of November 29, 2016**

**Relating to:**

**CITY OF SALINAS  
COMMUNITY FACILITIES DISTRICT NO. 2016-1  
(MONTE BELLA)  
OF THE CITY OF SALINAS**

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List of Exhibits

Exhibit A:	Description of Authorized Facilities and Discrete Components Eligible for Acquisition from the Owner
Exhibit B:	Eligible DIFs
Exhibit C:	Form of Payment Request (Facilities)
Exhibit C-1:	Form of Payment Request (DIF Reimbursement)
Exhibit C-2:	Form of Disbursement Request (DIFs)

THIS ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of November 29, 2016, is by and between the CITY OF SALINAS, a general law city and a political subdivision of the State of California (the "City"), acting for and on behalf of itself and Community Facilities District No. 2016-1 (Monte Bella) of the City of Salinas (the "District"), and CANADIAN PACIFIC LAND, LLC, a Florida limited liability company ("Canadian Pacific") and STRACK FARMS LAND, LLC, a Delaware limited liability company ("Strack Farms") (and together with Canadian Pacific, the "Owner").

## 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, Sections 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 (in an amount equal to 5% of the hard construction costs), 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).

“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 designated “Community Facilities District No. 2016-1 (Monte Bella) of the City of Salinas Special Tax Bonds”, to be issued by the District pursuant to the Act in one or more series on behalf of either Improvement Area, as the case may be.

“City” means the City of Salinas, a general law city and a political subdivision of the State.

“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 Monterey, California.

“DIFs” means those development impact, connection and capacity fees of the City imposed on development within the District and the Improvement Areas, as specified in Exhibit B hereto.

“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 Community Facilities District No. 2016-1 (Monte Bella) of the City of Salinas, created by the City under the Act.

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

“Financing Policies” means Section IX of the City’s Financial Policies, as amended pursuant to Resolution No. 21069 adopted October 18, 2016, attached hereto as Exhibit D.

“Improvement Area” means either Improvement Area No. 1, Improvement Area No. 2 or Improvement Area No. 3.

“Improvement Area No. 1” means Improvement Area No. 1 of the District.

“Improvement Area No. 2” means Improvement Area No. 2 of the District.

“Improvement Area No. 3 means Improvement Area No. 3 of the District.

“Improvement Areas” means, collectively, Improvement Area No. 1, Improvement Area No. 2 and Improvement Area No. 3.

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

“Indenture” means the bond indenture or similar document between the City and the Trustee for each Improvement Area, 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 of an Improvement Area, the proceeds of such Special Taxes received prior to the initial issuance of Bonds of such Improvement Area and remaining after the payment or setting aside of, or provision for, administrative expenses of such Improvement Area, and (b) with respect to Bonds of an Improvement Area, 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 formation 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 Canadian Pacific Land, LLC and Strack Farms Land, LLC, each the owner of a fifty percent (50%) undivided interest in all of the land within the District, and their successors or assigns to the extent permitted under Section 10.7 hereof.

“Payment Request” means a document, substantially in the form of Exhibit C 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 or other entity that will own, operate or maintain the Facilities when completed and acquired.

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

“Rate and Method” means, with respect to an Improvement Area, the rate and method of apportionment of the special taxes of such Improvement Area approved by the qualified electors of such Improvement Area.

“Special Taxes” means, with respect to an Improvement Area, the special taxes approved by the qualified electors of such Improvement Area 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**

### **RECITALS**

**Section 2.1 The District.** The City Council of the City has established the District and the Improvement Areas therein 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 and the Improvement Areas therein, which include the Facilities listed in Exhibit A hereto and the facilities authorized to be financed with the DIFs.

**Section 2.2 The Development.** The land within the District and the Improvement Areas is expected to be developed ultimately with 234 dwelling units in a development commonly known as “Monte Bella”.

**Section 2.3 The Facilities.** The Facilities are within or in the vicinity of the District and the Improvement Areas therein, 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. The Owner acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the City to issue any Bonds to acquire the Facilities from the Owner or implies that the City has in any way engaged the Owner to construct the Facilities. The facilities which 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.

**Section 2.4 The Financing.** The Owner and the City wish to finance the DIFs and the acquisition of the Facilities and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and payment for Discrete Components thereof as shown in Exhibit A hereto (as it may be amended and supplemented by any Supplement) with funds on deposit in the Improvement Fund.

**Section 2.5 The Bonds.** The City 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 DIFs and acquisition of all or a portion of the Facilities. The execution by the City of this Acquisition Agreement in no way obligates the City to issue any Bonds, or to acquire any Facilities or finance any fees with proceeds of any Bonds issued, except the Facilities and DIFs listed in Exhibit A and Exhibit B hereto which are to be acquired or financed subject to the terms and conditions set forth in this Agreement.

**Section 2.6 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 be constructed by the Owner 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.

**Section 2.7 Agreements.** In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, the City and the Owner agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

## **ARTICLE III**

### **FUNDING**

**Section 3.1 City Proceeding.** Upon the written request of the Owner, 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 its sole discretion; provided that, subject to satisfaction of the applicable Financing Policies, sound municipal financing practices and the requirements of this Acquisition Agreement, the City shall use reasonable efforts to issue and sell the Bonds for each Improvement Area in one or more series in an amount sufficient to fund the Facilities and DIFs in accordance with this Acquisition Agreement and the Owner's schedule for development of its property within the applicable Improvement Area. The authorized aggregate principal amount of the Bonds is \$3,575,000 for Improvement Area No. 1, \$3,025,000 for Improvement Area No. 2 and \$4,400,000 for Improvement Area No. 3. For purposes of sizing each series of Bonds, the priority annual administrative expense shall be \$20,000 per Improvement Area.

**Section 3.2 Special Taxes and Bonds.** Prior to the issuance of the first series of Bonds of an Improvement Area, the "Assigned Special Tax" shall be levied 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 shall be deposited in the Improvement Fund. Following the issuance of the first series of Bonds of an Improvement Area, Special Taxes shall be levied in accordance with the Rate and Method and applied in accordance with the Indenture for such series of Bonds. The City, in connection with this Acquisition Agreement, shall proceed with the issuance and delivery of the Bonds for the District on behalf of the Improvement Area. The City shall not be obligated to finance any DIFs or pay the Purchase Price of the Facilities or any Discrete Components thereof except from amounts on deposit in the Improvement Fund. The City makes no warranty, express or implied, that the total Net Proceeds deposited and held in the Improvement Fund, including any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the DIFs or the Purchase Price of all of the Facilities.

**Section 3.3 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 DIFs and the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), all as herein provided.

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 and/or the DIFs 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 this Acquisition Agreement 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 is subject.



**Section 3.4 Disclosure of Special Tax.** Copies of the executed “Notices 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 Finance Manager. The Finance Manager’s receipt of such “Notices 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.”

Prior to the Bonds being issued, the Owner will be required to provide all information regarding the development of its property, 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 applicable Improvement Area 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 applicable Improvement Area 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.

## **ARTICLE IV**

### **CONSTRUCTION OF FACILITIES**

**Section 4.1 Plans.** To the extent that it has not already done so, the Owner shall cause Plans to be prepared for the Facilities. The Owner shall obtain the City’s written approval of the Plans in accordance with applicable ordinances and regulations of the City and/or the public entity that will own and operate the Facilities. Copies of all Plans shall be provided by the Owner to the Director upon request therefor, and, in any event, a written assignment of the Plans for any Facility shall be provided to the City prior to its acceptance of the Facility and as built drawings shall be provided to the City within 60 days of such acceptance.

**Section 4.2 Duty of Owner to Construct.** All Facilities and Discrete Components thereof to be acquired hereunder shall be constructed at the direction of the Owner in accordance with the approved Plans following the solicitation of competitive bids as provided in Section 4.3 hereof. The Owner shall employ 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.

The Owner shall be obligated: (i) to cause the construction and cause conveyance to the City (or other applicable governmental agency) of all Facilities and Discrete Components thereof listed in Exhibit A hereto in accordance with the Conditions of Approval, and (ii) to use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid hereunder, if any.

Except as set forth in the following paragraph, the Owner shall not be relieved of its obligation to cause the construction of each Facility and Discrete Component thereof listed in Exhibit A hereto and convey each such Facility and Discrete Component to the City in accordance with the terms of this Agreement and the Conditions of Approval even if, (i) because of the limitations imposed by Section 5.6 hereof, the Purchase Price for such Discrete Component or Facility is less than the Actual Cost, or cost to the Owner, of such Discrete Component or Facility, or

(ii) there are no funds or insufficient funds in the Improvement Fund to pay the Purchase Prices thereof, and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the District under the Conditions of Approval with respect to the public improvements required in connection with the development of the land within the District. The obligation of the Owner to construct and convey such Facilities, and pay the costs thereof in excess of available monies in the Improvement Fund and the timing of construction of such Facilities, shall be determined by the applicable Conditions of Approval.

**Section 4.3 Relationship to Public Works.** This Acquisition Agreement is for the acquisition by the City of the Facilities and payment for Discrete Components thereof listed in Exhibit A hereto from monies in the Improvement Fund and is not intended to be a public works contract. Notwithstanding the foregoing, the Owner shall competitively bid and award all contracts for construction of the Facilities listed in Exhibit A hereto, as amended from time to time, and materials related thereto by means of a competitive bid process acceptable to the Director. At the Owner's request, the Director shall review the Owner's proposed bid process and either provide modifications or written acknowledgment that it is acceptable. The Owner shall endeavor to obtain at least two bids for such Facility or Discrete Component thereof by means of a bidding process acceptable to the Director. Bids for each Discrete Component shall be submitted in sealed envelopes to the Owner prior to the time and date prescribed for bid opening. The Owner shall open the bids immediately following the submittal deadline. The Director or his designee may be present at all bid openings and may direct that all bids be submitted to him. Upon written request of the Director, the Owner shall provide an analysis of bids for construction and materials for the Facilities, constructed or to be constructed by or under the supervision of the Owner. The Owner shall award each bid to the lowest responsible bidder.

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

**Section 4.4 Independent Contractor.** In performing this Acquisition Agreement, the Owner 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, consultant, employee or supplier of the Owner.

**Section 4.5 Performance and Payment Bonds.** The Owner agrees to comply with all applicable performance and mechanics and materialmen bonding requirements of the City (and other applicable public entities and/or public utilities) with respect to the construction of the Facilities, as requested by the City.

**Section 4.6 Contracts and Change Orders.** The Owner shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Facilities listed in Exhibit A hereto, as amended from time to time, and all such contracts and change orders shall be submitted to the Director. Prior approval of

change orders by the Director shall only be required for such change orders which in any way materially alter the quality or character of the subject Facilities, or which involve an amount equal to \$50,000 or greater. The City expects that such change orders needing prior approval by the Director will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director thereof.

**Section 4.7 Time for Completion.** The Owner agrees that this Acquisition Agreement is for the benefit of the City and the Owner and, therefore, the Owner represents that it expects to complete the Facilities that are intended to be financed with the Net Proceeds of each series of Bonds and to have requested payment for such Facilities under this Acquisition Agreement within eighteen (18) calendar months from the date of the closing of the series of Bonds. Any failure to complete the Facilities within said time period shall not, however, in itself, constitute a breach by the Owner of the terms of this Acquisition Agreement.

The Owner agrees to use its good faith efforts to complete all Facilities that are intended to be financed with the Net Proceeds of each series of Bonds within eighteen (18) calendar months from the date of closing of the Bonds.

## **ARTICLE V**

### **ACQUISITION AND PAYMENT**

**Section 5.1 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 approved Plans by the City or other applicable public entity or utility. [Describe procedure for identifying Discrete Components as eligible. Will these be listed at signing?] The City shall make or cause to be made periodic site inspections of the Facilities 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 5.2 Agreement to Sell and Acquire Facilities.** The Owner hereby agrees to sell the Facilities and Discrete Component listed in Exhibit A hereto to the City (or other applicable public agency that will own such Facility and Discrete Component), and the City hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof 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 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, as it may be supplemented by any Supplement. The Owner acknowledges that the Discrete Components have been identified for payment purposes only, and that the City (or other applicable public agency that will own a Facility) 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 (or other applicable public agency that will own a Facility) 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.

**Section 5.3 Payment Requests.** In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5.1 shall have been made and the Owner shall deliver to the Director: (i) a Payment Request in the form of Exhibit D hereto for such Facility or Discrete Component, together with all attachments and exhibits required by Exhibit C and this Section 5.3 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit C), 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 (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the City (or other applicable public agency that will own the Facility) Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.1 hereof, (b) a copy of the recorded notice of completion of such Facility (if applicable), (c) 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 (d) an assignment of warranties and guaranties for such Facility, as described in Section 6.5 hereof, in a form acceptable to the City.

**Section 5.4 Processing Payment Requests.** 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. If a Payment Request seeking reimbursement for more than one Facility or Discrete Component is denied, the Director shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components shall be processed for payment under Section 5.5 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 5.5 Payment.** Upon approval of the Payment Request by the Director, the Director shall sign the Payment Request and forward the same to the Finance Manager of the City. Upon receipt of the reviewed and fully signed Payment Request, the Finance Manager of the City shall, within the then current City financial accounting payment cycle but in any event within ten (10) 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 or Bond Resolution, 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.

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

**Section 5.6 Restrictions on Payments.** Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Owner under Sections 5.2 and 5.5 hereof:

(a) Amounts of Payments. Subject to the following paragraphs of this Section 5.6, payments for each Discrete Component or Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or Facility.

Nothing herein shall require the City in any event (i) to pay more than the Actual Cost of a Facility or Discrete Component, or (ii) to make any payment beyond the available funds in the Improvement Fund. The parties hereto acknowledge and agree that all payments to the Owner for the Purchase Prices of Facilities or Discrete Components are intended to be reimbursements to the Owner for monies already expended or for immediate payment by the Owner (or directly by the City) to third parties in respect of such Facilities and/or Discrete Components.

(b) Joint or Third Party Payments. The City may make any payment jointly to the Owner 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 Owner requests the same in writing.

(c) Withholding Payments. The City shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component or a Facility if the Owner or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or special taxes levied in the District. In the event of any such delinquency, the City shall only make payments hereunder, should any be made at the City's sole discretion, directly to contractors or other third parties employed in connection with the construction of the Facilities or to any assignee of the Owner's interests in this Acquisition Agreement (and not to the Owner or any Affiliate), until such time as the Owner provides the Director with evidence that all such delinquent taxes and assessments have been paid.

The City shall withhold payment for any Discrete Component or Facility constructed on land, 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 VI hereof.

The City shall be entitled to withhold any payment hereunder for a 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 Discrete Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Owner for such 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, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.1, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Owner, in a form acceptable to the Director, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility (or final Discrete Component) have been submitted to the Director for the Facility. The City hereby agrees that the 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, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director.

(d) Retention. 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 in accordance with Section 6.5 hereof. 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.

(e) Frequency. Unless otherwise agreed to by the Director, no more than one Payment Request shall be submitted by the Owner in any calendar month, but Payment Request may include more than one Facility or Discrete Component.

**Section 5.7 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.

**Section 5.8 Modification of Discrete Components.** The Owner may submit to the Director one revised Exhibit A for the purpose of updating the description of one or more Discrete Component and/or Facility or identifying other Facilities, Discrete Components or DIFs that are eligible to be financed and such revised Exhibit A shall replace the original Exhibit A in its entirety. Any such modification shall be subject to the written approval of the Director, and shall not diminish the overall Facilities to be provided by the Owner (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted in connection with any prior issuance of Bonds). It is expected that any such modification with respect to Discrete Components will be for purposes of dividing up the work included in any Discrete Component for purposes of acceptance and payment, for example: (i) separation of irrigation and landscaping from other components of a Discrete Component, or (ii) modifications to allow for payment for roadway improvements prior to completion of the top course of paving. In most instances, the Director will only approve modification for payment purposes when there will be an unusual period of time between the completion and acceptance of such divided work or to better implement the phasing of the overall construction of the Facilities; but no such circumstances shall in any way obligate the Director to approve such modification.

## **ARTICLE VI**

### **OWNERSHIP AND TRANSFER OF FACILITIES**

**Section 6.1 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 6.2 Facilities to be Owned by the City-Title Evidence.** Upon the request of the City, 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 fifteen (15) 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 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. In the event the Owner cannot

cure such objections to title, City agrees to consider the use of eminent domain pursuant to Section 6.3 hereof for such purpose.

**Section 6.3 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 V 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 6.1 and 6.2 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 6.4 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 6.3 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 6.5 Facilities to be Acquired by Other Public Agencies.** With respect to any Facility to be acquired by a public entity other than the City, the Owner shall comply with such entities rules and regulations regarding title and conveyance of property, and provide the Director with evidence of such compliance, prior to the payment of the Purchase Price for any such Facility (or the last Discrete Component thereof).

**Section 6.6 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.

## **ARTICLE VII**

### **INSURANCE**

**Section 7.1 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 \$100,000.00 per occurrence; (ii) Comprehensive General Liability - Combined Single Limit - \$1,000,000.00; (iii) Automobile Liability - Combined Single Limit - \$1,000,000.00, (the automobile and general comprehensive liability policies shall be accompanied by an umbrella policy with a combined limit of \$5,000,000.00); and (iv) Errors and Omissions Insurance - Combined Single Limit - \$1,000,000.00.

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 7.2 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 7.1, 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) A12 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 7.3 Evidence of Insurance.** 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 VIII

### DIFS

**Section 8.1 Reimbursement and Advance Funding of DIFs.** The Owner may submit to the City from time to time a Payment Request in the form attached hereto as Exhibit C-1 for reimbursement of any DIFs previously paid to the City in an amount not to exceed the amount on deposit in the Improvement Fund. In the event that the amount in such Improvement Fund is less than the total amount of DIFs previously paid to the City and requested for reimbursement in a Payment Request, the unpaid amount shall be reimbursed to the Owner when additional funds are subsequently deposited in the Improvement Fund in an amount equal to or greater than such unpaid amount of the Payment Request. Payment Requests for reimbursement for which moneys on deposit in the Improvement Fund are prerequisite shall be provided to the City not more than ninety (90) days following issuance of the last series of Bonds issued by the District.

Upon receipt of a Disbursement Request in the form attached hereto as Exhibit C-2 (a "Disbursement Request"), the City may withdraw from the Improvement Fund the amount specified in such Disbursement Request to pay all or a portion of the DIFs which are then estimated to be due and payable by Owner or its successors and assigns with respect to all or any portion of the property within the District. The City shall provide a credit against the applicable DIFs for property located within the District to Owner or its successors and assigns equal to the amount of the money disbursed

pursuant to the Disbursement Request for a particular DIF divided by the per dwelling unit/equivalent dwelling unit/acre amount of the DIF at the time of the disbursement.

Some of the Facilities may be in the City DIF program. Owner shall be entitled to full credit against the applicable DIF for the Owner's construction of a Facility whether or not the Purchase Price of such Facility is funded out of the Improvement Fund. If Owner receives a credit against a DIF as the result of Owner's construction of any public improvement, Owner shall only be entitled to fund pursuant to the terms of this Acquisition Agreement Owner's remaining obligation for such DIF, net of such credit amount.

## **ARTICLE IX**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 9.1 Representations, Covenants and Warranties of the Owner.** The Owner represents and warrants for the benefit of the City, as follows:

(a) Organization. Canadian Pacific is a limited liability company duly organized and validly existing under the laws of the State of Florida and Strack Farms is a limited liability company duly organized and validly existing under the laws of the State of Delaware and each 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 will assure 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.

(i) Land Owners. The Owner agrees that in the event that it sells any land owned by it within the boundaries of the District, the Owner will (i) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement and the Owner's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (ii) notify the purchaser in writing of the existence of the District and the special tax lien in connection therewith.

**Section 9.2 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, or any claims of persons employed by the Owner or its agents to construct the Facilities. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or active 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 X**

### **TERMINATION**

**Section 10.1 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 any further payments for the DIFs or the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent.

**Section 10.2 City Election 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 10.3 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 intentional 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 V hereof.

**Section 10.3 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, 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 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 XI**

### **MISCELLANEOUS**

**Section 11.1 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 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 11.2 Excess Costs.** 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 11.3 Audit.** 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.

**Section 11.4 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 11.5 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:	City of Salinas
	200 Lincoln Avenue
	Salinas, California 91786
	Attention: City Manager

Owner: Canadian Pacific Land, LLC and  
Strack Farms Land, LLC  
c/o Richland Communities, Inc.  
801 Ygnacio Valley Road, Suite 110  
Walnut Creek, CA 94596  
Attention: Aaron Ross-Swain

With a copy to: John P. Yeager  
O'Neil LLP  
19900 MacArthur Blvd., Suite 1050  
Irvine, CA 92612

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 11.6 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 11.7 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 transfer is expressly authorized hereunder, without further act of the City), without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed; provided, however, that the Owner shall have the right to assign its right to reimbursement or advance funding of DIF Fees hereunder to merchant builders within the Improvement Areas without the City's consent, at the Owner's written election and notification to the City. 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. Except as otherwise provided herein, without the City's consent, no assignment shall release the Owner from its obligations and liabilities under this Acquisition Agreement.

**Section 11.8 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 or the Improvement Areas. 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 or the Improvement Areas. 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 11.9 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 11.10 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 11.11 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 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 or the Owner shall be for the sole and exclusive benefit of the City and the Owner.

**Section 11.12 Amendment.** This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the City and the Owner.

**Section 11.13 Counterparts.** This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

*[Signature Page Follows]*



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

CITY OF SALINAS, for itself and on behalf of  
Community Facilities District No. 2016-1 (Monte  
Bella) of the City of Salinas

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

ATTESTED TO:

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

STRACK FARMS LAND, LLC, a Delaware limited  
liability company

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

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

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

CANADIAN PACIFIC LAND, LLC, a Florida  
limited liability company

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

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

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

## ACQUISITION AGREEMENT

### EXHIBIT A

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

Facility	Discrete Components	Estimated Cost
1. Phase 5A Sanitary Sewer Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) Installation of 10", 8" and 6" sewer mains and 4", laterals and manholes	(a) \$62,586  (b) \$312,930
2. Phase 5A Storm Drain Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) Installation of 12", 15", 24" and 48" storm drain lines, manholes, drain inlet and headwalls	(a) \$34,060  (b) \$170,300
3. Phase 5A Street Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) completion of road grading and paving, installation of street signs, stop signs, street monuments and striping	(a) \$107,272  (b) \$536,360
4. Phase 5A Curb, Gutter and Sidewalk Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) installation of curb, gutter, sidewalk and handicap ramps	(a) \$64,072  (b) \$320,360
5. Phase 5A Street Lights	(a) design, engineering and other soft costs incurred prior to award of	(a) \$19,600

Facility	Discrete Components	Estimated Cost
	construction contract (b) Installation of street lights	(b) \$98,000
6. Phase 5A Detention Basin	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) Demolition and abandonment of existing improvements, grading, access road, structures, landscaping and fencing	(a) \$325,856  (b) \$1,629,280
7. Phase 5B Sanitary Sewer Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) Installation of 8" and 6" sewer mains and 4" laterals and manholes	(a) \$42,663  (b) \$213,315
8. Phase 5B Storm Drain Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) Installation of 12", 15", 18" and 24" storm drain lines, manholes and catch basins	(a) \$17,284  (b) \$86,422
9. Phase 5B Street Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract  (b) completion of road grading and paving, installation of street signs, stop signs, street monuments and striping	(a) \$81,088  (b) \$405,440

<b>Facility</b>	<b>Discrete Components</b>	<b>Estimated Cost</b>
10. Phase 5B Curb, Gutter and Sidewalk Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) installation of curb, gutter, sidewalk and handicap ramps	(a) \$42,535 (b) \$212,675
11. Phase 5B Street Lights	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of street lights	(a) \$15,600 (b) \$78,000
12. Phase 5B Masonry Wall	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of 6' masonry wall	(a) \$40,320 (b) \$201,600
13. Phase 6 Sanitary Sewer Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of 8" and 6" sewer mains and 4" laterals and manholes	(a) \$52,289 (b) \$261,445
14. Phase 6 Storm Drain Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of 15" and 18" storm drain lines, manholes and catch basins	(a) \$13,462 (b) \$67,336
15. Phase 6 Street Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) completion of road grading and paving, installation of street signs,	(a) \$111,597 (b) \$557,984

Facility	Discrete Components	Estimated Cost
	stop signs, street monuments and striping	
16. Phase 6 Curb, Gutter and Sidewalk Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) installation of curb, gutter, sidewalk and handicap ramps	(a) \$84,390 (b) \$421,952
17. Phase 6 Street Lights	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of street lights	(a) \$26,000 (b) \$130,000
18. Phase 6 Masonry Wall	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of 6' masonry wall	(a) \$92,960 (b) \$464,800
19. Offsite Street Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Completion of road grading and paving, signage and striping	(a) \$207,210 (b) \$1,036,052
20. Offsite Curb, Gutter and Sidewalk Improvements	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of curb, gutter, sidewalk and handicap ramps	(a) \$67,730 (b) \$338,649
21. Offsite Street Lights	(a) design, engineering and other soft costs incurred prior to award of construction contract (b) Installation of street lights	(a) \$31,200 (b) \$156,000

Facility	Discrete Components	Estimated Cost
22. Offsite Frontage Landscaping (Bio Swales) along Freedom Parkway and Sconeberg Parkway	(a) design, engineering and other soft costs incurred prior to award of construction contract	(a) \$149,403
	(b) Installation of landscaping and bio swales	(b) \$747,013

The description of Facilities is general in nature. The final nature and location of the Facilities will be determined upon preparation of final plans and specifications. All costs are estimates only.

## ACQUISITION AGREEMENT

### EXHIBIT B

#### ELIGIBLE DIFs

<i>DIF Category</i>	<i>Per Unit</i> <sup>(1)</sup>	<i>Total (237)</i>
Traffic Fee	\$ 2,160	\$ 511,920
Sanitary Sewer Trunk Line Fee	2,024 <sup>(2)</sup>	479,688
Storm Sewer Trunk Line Fee	<u>1,888<sup>(2)</sup></u>	<u>447,456</u>
TOTAL:	\$ 6,072	\$ 1,439,064

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<sup>(1)</sup> Current DIF amounts as of [10/1/16]

<sup>(2)</sup> Per bedroom fee; assumes 4 bedrooms per unit

## **ACQUISITION AGREEMENT**

### **EXHIBIT C**

#### **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 November 29, 2016 between the City of Salinas (the "City"), with respect to the City of Salinas Community Facilities District No. 2016-1 (Monte Bella) of the City of Salinas and the Owner), or Discrete Components thereof (as described in Exhibit B 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. To the extent that this payment request is with respect to a completed Facility, the Owner has submitted or submits herewith to the City as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Discrete Component, the Owner has in his construction office a marked set of drawings or similar plans and specifications for the Discrete Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as, applicable, are current and show all changes or modifications which have been made to date.

3. 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 items for which payment is requested have not been the subject of any prior payment request submitted to the City.

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

5. 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.

6. 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 the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Owner is in compliance with the terms and provisions of the Acquisition Agreement, including the award of contracts under which the construction for which this payment is requested.



8. 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 Section 5.6 of the Acquisition Agreement.

9. Neither the Owner nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or assessments or special assessments levied in the District or either Improvement Area thereof (as defined in the Acquisition Agreement), except as follows: \_\_\_\_\_.

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

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

OWNER:  
STRACK FARMS LAND, LLC,  
a Delaware limited liability company

By:\_\_\_\_\_  
Name:\_\_\_\_\_  
Title:\_\_\_\_\_

CANADIAN PACIFIC LAND, LLC, a Florida  
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 C**

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

## ACQUISITION AGREEMENT

### ATTACHMENT 2

#### EXHIBIT C

#### CALCULATION OF PURCHASE PRICE

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

- |    |   |    |
|----|---|----|
| 1. | Description (by reference to Exhibit B to the Acquisition Agreement)<br>of the Facility or Discrete Component               | \$ |
| 2. | Actual Cost (list here total of supporting invoices and/or other<br>documentation supporting determination of Actual Cost): | \$ |
| 3. | Subtractions from Purchase Price:   | \$ |
|    | A. Holdback for Lien releases (see Section 5.6(C) of the<br>Acquisition Agreement)  | \$ |
|    | B. Retention (see Section 5.6(D) of the Acquisition Agreement)  | \$ |
| 4. | Total disbursement requested (Amount listed in 2, less amounts, if any,<br>listed in 3)                                     | \$ |

Payment shall be directed to following payee(s):

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## ACQUISITION AGREEMENT

### EXHIBIT C-1

#### FORM OF PAYMENT REQUEST (DIF REIMBURSEMENT)

1. The undersigned (the “Owner”) hereby requests reimbursement from the City in the amount of \$\_\_\_\_\_ (“Requested Amount”), which amount is on deposit in the Improvement Fund for Improvement Area \_\_\_\_, or any applicable account of subaccount thereof, established by CFD No. 2016-1 for the DIFs (as defined in the Acquisition Agreement, dated as of \_\_\_\_\_ 1, 2016 relating to CFD No. 2016-1) specified below:

<i>Fee Category</i>	<i>Date Paid</i>	<i>Amount Requested</i>	<i>No. and Description of Lots/DUs for which Fees Requested</i>

2. The Requested Amount has been paid to City and has not formed the basis of any prior request or disbursement.

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

4. Neither the Owner nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or assessments of special assessments or taxes levied in the District (as defined in the Acquisition Agreement).

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

**EXHIBIT C-2**

**FORM OF DISBURSEMENT REQUEST (DIFs)**

1. City of Salinas Community Facilities District No. 2016-1 (the "CFD") is hereby requested to pay from the Improvement Fund for Improvement Area No. \_\_\_\_ (the "Improvement Area"), or any applicable account or subaccount thereof, to the City of Salinas ("City"), as payee, the sum set forth below:

\$\_\_\_\_\_ (the "Requested Amount")

2. The Requested Amount represents the payment of DIFs in the aggregate amount of \$\_\_\_\_\_ representing the DIFs with respect to the lot(s) within the Improvement Area specified below.

**[Insert List of Tract, Lot Nos. and DIFs satisfied]**

3. The Requested Amount is due and payable, has not formed the basis of any prior request or disbursement.

4. The Requested Amount is authorized and payable pursuant to the terms of that certain Acquisition Agreement by and among the City of Salinas and Owner dated as of \_\_\_\_\_ 1, 2016.

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

OWNER:

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

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

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

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

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

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