


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL


FOR Glen R. Googins
City Attorney

Dated: 12/1/15

COMMUNITY FACILITIES DISTRICT
ADVANCE DEPOSIT AND REIMBURSEMENT AGREEMENT
BETWEEN
THE CITY OF CHULA VISTA AND
SLF IV-MILLENIA, LLC
(COMMUNITY FACILITIES DISTRICT NO. 16-I (MILLENIA))

**COMMUNITY FACILITIES DISTRICT
ADVANCE DEPOSIT AND REIMBURSEMENT AGREEMENT
COMMUNITY FACILITIES DISTRICT NO. 16-I (MILLENIA)**

THIS ADVANCE DEPOSIT AND REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2015 (the “Effective Date”), by and between the CITY OF CHULA VISTA, a charter city (“City”), and SLF IV-MILLENIA, LLC, a Delaware limited liability company (“Applicant”).

RECITALS

- A. The City and McMillin Otay Ranch, LLC entered into that certain Development Agreement (the “Development Agreement”) for the purposes and mutual benefits set forth therein to provide for the Development of the Eastern Urban Center, now known and referred to as “Millenia” (the “Property”). All capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Development Agreement. The Applicant has acquired the Property and been assigned all rights, interests and obligations of the Development Agreement and Existing Entitlements and the obligations to construct improvements required by subdivision maps on the Property and has agreed to fulfill the Master Developer’s role with regard to such obligations.
- B. The Development Agreement provides that the Applicant, as the Master Developer, may submit a written request to City (“CFD Request”) requesting that the City establish a Community Facilities District pursuant to the Mello-Roos Act to finance the acquisition and construction of public facilities in accordance with the Financing Plan and the Goals and Policies. The Development Agreement further provides that upon receipt of such request and application and the deposit with City of sufficient funds to pay City’s costs to undertake the proceedings to establish such Community Facilities District, the City shall use reasonable efforts to, among other actions, establish such Community Facilities District.
- C. Applicant intends to submit such a CFD Request to the City to request that the City initiate proceedings under the provisions of the Mello-Roos Act to establish such a Community Facilities District (to be designated “Community Facilities District No. 16-I” or “CFD No. 16-I”) to finance the acquisition and/or construction of certain public improvements.
- D. Applicant agrees to advance funds to the City as required pursuant to the Development Agreement for the payment of all initial consulting and administration costs and expenses related to the proceedings to consider the formation of Community Facilities District No. 16-I and to subsequently authorize, issue and sell bonds for Community Facilities District No. 16-I (the “Proceedings”). Such monies shall be subject to reimbursement or credit pursuant to the provisions of this Agreement upon the successful sale of bonds for Community Facilities District No. 16-I and the receipt by the City of the proceeds of such bonds.
- E. Prior to January 1, 2015, Applicant solicited bids for and contracted for the construction of certain improvements required to be constructed pursuant to the Development Agreement (the

“Initial Improvements”). In addition, prior to the completion of the Proceedings, Developer may solicit bids for and contract for the construction of certain additional improvements required to be constructed pursuant to the Development Agreement and which are identified in Exhibit “C” to the Development Agreement as Eligible Public Facilities (the “Additional Improvements”). The Initial Improvements are identified in Exhibit A hereto and incorporated herein by this reference. Applicant has or will, in its CFD Request, request that the Initial Improvements and Additional Improvements be eligible to be acquired by City from the proceeds of special taxes authorized to be levied within Community Facilities District No. 16-I (the “Special Taxes”) or bonds issued by Community Facilities District No. 16-I (the “Bonds”) notwithstanding the fact that some or all of such Initial Improvements and Additional Improvements may be accepted by the City prior to (i) the City and the Applicant entering into an agreement to establish the terms and conditions pursuant to which the acquisition or construction of specified public improvements may be financed by Community Facilities District No. 16-I or (ii) the formation of Community Facilities District No. 16-I.

- F. The parties hereto wish to enter into this Agreement to memorialize the terms and conditions pursuant to which Applicant shall advance monies and the monies so advanced may, subject to certain conditions contained herein, be reimbursed or credited against future special tax obligations and to preserve the ability for Community Facilities District No. 16-I to finance the acquisition of the Initial Improvements and Additional Improvements and for the City to acquire such improvements.

AGREEMENT

The parties hereto, for mutual consideration, the receipt of which is hereby acknowledged, agree as follows:

SECTION 1. **Advances.**

A. Applicant shall advance monies to the City in such amounts and at such times as specified below to pay all costs and expenses incurred by the City in undertaking the Proceedings (except those costs and expenses which are contingent upon the issuance of bonds for the Community Facilities District and payable solely from the proceeds of such bonds), including without limitation, the following:

1. Special Tax Consultant services;
2. Bond counsel services;
3. Financial advisory services;
4. Disclosure counsel services;
5. Appraisal and market absorption services; and
6. City staff and City Attorney time.

All such costs and expenses are collectively referred to as the “Formation and Issuance Costs.”

B. Advances shall be made to the City pursuant to the following schedule:

1. Applicant shall advance the amount of seventy nine thousand and five hundred dollars (\$79,500) on or before the Effective Date of this Agreement.
2. If monies in addition to the initial advance are necessary to pay for the Formation and Issuance Costs, the City shall as necessary and from time to time make written demand upon Applicant and Applicant shall immediately thereafter, within five (5) working days, deposit said monies with the City to pay for the balance of the Formation and Issuance Costs. If such additional monies are not timely received, all Proceedings shall, at the option of the City, be suspended until such monies are received.

SECTION 2. Records. The City agrees to keep records consistent with its regular accounting practices of the amount of monies advanced and the expenditure of such monies. Additionally, the City shall enter into and maintain contracts with all consultants that shall specify the scope of services and compensation to be paid to all such consultants. Such records and contracts shall be available for review by the Applicant during normal business hours upon reasonable notice to the City.

SECTION 3. Reimbursement. If the Community Facilities District is formed, the unexpended and unencumbered portion of all monies advanced to the City by the Applicant pursuant to this Agreement shall be returned to the Applicant. Any portion of such monies that is appropriated to pay Formation and Issuance Costs shall be retained by the City until such monies are expended for such purpose pursuant to this Agreement or, if some or all of such monies shall become unappropriated before being expended, the unexpended portion shall be returned to the Applicant. The expended portion of such monies shall be reimbursed to the Applicant in cash solely from special tax and/or bond proceeds.

If the Proceedings to form the Community Facilities District are not completed and are abandoned for any reason at any time prior to the formation thereof or the successful sale of bonds of the Community Facilities District or the Community Facilities District is unable for any reason to issue or sell the bonds, there will be no obligation on the part of the City or the Community Facilities District to reimburse Applicant for any monies previously advanced pursuant to this Agreement; provided, however, the City does agree to return to Applicant any monies previously advanced which remain on deposit with the City and which the City determines are in excess of the amount necessary to pay for any outstanding Formation and Issuance Costs previously incurred by the City.

SECTION 4. Ownership of Documents. All appraisals, market absorption studies, special tax pro formas and other documentation as prepared as a part of the Proceedings shall become the property of the City, regardless as to whether the Community Facilities District is actually formed.

SECTION 5. No Obligation to Form Community Facilities District. Applicant acknowledges that the decision of the City Council to form the Community Facilities District is an exercise of the legislative authority of the City Council and that the City may not enter into a contract to obligate the City Council to exercise its legislative discretion in a particular manner. This Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the City to approve the formation of the Community Facilities District. The City expressly reserves the right to abandon the

Proceedings for any reason at any time prior to the completion thereof. Should Applicant desire to abandon the Proceedings, Applicant shall provide written notification of such desire to the City and request the City to immediately terminate all consulting agreements and use all efforts to minimize any and all Formation and Issuance Costs.

SECTION 6. Financing of the Acquisition of the Initial and Additional Improvements. Applicant, in order to proceed in a timely way with development of the Property, may initiate construction of Additional Improvements that will, following the completion of the construction thereof, be acquired, owned, operated and maintained by the City. Applicant shall solicit bids for the construction of each of the Additional Improvements from not less than three (3) contractors and Applicant shall award the construction contract for each of the Additional Improvements to that contractor submitting the lowest responsible bid for such work and that the design and the construction of each of the Additional Improvements shall be undertaken in conformity with the following requirements:

- (a) in substantial compliance with the plans and specifications approved by the City for each such Additional Improvement;
- (b) in a good and workmanlike manner by well-trained adequately supervised workers;
- (c) in strict compliance with all governmental and quasi-governmental rules, regulations, laws, building codes and all requirements of Applicant's insurers and lenders;
- (d) free of any known design flaws and defects; and
- (e) except as provided above, in substantial compliance with the requirements of Exhibit B attached hereto which is incorporated herein by this reference.

Applicant certifies that Applicant solicited bids for the construction of each of the Initial Improvements from not less than three (3) contractors and that Applicant awarded the construction contract for each of the Initial Improvements to that contractor submitting the lowest responsible bid for such work and that the design and the construction of each of the Initial Improvements was undertaken in conformity with (a) through (d) above in the preceding paragraph. The City agrees to acquire the Initial Improvements notwithstanding the fact that such Initial Improvements may not have been bid and the award of the construction contracts may not have been made in accordance with all of the requirements of Exhibit B hereto.

SECTION 7. Land Use Approvals. The City has, as required by Government Code Section 53312.7, adopted local goals and policies concerning the use of the Mello-Roos Act (the "Goals and Policies") as a precondition to the initiation of proceedings to establish community facilities districts pursuant to such act. Such Goals and Policies provide in pertinent part as follows:

"It is the policy of the City Council in granting approval for development such as zoning, specific plan or subdivision approval to grant such approval as a part of the City's ongoing planning and land use approval process. In granting such approval, the City reserves such rights as may be permitted by law to modify such approvals in the future as the City

Council determines the public health, safety, welfare and interest may require. Such approval when granted is subject to a condition that the construction of any part of the development does not, standing alone, grant any rights to complete the development of the remainder of such development. Construction of public improvements to serve undeveloped land financed through a community facilities district shall not vest any rights to the then existing land use approvals for the property assessed for such improvements or to any particular level, type or intensity of development or use. Applicants for a Development Related CFD must include an express acknowledgment of this policy and shall expressly waive on their behalf and on behalf of their successors and assigns any cause of action at law or in equity including, but not limited to, taking or damaging of property, for reassessment of property or denial of any right protected by USC Section 1983 which might be applicable to the properties to be assessed.” (the foregoing is described as the “Land Use Approval Policy”)

In order to satisfy the foregoing requirements of the Land Use Policy, Applicant expressly acknowledges such policy and expressly waives on its own behalf and on behalf of all Affiliates, successors and assigns any cause of action at law or in equity including, but not limited to, taking or damaging of property, for reassessment of property or denial of any right protected by USC Section 1983 which might be applicable to the properties to be assessed.

The parties agree that nothing contained in the Land Use Approval Policy above or the Applicant’s waiver in the preceding paragraph is intended to divest, alter or amend or shall divest, alter or amend Applicant’s development rights granted pursuant to the Development Agreement.

SECTION 8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 9. Authority to Execute Agreement. The City and the Applicant represent that the individuals signing this Agreement have full right and authority to bind their respective parties to this Agreement.

SECTION 10 Best Efforts. The parties promise to use their best efforts to satisfy all conditions to this Agreement and to take all further steps and execute all further documents reasonably necessary to put this Agreement into effect.

SECTION 11. Successor and Assigns. This Agreement shall be binding on and inure to the benefit of the respective parties and their respective heirs, legal representatives, successors and assigns. Applicant may not assign its rights or obligations hereunder except upon written notice to City within thirty (30) calendar days of the date of such assignment indicating the name and address of the assignee. Upon such notice and the assumption by the assignee in writing delivered to the City of the rights, duties and obligations of the Applicant arising under or from this Agreement, Applicant shall be released for all future duties or obligations arising under or from this Agreement.

SECTION 12. **Singular and Plural; Gender.** Whenever used herein, the singular number shall include the plural, the plural number shall include the singular, and the masculine feminine or neuter gender shall include the others whenever the context of the Agreement so indicates.

SECTION 13. **Entire Agreement.** This Agreement contains the entire Agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be altered, modified or amended except by an instrument in writing executed by all of the parties.

SECTION 14. **Governing Law.** This Agreement has been executed in and shall be governed by the laws of the State of California.

SECTION 15. **Construction.** This Agreement has been reviewed by legal counsel for both the City and the Applicant and shall be deemed for all purposes to have been jointly drafted by the City and the Applicant. No presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. The language in all parts of this Agreement, in all cases, shall be construed as a whole and in accordance with its fair meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives of the parties hereunder. The captions of the sections and subsections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction.

SECTION 16. **Severability.** In the event that any one or more of the provisions of this Agreement that is or are material to the entering into this Agreement by either Applicant or the City shall for any reason be held to be unenforceable in any material respect by a court of competent jurisdiction, Applicant and the City may mutually agree that such unenforceability shall not affect any other provision of this Agreement, and that this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein. If Applicant and the City fail to so mutually agree, this Agreement shall terminate, without penalty to either party, after the giving by one party of thirty (30) days' prior written notice to the other party. In such event, the City shall use all efforts to minimize any and all Formation and Issuance Costs and shall return to Applicant any monies previously advanced which remain on deposit with the City and which the City determines are in excess of the amount necessary to pay for any outstanding Formation and Issuance Costs previously incurred by the City.

SECTION 17. **Notices.** All notices and demands shall be given in writing by personal delivery or first-class mail, postage prepaid. Notices shall be addressed as appears below for the respective party; provided that, if any party gives notice of a change of name of address, notices to the giver of that notice shall thereafter be given as demanded in that notice. Notices shall be deemed received seventy-two (72) hours after deposit in the United States mail.

CITY: CITY OF CHULA VISTA
276 Fourth Avenue
Chula Vista, CA 91910
Attention: City Manager

With a Copy to:
276 Fourth Avenue

Chula Vista, CA 91910
Attention: City Attorney

APPLICANT: SLF IV-MILLENIA, LLC
5949 Sherry Lane, Suite 1750
Dallas, TX 75225
Attn: Heather Shannon

AND

MILLENIA REAL ESTATE GROUP
2750 Womble Road, Suite 200
San Diego, CA 92016
Attention: Todd Galarneau, Executive Vice President

SECTION 18. Time of the Essence. Time is of the essence in the performance of the parties respective obligations herein contained.

SECTION 19. Waiver. The waiver by one party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered a waiver by such party of any other covenant, condition or promise. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and any provision of this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

SECTION 20. Amendment. No provision of this Agreement may be modified, waived, amended or added to except by a writing signed by the party against which the enforcement of such modification, waiver, amendment or addition is or may be sought.

SECTION 21. Defense, Indemnity & Hold Harmless. To the maximum extent allowed by law, Applicant shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Applicant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or sole willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Applicant, its employees, agents or officers, or any third party.

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Signature Page
to
Community Facilities District Reimbursement Agreement
between
the City of Chula Vista
and
SLF IV-Millenia, LLC

IN WITNESS WHEREOF, City and Applicant have executed this Agreement as of the Effective Date thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms.

CITY OF CHULA VISTA

By: _____
Gary Halbert, City Manager

Attest:

Donna Norris, City Clerk

Approved as to Form:

Glen R. Googins, City Attorney

SLF IV-MILLENNIA, LLC,
a Delaware limited liability company

By: SLF IV Millenia Investor, LLC,
a Texas limited liability company,
its sole and managing member

By: Stratford Land Fund IV, L.P.,
a Delaware limited partnership,
its co-managing member

By: Stratford Fund IV GP, LLC,
a Texas limited liability company,
its general partner

By: _____
Name: Marie Westenberg
Title: Vice President

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF TEXAS)
)ss.
COUNTY OF DALLAS)

On December 2, 2015 before me, SUSAN EVANS, Notary Public, personally appeared MARK WEJTEBUNG (personally known to me) (or who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

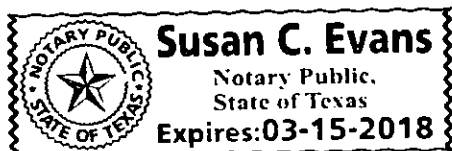


EXHIBIT A

DESCRIPTION OF INITIAL IMPROVEMENTS

1. Eastlake Parkway widening and improvements (including landscaping)
2. Birch Road widening, improvements and water quality devices (including landscaping)
3. Interior Street improvements (including water quality basins, sewer and storm drain improvements and landscaping – whether constructed by the Applicant or merchant builder):
 - (a) Orion Street from Birch to Stylus, and from Strata to southerly terminus
 - (b) Stylus Street from Orion to Eastlake Parkway
 - (c) Solstice Street from Stylus to Strata
 - (d) Strata Street from Orion to Eastlake
 - (e) Optima from Solstice to Eastlake
 - (f) Artisan Street from Millenia Avenue to Orion
 - (g) Millenia Avenue from Birch to Stylus
4. Traffic signals
5. Bus Rapid Transit Improvements – Phase 1 Guideway
6. Stylus Park

EXHIBIT B

DESIGN, BID, CONTRACT AND CHANGE ORDER REQUIREMENTS FOR ADDITIONAL IMPROVEMENTS

1. General

These requirements shall be applied to all improvements proposed to be constructed by the Applicant and subsequently acquired by the City through Community Facilities District No. 16-I. Except as expressly provided otherwise in the body of this Agreement itself, **any deviation** from these requirements **must be approved in writing in advance by** the City Engineer.

References to the City Engineer means the City Engineer or his or her designee.

The City reserves the right to make the final determination of cost of the Additional Improvements to be acquired in accordance with this Agreement.

2. Design Phase

A. Only design costs directly related to the Additional Improvements to be acquired are eligible for inclusion.

B. Bidding Documents. Two complete sets of bidding documents, including improvement plans, general provisions, and bid proposal forms shall have been or shall be submitted to the Engineering Division for review and approval within 15 working days of submittal. Advertising for bids shall not have taken place or shall not take place until the bidding documents are approved in writing by the City. This procedure shall have been followed or shall be followed for each contract proposed to be advertised. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements:

1. Unless impractical due to the nature of the improvement, the bid proposal shall be unit priced rather than lump sum. A.C. pavement, base and sub-base shall be bid on a square foot per inch thickness basis.

2. The bidding documents required or shall require the bidder/contractor to provide the following bonds:

- a. Bid Bond - 10% of the amount of the bid.
- b. Material and Labor Bond - 50% of the contract amount.
- c. Performance Bond - 100% of the contract amount.

The contractor posted or shall post performance and labor and material bonds for all improvements as part of the bid. The City of Chula Vista shall be named as additional obligee with the right to call such bonds if needed. Such bonds shall remain in effect until such time as all improvements are completed and accepted by the City Engineer. The City Engineer shall be the sole judge in determining the release of such bonds.

3. The bidding documents required or shall require the successful bidder to provide evidence of comprehensive or commercial general public liability insurance in the amount of at least \$1,000,000 prior to the award of the contract.

4. The contractor is required to pay prevailing wages.

5. The bidding documents clearly stated or must clearly state the time, date, and place where bids are to be submitted and opened.

6. The bidding documents shall have clearly stated or shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplementally bid, and are not eligible for public finance unless previously approved by the City Engineer.

3. Bidding Phase

A. The Notice inviting Sealed Bids was published or shall be published in the Chula Vista Star News and the San Diego Daily Transcript. The notice inviting bids stated or shall state where bidding documents are available.

B. The bidding period following the advertisement of the Notice Inviting Sealed Bids was or shall be a minimum of 14 calendar days.

C. Applicant provided or shall provide complete sets of bidding documents to all contractors, subcontractors, or suppliers requesting them. A reasonable price may be charged for bidding documents.

D. Applicant kept or shall keep a log of all persons obtaining bidding documents, and their mailing address.

E. Addenda were mailed or shall be mailed by first class mail to all bidding document holders and the City Engineer. If an addendum is required within five working days of the noticed bid opening date, the bid opening date shall be extended.

F. Submitted bids were or shall be in sealed envelopes.

- G. Bids were not or shall not be accepted after the stated time for submission.
 - H. Bid opening was or shall be conducted by the Applicant at the Applicant's place of business or other site mutually acceptable to the Applicant and City Engineer.
 - E. Sealed bids were or shall be opened and read aloud immediately following the submission time. A City representative was or shall be invited to attend the bid opening.
 - J. Conditioned bids, unless the bid proposal lists them for all to bid on, were or shall not be accepted.
 - K. The bid proposals conformed or shall conform to all state and local laws governing the listing of subcontractors and suppliers.
 - L. The arithmetic of the two lowest bid proposals received were or shall immediately be checked for errors.
 - M. A tabulation of all bids received were or shall be provided to the City Engineer within five working days of the bid opening.
 - N. Award was or shall be made to the lowest responsible bidder within a reasonable period of time following approval by the City Engineer.
 - O. A preconstruction meeting was or shall be held with the contractor prior to beginning the work. A City representative was or shall be invited to attend the meeting.
 - P. The Notice to Proceed was or shall be issued within a reasonable period of time following the contract execution.
4. Construction Phase
- A. The City was or shall be provided a copy of the construction schedule.
 - B. Applicant did or shall require the contractor to conduct weekly construction status meetings to which a City representative shall be invited.
 - C. Any additional costs incurred for the benefit of the Applicant, such as accelerating the construction schedule, shall not be eligible for public financing unless previously approved by the City Engineer.

- D. Any additional construction costs incurred due solely to delays caused by the Applicant shall not be eligible for public financing.
- E. All contracts and construction related records shall be available to the City as and when required for the final determination of eligible costs for the public financing. This shall include trip tickets and other confirmations of material delivered to the Improvement.

5. Change Orders

- A. No single change order for a Transportation Development Impact Fee Improvement (“TDIF Improvement”) that may be constructed as an Additional Improvement shall be eligible for inclusion in the Purchase Price for such Additional Improvement that increases or decreases the original contract amount for the construction of such Additional Improvement by more than \$50,000 without City Council approval.
- B. All change orders shall be fully documented and be in a format consistent and be in a format consistent with the original bid items (i.e., show units, unit costs, extensions and total costs). The City Engineer, in his/her sole discretion shall determine the eligibility of each change order for inclusion in the Purchase Price for an Additional Improvement.
- C. The aggregate of all change orders for TDIF Improvements constructed as Additional Improvements, including those for differences between estimated and actual quantities shall not increase the contract amount by more than the amount specified below without City Council approval:

Original Contract Range	Maximum Aggregate Increase
Up to \$100,000	10%
\$100,001 to \$1,000,000	\$10,000 plus 7% of amount over \$100,000
More than \$1,000,000	\$73,000 plus 5% of amount over \$1,000,000

The aggregate of all change orders for any non-TDIF Improvement constructed as an Additional Improvement shall not increase the Purchase Price thereof so as to cause such Purchase Price to exceed the cost estimate for such Additional Improvement as set forth in Exhibit A by more than 25% without City Council approval.

- D. All change orders involving changes in scope of the project, or increases of contract amounts greater than outlined in C. above shall be submitted to the City Council for approval after the construction of the Additional Improvement is completed, but before the payment of any portion of the Purchase Price for such Additional Improvement is authorized by the City Engineer. Change orders that the Applicant does not wish to include in the Purchase Price for an Improvement do not need to go to City Council for approval.

- E. Negotiated set price change orders are acceptable where most of the items of work in the change order have unit prices from the bids. Where change orders are for work that does not have unit prices for a substantial portion of the work contained within the bids, time and materials change orders are preferred.