

ACQUISITION/FINANCING AGREEMENT

COMMUNITY FACILITIES DISTRICT NO. 16-I (MILLENIA)

THIS ACQUISITION/FINANCING AGREEMENT (the “Agreement”), dated as of _____ 1, 2016 (the “Effective Date”), is made and entered into by and between the CITY OF CHULA VISTA, a charter city duly organized and validly existing under the Constitution and laws of the State of California, (the “City”), COMMUNITY FACILITIES DISTRICT NO. 16-I (MILLENIA), a community facilities district formed and existing pursuant to the laws of the State of California (the “CFD No. 16-I”), and SLF IV-MILLENIA, LLC, a Delaware limited liability company (the “Owner”).

WHEREAS, 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”). The Owner has acquired the Property and has 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

WHEREAS, the Owner is the master developer of the Property described in Exhibit F attached hereto and incorporated herein by this reference and Owner has obtained certain land use entitlements from the City which permit the development of the Property as entitled, (the “Development Project”); and

WHEREAS, as a part of the development of the Development Project, the Owner has, or will be constructing certain public improvements to serve the Development Project including the improvements identified as Improvements Nos. __ through __ in Exhibit A attached hereto and incorporated herein by this reference (the “Improvements”) ; and

WHEREAS, the City and Owner entered into that certain Community Facilities Agreement Advance Deposit and Reimbursement Agreement Community Facilities District No. 16-I (Millenia) dated December 30, 2015 (the “Deposit Agreement”) pursuant to which, among other things, (i) Owner has agreed to advance funds to the City for the payment of the City’s costs and expenses relating to the formation of CFD No. 16-I and issuance of bonds of CFD No. 16-I, (ii) the City and Owner identified certain “Initial Improvements” (as defined in the Deposit Agreement) that are eligible to be financed through CFD No. 16-I subject to bidding and contracting requirements set forth in the Deposit Agreement, and (iii) the City and Owner identified the bidding and contracting requirements for all “Additional Improvements” (as defined in the Deposit Agreement) that are eligible to be financed through CFD No. 16-I; and

WHEREAS, pursuant to the Development Agreement including, without limitation, the “Financing Plan” incorporated by reference as Exhibit C to the Development Agreement (the “Financing Plan”), the Owner requested that the City consider and the City did consider and form

CFD No. 16-I and designate Improvement Area Nos. 1 and 2 of CFD No. 16-I (each, an “Improvement Area” and, together, the “Improvement Areas”), under the terms and conditions of the “Mello-Roos Community Facilities Act of 1982,” as amended (Government Code Section 53311 and following) (the “Act”), for the purpose of financing the acquisition or construction of the Improvements; and

WHEREAS, Owner, in order to proceed in a timely way with development of the Development Project, desires to construct the Improvements that will, following the completion of the construction thereof, be acquired, owned, operated and/or maintained by the City; and

WHEREAS, the City, CFD No. 16-I and Owner agree that the Improvements to be constructed by the Owner may, upon the completion of the construction thereof, be acquired by the City through financing provided by CFD No. 16-I at prices determined pursuant to and in accordance with the provisions of this Agreement; and

WHEREAS, the City and the Owner further agree that payment by the City for the acquisition of the Improvements shall be funded solely from (a) the proceeds of bonds which shall be issued by CFD No. 16-I for each Improvement Area and which shall be secured by the levy of special taxes within the Improvement Area and (b) Surplus Special Taxes (defined below) derived from the levy of special taxes within the Improvement Areas; and

WHEREAS, it is the intent of this Agreement that Owner shall be entitled pursuant to the provisions of this Agreement to be paid for each of the Improvements constructed by the Owner at the prices as determined by the City pursuant to this Agreement upon: (a) the sale and delivery of bonds by CFD No. 16-I the proceeds of which shall be authorized and designated to make the payments to acquire such Improvements, or (b) the receipt of Surplus Special Taxes and (c) the completion of the construction of each such Improvement; and

WHEREAS, the City and CFD No. 16-I are willing to have CFD No. 16-I finance the acquisition of the Improvements to be constructed by the Owner, subject to the requirements of the Act, the City of Chula Vista Statement of Goals and Policies Regarding the Establishment of Community Facilities Districts adopted by the City Council (the “Goals and Policies”), the Development Agreement and Financing Plan, the Deposit Agreement and this Agreement and Owner desires that CFD No. 16-I so finance the acquisition of such Improvements allocable to the Development Project.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the respective parties as follows:

SECTION 1. Recitals. The above recitals are all true and correct.

SECTION 2. Plans and Specifications. All plans, specifications and bid documents for the Improvements (the “Plans and Specifications”) and all changes in the Plans and Specifications necessitated by change orders shall be prepared by the Owner at the Owner’s initial expense, subject to City approval. The costs of acquisition of such Improvements shall include costs of

the preparation of the Plans and Specifications and all related documentation as set forth in Section 7 below.

Owner shall not award bids for construction, commence construction or cause commencement of construction of any Improvement until the Plans and Specifications for such Improvement have been approved by the City.

SECTION 3. Design, Bid and Construction of Improvements. With the exception of the Initial Improvements, Owner covenants and agrees that each Improvement to be acquired from Owner pursuant to this Agreement shall be designed, bid and constructed:

- (a) in substantial compliance with the approved Plans and Specifications for such 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 Owner's insurers and lenders;
- (d) free of any known design flaws and defects; and
- (e) except as provided below, in substantial compliance with the requirements of Exhibit C hereto which is incorporated herein by this reference.

The Improvements identified as Improvement Nos. __ through __ in Exhibit A hereto are the Initial Improvements. Owner certified in the Deposit Agreement that Owner solicited bids for the construction of each of the Initial Improvements from not less than three (3) contractors and awarded the construction contract for each of the Initial Improvements to that contractor submitting the lowest responsible bid for such work, and Owner hereby certifies 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 has agreed in the Deposit Agreement 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 C hereto.

In the event of a protest by a bidder to the award of a contract for the construction of an Improvement or Improvements to the apparent low bidder, the Owner may, in its sole discretion, elect to:

- (a) award the contract to the apparent low bidder pursuant to the provisions of Exhibit C hereto if the Owner has determined that the bid of the apparent low bidder was, in fact, responsive and that the irregularity upon which the protest is based was minor in nature, i.e., the irregularity did not create an unfair competitive advantage for the apparent low bidder;

(b) reject the bid of the apparent low bidder if the Owner determines that the irregularity upon which the protest is based did create an unfair competitive advantage for the apparent low bidder and the bid of the apparent low bidder was, therefore, not responsive and award the contract to the lowest responsive bidder; or

(c) reject all bids and solicit new bids for the construction of the applicable Improvement or Improvements.

Should a legal action be filed challenging the validity of the Owner's decision regarding any such bid protest and/or the award of any contract for the construction of any Improvement, including any Initial Improvement, the Owner shall, at Owner's sole expense, defend such action and shall defend, indemnify, and hold harmless the City, its officers, directors, employees and agents and CFD No. 16-I, its officers, directors, employees and agents (each, an "Indemnified Party" and collectively, the "Indemnified Parties").

SECTION 4. Inspection and Acceptance of the Improvements. The construction activities relating to the Improvements to be constructed by the Owner shall be subject at all reasonable times to inspection by authorized representatives of City. Once an Improvement to be acquired by City is substantially completed in accordance with the approved Plans and Specifications, then such Improvement shall be eligible for payment of the Base Increment of the Purchase Price (as defined in Section 7 below) therefor.

Prior to acceptance by the City of any Improvement constructed by the Owner for purposes of paying the Retained Increment (as defined in Section 7 below) of the Purchase Price, the Owner shall provide to the City Engineer of the City, or his or her designee (the "City Engineer"), the documentation set forth in this Section 4 and Section 7(c)(ii) below and obtain approval of as-built drawings for the Improvement in accordance with the process described below in this Section 4. The engineer of record for any such Improvement ("Engineer of Record") shall file form PW-E-106 (Request for Release of Bonds) with the City Engineer. Within 20 working days of such filing, the field inspector of the City or his or her designee ("Field Inspector") shall issue and transmit to the Engineer of Record a letter requesting (i) as-built drawings and soils reports (when applicable) and (ii) a punchlist of work to be completed or corrections to work to be completed before such Improvement will be eligible for payment of the Retained Increment. Within 20 working days of receipt of the Field Inspector's letter, the Engineer of Record shall prepare redline as-built drawings and submit them, together with any necessary soils reports, to the Field Inspector and the Owner shall complete the items of work and/or corrections specified in the punchlist. Within 10 working days of the Engineer of Record's submittal of the red lined as-built drawings, the Field Inspector shall review such drawings and provide comments. The Engineer of Record shall revise the redline as-built drawings per the Field Inspector's comments and resubmit within 10 working days. The Field Inspector shall make his final review within 5 working days of the Engineer of Record's resubmittal and notify the Engineer of Record to prepare mylar as-built drawings and a microfiche copy and submit both to the City Engineer or his designee and notify the Owner of any punchlist items which remain to be completed. The City and Owner shall make best efforts

to perform within the time periods described above. The inability of City or Owner to perform within each time period, notwithstanding its best efforts, shall not constitute a breach of this Agreement.

SECTION 5. Warranty of Improvements Constructed by the Owner. At all times prior to the City's acceptance of any Improvement constructed by the Owner, the Owner shall be responsible for maintaining such Improvement at the Owner's expense. The Owner shall be obligated for the period of twelve (12) months immediately following the City's acceptance of such an Improvement to repair or replace, at Owner's expense, any defects or failures resulting from the work of Owner, its contractors or agents. Upon the expiration of such twelve (12) month period, Owner shall assign to City and CFD No. 16-I its rights in and to any warranties, guarantees or other evidence of contingent obligations of third persons with respect to such Improvement. As a condition precedent to the payment of the Retained Increment (as defined in Section 7 below) of the Purchase Price, Owner shall post a maintenance bond in a form reasonably approved by the City, cause such a maintenance bond to be posted, or assign Owner's rights under such a maintenance bond naming City and/or CFD No. 16-I as beneficiary in an amount equal to fifteen percent (15%) of the Purchase Price of such Improvement in order to secure Owner's obligations pursuant to this Section. Upon posting of such maintenance bond, the City shall release any performance, labor and material bonds for such Improvement.

SECTION 6. Notice of Completion and Lien Releases. Upon completion of the construction of an Improvement, Owner shall notify the City Engineer in writing of such completion and shall prepare and execute a Notice of Completion for such Improvement in the form prescribed by Section 3093 of the California Civil Code and shall record such notice in the Official Records of the County of San Diego. Owner shall cause its contractors to provide unconditional lien releases for such Improvement in accordance with Section 3262 of the Civil Code. Notwithstanding the foregoing, City may waive the requirement for a Notice of Completion and lien releases if City determines that as of the date of payment of the Retained Increment of the Purchase Price for an Improvement, title to such Improvement or portion thereof satisfies the requirements for Acceptable Title (as hereinafter defined).

SECTION 7. Payment of Purchase Price.

(a) Amount of Purchase Price. The amount to be paid by City for the Improvements to be constructed by and acquired from Owner (the "Purchase Price") shall, as to each such Improvement, (i) be determined by City in accordance with the provisions of this Section 7, (ii) equal the lesser of the cost or the value thereof, (iii) include the reasonable cost or value of eligible appurtenant public facilities, (iv) include the costs of the title insurance policy described in Section 9 (a), and (v) include all other costs of construction and incidental costs eligible under the Act, the Goals and Policies and the Financing Plan as a part of the cost of the Improvements.

The costs of each Improvement to be included in the Purchase Price of such Improvement shall include the following:

- (i) the actual hard costs for the construction of the Improvement, including labor, materials and equipment costs;
- (ii) the costs of grading related to the Improvement;
- (iii) the costs incurred in designing, engineering and preparing the plans and specifications for the Improvement;
- (iv) the costs of environmental evaluation and mitigation of or relating to the Improvement;
- (v) fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Improvement;
- (vi) costs of construction administration and supervision up to five percent (5.0%) of the total cost of the Improvement as an exception to the Goals and Policies which would otherwise impose a limitation of one and three-quarters percent (1.75%) of total cost;
- (vii) professional costs associated with the Improvement, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services;
- (viii) costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Improvement; and
- (ix) the value of the land that is included in each park Improvement, which shall be based upon the amount per gross acre used by the City in setting its park fees.

In no event shall the cost or value of the construction of the Improvements, other than the Initial Improvements, be deemed to exceed the construction contract prices set forth in the contracts and change orders approved by City ("Approved Change Orders") pursuant to the applicable provisions of Exhibit C hereto, which is incorporated herein by this reference, or otherwise authorized pursuant to this Agreement.

Notwithstanding the foregoing, the aggregate Purchase Price of the acquisition of all new utilities to be owned by a public utility or public utilities may not exceed 5% of the proceeds of the series of the Bonds to be utilized to pay such Purchase Price less that portion of the reserve fund, costs of issuance and other incidental costs allocable to such amount.

(b) Incremental Payment of Purchase Price of an Improvement. Except for payments for Discrete Components that are permitted pursuant to Section 7(g) below, the Purchase Price for any Improvement constructed by the Owner shall be payable in not to exceed two increments: (i) the "Base Increment" which shall be an amount equal to 75% of the audited, eligible costs as reflected in the written request for payment of the Base Increment submitted by the Owner and as approved by the Director of Public Works and shall not exceed 75% of the cost estimate set forth

in Exhibit A for such Improvement; and (ii) the “Retained Increment” which shall be an amount not to exceed the remaining, unpaid portion of the Purchase Price for such Improvement determined pursuant to the provisions of (a) above.

(c) Requisition for Incremental Payment of Purchase Price of an Improvement.

(i) Base Increment. The Owner may submit only one (1) written request to the City Engineer for the payment of the Base Increment for an Improvement constructed by the Owner upon the substantial completion of the construction of such Improvement in accordance with the approved Plans and Specifications. The criteria for determining “substantial completion” of each such Improvement is described in Exhibit B and shall mean generally that construction, or work with respect to such Improvement has progressed to the point where it is sufficiently complete so that such Improvement can be utilized for the purpose for which it was intended. Substantial completion of such an Improvement shall also mean that all components of such Improvement are substantially complete, e.g., in the case of Improvement including streets [(other than streets included in the Traffic Enhancement Improvements)], the components are described in footnote 1 to Exhibit A. Each Base Increment payment request must be in the form attached hereto as Exhibit D, which is incorporated herein by this reference, and conform to the requirements of (f) below. The request for payment of the Base Increment for an Improvement shall be accompanied by a copy of the following documents related to the construction of such Improvement: (1) each construction contract and copy of bid notice for such contract, (2) each change order, (3) each invoice submitted pursuant to such construction contracts, (4) evidence of payment of each such invoice such as copies of cancelled checks or other evidence of payment satisfactory to the City Engineer, and (5) written conditional lien releases executed by each applicable contractor, subcontractor and materialman in a form satisfactory to the City Attorney of the City (the “City Attorney”) for such Improvement.

(ii) Retained Increment. The Owner may submit only one (1) written request to the City Engineer for the payment of the Retained Increment for an Improvement in the form attached hereto as Exhibit E, which is incorporated herein by this reference, upon the submission to the City Engineer of (1) as-built drawings or other equivalent plans and specifications for such Improvement in a form reasonably acceptable to the City, (2) evidence that the Owner has posted a maintenance bond for such Improvement as required by Section 5 hereinabove, (3) evidence of the satisfaction of the requirements of Section 10 hereinbelow directly related to such Improvement and (4) written unconditional lien releases from all contractors, subcontractors and materialmen satisfactory to the City Attorney for such Improvement. For any costs not included in the Owner’s written request for payment of the Base Increment but requested for payment in the Retained Increment the request shall conform to the requirements of (f) below and also be accompanied by the following documents related to such additional costs of the construction of such Improvement if not done so with the written request for payment of the Base Increment: (1) each construction contract, (2) each change order, (3) each invoice submitted pursuant to such construction contracts, and (4) evidence of payment of

each such invoice such as copies of cancelled checks or other evidence of payment satisfactory to the City Engineer.

(d) Documentation. Any payment request submitted by Owner shall be properly executed and shall include copies of all supporting documents required by subsection (c)(i) or (c)(ii), as applicable.

(e) Review of Payment Request for an Improvement. The City Engineer or his designee shall review each payment request and the supporting documentation accompanying such payment request. If the City Engineer finds that any such payment request is incomplete, improper or otherwise not suitable for approval, the City Engineer shall inform Owner in writing within twenty (20) working days after receipt thereof, the reasons for his finding. Owner shall have the right to respond to this finding by submitting further documentation after receipt of the denial. The City Engineer shall review any further documentation received from the Owner in support of a payment request and inform Owner of his approval or denial of the payment request as supplemented in accordance with this Section within ten (10) working days after receipt of the supplemental documentation. A resubmittal of a payment request shall be deemed a new payment request for purposes of this Section.

Subject to the limitations set forth herein, costs incurred under a construction contract for an Improvement entered into pursuant to the requirements of this Agreement and Approved Change Orders shall be deemed to be reasonable and, subject to the other provisions of this Agreement, shall be included in the Purchase Price for such Improvement.

After his or her approval of each payment request, the City Engineer shall immediately forward a request to the Director of Finance of the City notifying the Director of Finance of his or her approval of the payment request and requesting that such payment be made to the appropriate payee. The Director of Finance shall process any such request of the City Engineer pursuant to the applicable procedures of the Finance Department and shall make or authorize such payment pursuant to such procedures and subsection (h) below.

(f) Payment.

(i) Priority of Payment of Purchase Prices for Improvements. The City and the Owner acknowledge and agree that the Purchase Prices of all Improvements may exceed the aggregate amount of the Bond proceeds and Surplus Special Taxes which will be available for the payment of the Purchase Prices. As provided in the Financing Plan, the Improvements may be financed with the proceeds of Bonds issued for the Improvement Areas and Surplus Special Taxes collected within either or both Improvement Areas. As also provided in the Financing Plan, the City's grant of credits against Development Impact Fees (as defined in the Development Agreement) as a result of Owner's construction of any Improvement shall not prevent the financing of all or any portion of the Purchase Price of such Improvement with the proceeds of the Bonds and Surplus Special Taxes of the Improvement Areas.

(ii) Timing of the Payment of the Purchase Price for an Improvement. Subject to the limitations contained in (i) above and (iii) and (iv) below, the increment of the Purchase Price for each Improvement shall be paid to Owner within thirty (30) days after the date of the City Engineer's approval of the payment request for any such increment; provided, however, no Retained Increment for any Improvement shall be paid earlier than thirty-five (35) days after the recording of a Notice of Completion for such Improvement.

(iii) Source of Payment. The Purchase Price or any increment thereof for an Improvement shall be payable to the Owner from those proceeds ("Eligible Bond Proceeds") of the sale of Bonds as provided in Section 20 hereof authorized and designated for the payment for such Improvement, after all costs of formation of CFD No. 16-I and all costs of issuance of such Bonds have been paid or proceeds set aside for such purpose and deposits of accrued and capitalized interest to the redemption fund of the project fund (the "Project Fund") established pursuant to the Indenture (defined in Section 18 below) and the initial deposit to the reserve fund have been made.

In accordance with the Financing Plan, the City shall allow the levy and collection of special taxes so as to generate Surplus Special Taxes (as defined in the Development Agreement). The Purchase Price or any increment thereof for an Improvement shall be payable to the Owner from the Surplus Special Taxes until the earlier of (i) the Owner's submittal of its final payment request for the Improvements and payment in full for all amounts approved by the City for the Improvements, or (ii) the payment in full of all Bonds.

(iv) Withholding of Payment. In addition to the foregoing, the City shall have the right to withhold payment of the Purchase Price or any increment thereof of any Improvement if (a) the Owner is delinquent in the payment of any assessment installments or special taxes levied by the City or a community facilities district established by the City on properties then owned by the Owner within CFD No. 16-I, (b) the City Engineer reasonably determines that the Owner is not then in substantial compliance with all applicable conditions and obligations imposed upon the Owner hereunder or upon the Development pursuant to the land use entitlements approved by the City for the Development, including but not limited to, payment of all applicable fees, dedication of all applicable rights-of-way or other property and construction of all applicable public improvements. The City Engineer shall provide written notice to the Owner of the decision to withhold any such payment and shall specify the reason for such decision. If the payment is withheld as a result of the delinquency in the payment of assessment installments or special taxes, the notice shall identify the delinquent parcels and the amount of such delinquency. If the payment is withheld as a result of substantial non-compliance with a condition or obligation, the notice shall specify such condition or obligation and what action will be necessary by the Owner to substantially comply with such condition or obligation. Upon receipt by the City Engineer of evidence reasonably satisfactory to the City Engineer of the payment of the delinquent special taxes or assessments or upon the determination by the City Engineer that the Owner has

substantially complied with the subject condition or obligation, the City shall forthwith make any payment which has been withheld pursuant to the provisions of this paragraph.

(g) Payment for Discrete Components. Discrete Components of Improvements may be approved for payment in accordance with the Financing Plan as an alternative to the payment of the Base Increment of any Improvement. As provided for in the Financing Plan, each Discrete Component shall be a component of an Improvement that the City has agreed can be separately identified and/or inspected. The payment request for each Discrete Component shall substantially conform to the form of payment request for a Base Increment attached hereto as Exhibit D.

(h) Funding or Reimbursement of Contributions. Although Owner does not currently expect to request that Contributions (as defined in the Financing Plan) be financed through CFD No. 16-I, Owner may request so in the future. Upon such request, Owner and City shall amend this Agreement to provide for the financing of Contributions consistent with the terms of the Financing Plan.

SECTION 8. Audit. The authorized representatives of City shall have the right, upon two (2) days prior written notice to Owner and during normal business hours, to review all books and records of Owner pertaining to costs and expenses incurred by Owner in construction of the Improvements.

SECTION 9. Ownership and Transfer of Improvements. The conveyance of the Improvements by Owner to City shall be in accordance with the following procedures:

(a) Improvements Constructed on Land not Owned by City. As a condition to the payment of the Retained Increment of the Purchase Price, Owner shall cause an irrevocable offer of dedication to be made to City or an outright grant of a fee interest or easement interest as appropriate, in the sole discretion of the City of the appropriate right, title and interest in and to the portion of the applicable property owned by the Owner related to the applicable Improvement, including any temporary construction or access easements. Owner, whether or not it is the entity constructing the Improvements, agrees to execute and deliver to the City the documents required to complete the transfer of Acceptable Title for property owned by the Owner upon or within which such Improvements are to be located. For purposes of this Agreement, the term "Acceptable Title" shall mean title to the portion of the property to be conveyed free and clear of all taxes, liens, encumbrances, assessments, easements, leases, whether any such item is recorded or unrecorded, except (i) non-delinquent taxes and assessments and (ii) those non-monetary encumbrances and easements which are reasonably determined by the City not to interfere with the intended use of the portion of the property. As a further condition to the payment of the Retained Increment of the Purchase Price for any Improvement, Owner at its sole initial cost and expense, subject to reimbursement pursuant to Section 7, shall cause to be issued a policy of title insurance for such portion of the property in an amount not to exceed the Purchase Price and in the form normally required by City in connection with the dedication of land for subdivision improvements and containing such title

endorsements as may be reasonably requested by City. City's final acceptance of the portion of the property and the Improvements constructed thereon shall not be unreasonably withheld or delayed.

- (b) Improvements Constructed on Land Owned by City. If Owner is authorized to construct an Improvement on land owned in fee by City or on land over which the City owns an easement Owner shall obtain the necessary encroachment permits to enter such land for purposes of constructing such Improvement. City shall cooperate with Owner in issuing such encroachment permits. The Improvements shall be inspected by City on an ongoing basis.

SECTION 10. Grading and Subdivision Improvement Bonds. Except as provided below, Owner shall be required to post or cause the posting of bonds or other security acceptable to the City to guarantee completion of the Improvements in accordance with City's standard subdivision requirements and conditions of approval of the Development Project (the "Conditions of Approval"). Labor and materials bonds shall also be required to be provided by the Owner's contractor for all Improvements to be constructed under this agreement. Such bonds shall name the City of Chula Vista as additional obligee and shall remain in effect until the final acceptance of the Improvements by the City Engineer. The presence of Bond proceeds shall not relieve the Owner of requiring this obligation of the Owner's contractor.

Performance and labor and material bonds for specific Improvements shall not be required or may be released if: (1) such Improvements constitute a portion of the required subdivision improvements, (2) Bond proceeds equal to 125% of the estimated cost to construct or acquire such Improvements are available and set aside for such purpose, and (3) the Improvements are to be constructed or acquired entirely with the proceeds of the Bonds. Provided that conditions (1) and (2) are satisfied, if an Improvement is to be constructed or acquired only in part with the proceeds of the Bonds, performance and labor and material bonds shall not be required for that portion of the Improvements to be so constructed or acquired except with respect to the portion that will not be acquired or constructed with Bond proceeds. In the event that the Bond proceeds that are available and may be set aside to fund the cost to construct or acquire an Improvement are less than 125% of the estimated cost thereof, the Owner shall be required to provide a performance and labor and material bond or other security satisfactory to the City Engineer and the City Attorney in the amount of such deficiency. City will cooperate with Owner in the termination or exoneration of any performance and labor and material bonds assuring completion of Improvements for which bonds have been sold. The City Engineer shall be the sole judge of determining release of such bonds.

SECTION 11. Indemnification by Owner. Owner shall defend, indemnify and hold harmless the City, its elected and appointed officers, agents and employees (the "Indemnified Parties"), from and against any and all claims, losses, liabilities, damages, including court costs and reasonable attorneys' fees by reason of, or resulting from, or arising out of the design, engineering, solicitation of bids, award of contracts, administration of contracts and construction of the Improvements by the Owner, its employees, agents, independent contractors and/or representatives; provided that any claims for personal injury or property damage which relate to

the Improvements shall be limited to those arising out of personal injury or property damage caused by actions or omissions by Owner or Owner's employees, agents, independent contractors or representatives which occurred during the period prior to the transfer of title to the Improvements by City, whether or not a claim is filed prior to the date of acceptance of the Improvements. Nothing in this Section 11 shall limit in any manner the rights of the City and/or CFD No. 16-I against any of the architects, engineers, contractors or other consultants employed by the Owner which has performed work in connection with construction or financing of the Improvements. Notwithstanding the foregoing, Owner shall have no obligation to defend, indemnify or hold harmless the Indemnified Parties from and against any claims, liabilities, losses or damages (including court costs and attorneys' fees) which result from or arise out of the sole negligence or willful misconduct of an Indemnified Party.

Except as set forth in this Section 11, no provision of this Agreement shall in any way limit the extent of the responsibility of Owner for payment of damages resulting from the operations of the Owner, its agents, employees or contractors.

SECTION 12. Obligation of City. Neither the City nor CFD No. 16-I has a legal or financial obligation to construct the Improvements. All costs incurred for actual construction of the Improvements, including all incidentals thereto, shall be borne by Owner, and the obligations of the City and CFD No. 16-I are limited to the acquisition of the Improvements pursuant to the provisions of this Agreement.

SECTION 13. Failure by Owner to Construct Improvements. At any time following commencement of the construction of any Improvements by the Owner the City determines that such construction is not progressing within a reasonable time in accordance with the Conditions of Approval or the Owner fails to demonstrate a continuing ability to complete the construction of such Improvement in accordance with the Conditions of Approval, the City may give written notice of such failure of performance to the Owner. Owner shall have sixty (60) days from the date of receipt of such notice to either (i) cure such failure of performance by demonstrating to the satisfaction of the City during such cure period reasonable progress in the construction of the Improvement and a continuing ability to complete the construction of such Improvement in accordance with the Conditions of Approval or (ii) reasonably demonstrate that such failure of performance is due to circumstances or conditions beyond Owner's reasonable control ("Force Majeure") including, without limitation, the City's actions, omissions or inaction which result in a delay of performance by Owner, labor disputes, acts of God, war, riots, insurrections, civil commotions, moratoriums, inability to obtain labor or materials or reasonable substitutes for either, fire, unusual delay in transportation, and adverse weather conditions. Should Owner fail to reasonably demonstrate such reasonable progress or such continuing ability to complete the construction of such Improvement or Force Majeure, the obligation of the City to pay the Purchase Price for the acquisition of such Improvement pursuant to this Agreement may be terminated by the City by providing ten (10) days written notice to the Owner. Upon termination, the City may in its sole discretion then proceed to advertise and bid the balance of the construction of such Improvement, and there will be no further obligation on the part of the City for payment of the Purchase Price for such Improvement due to Owner pursuant to this Agreement.

In the event that the City chooses not to advertise and bid the balance of the construction of any such Improvement following such a termination, any monies remaining in the Project Fund and set aside for the acquisition of such Improvement shall be transferred to the redemption fund established by the Indenture and used to call outstanding Bonds.

SECTION 14. Agreement Contingent. As a precondition to the sale of each series of the Bonds of CFD No. 16-I, Owner shall pay in cash to City an origination charge of 1.0% of the amount of the principal amount of such series of the Bonds (“Origination Payment”). Each such Origination Payment shall be at Owner’s own expense and not recoverable from the proceeds of the special taxes or from the proceeds of the Bonds. In the event that any series of the Bonds are, for any reason, not sold, the amount of the Origination Payment made for such series of the Bonds shall be returned to the Owner.

The City may, at its option, suspend the performance of its obligations under this Agreement if any legal challenge is filed relating to the validity or enforceability of this Agreement, CFD No. 16-I proceedings or the issuance of the Bonds. The obligations of the City and CFD No. 16-I hereunder shall be reinstated upon the entry of a final judgment in any such proceedings upholding the validity and enforceability of the Agreement, CFD No. 16-I proceedings and the issuance of the Bonds. In the event that a final judgment or other final and non-appealable resolution is entered invalidating or declaring unenforceable this Agreement, CFD No. 16-I proceedings or the issuance of the Bonds, the City and CFD No. 16-I may, at their option, terminate this Agreement.

SECTION 15. Notice of Special Tax. Owner, or the successor or assigns of the Owner, including but not limited to all Merchant Builders (as such term is defined in Section 16 below), shall provide written notice to all potential purchasers of lots in the form required pursuant to Government Code Section 53341.5 and/or such additional requirements as may be established by the City so advising the potential owner of the fact of CFD No. 16-I, with said document being executed by the potential purchaser. Such notice shall be provided to the potential purchaser a reasonable time before the potential purchaser becomes contractually committed to purchase the lot so that the potential purchaser may knowingly consider the impact of the special tax in the decision to purchase the lot. A copy of all such notices executed by actual purchasers shall be sent to the City Engineer.

SECTION 16. Limitation of Aggregate Taxes and Assessments. Owner agrees to include in any future agreement to sell all or any portion of the property to any person or entity for the purpose of constructing and marketing owner-occupied residential dwelling units (each, a “Merchant Builder”) provisions requiring the inclusion of the following “escrow instructions” in all sales by such Merchant Builder to residential home owners.

(a) At or prior to the close of each such escrow with a residential homeowner, the escrow company shall apply a “calculation formula” previously approved by the City Engineer and deposited with the escrow company by the Merchant Builder to determine the aggregate of all annual ad valorem property taxes, all special taxes authorized to be levied to finance the

construction or acquisition of public facilities and all assessment installments authorized to be levied to finance the construction or acquisition of public facilities (the “Total Annual Taxes and Assessments”) applicable to the parcel subject to such escrow (the “Applicable Parcel”).

(b) If the Total Annual Taxes and Assessments exceed 2% of the sales price of the Applicable Parcel, the Escrow Company will make immediate written demand upon the Merchant Builder for deposit into the escrow of the funds necessary to partially prepay the special tax obligation for CFD No. 16-I or any other community facilities district so that the Total Annual Taxes and Assessments will thereafter be equal to or less than 2% of the sales price of the Applicable Parcel. Such funds must be received by the escrow company prior to the close of escrow of the sale of the Applicable Parcel. The calculation of the prepayment amount for CFD No. 16-I shall be in accordance with the method of prepayment of special tax as set forth in the rate and method of apportionment of special taxes approved by the qualified electors of CFD No. 16-I or the other community facilities district for which the special taxes are being partially prepaid. Upon closing of such escrow, the amount so deposited by the Merchant Builder pursuant to this escrow instruction shall be sent by the escrow company to the Director of Finance, together with written instructions that such amount is to be used to partially prepay the special tax obligation of the Applicable Parcel for CFD No. 16-I or shall be sent to the other community facilities district for which the special tax obligation has been prepaid with similar written instructions.

The provisions of this Section 16 related to sales by Merchant Builders to residential homeowners shall also apply to any sale by Owner of a parcel to a residential home owner.

In addition to any other remedy provided for by law or in equity, the City may enforce the provisions of this Section 16 by an action for specific performance or injunctive relief or both.

SECTION 17. Relationship to Public Works. This Agreement is for the construction and acquisition of certain Improvements by City and the sale of the Bonds for the payment of construction and acquisition costs for such Improvements and such other amounts as are herein provided, and is not intended to be a public works contract. In performing its obligations under this Agreement, Owner is an independent contractor and not the agent of City. City shall have no responsibility for payment to any contractor or supplier of Owner. Notwithstanding the foregoing, Owner may be subject to certain public contract requirements as provided in Section 3 of this Agreement.

SECTION 18. Sale of Bonds. The City shall, immediately upon execution of this Agreement by the parties hereto, proceed with the issuance and sale of an initial series of bonds secured by the levy of special taxes within Improvement Area No. 1 (the “Bonds”) to be issued pursuant to the Act and the Financing Plan. The Bonds shall be issued in one or more series and each series shall be sized so that as of the date of issuance of such series of the Bonds the aggregate appraised value of all taxable properties within the Improvement Area for which such Bonds are being issued shall comply with the value-to-lien standards set forth in the Financing Plan or as otherwise approved by the City Council pursuant to the Goals and Policies. In addition, as to any subsequent series of Bonds, the issuance of such Bonds shall comply with the Financing Plan and

such parity bonds test as may be set forth in the Bond Indenture. The appraised value of taxable property for purposes of this paragraph shall be determined by an independent appraisal undertaken for the City utilizing appraisal assumptions approved by the City and, as to each subsequent series of the Bonds, consistent with the applicable parity bonds requirements.

The proceeds of each series of the Bonds shall be used in the following priority to (i) fund a reserve fund for the payment of principal and interest with respect to such Bonds; (ii) as provided in the Financing Plan, fund up to eighteen (18) months of capitalized interest on such Bonds in an amount not to exceed the amount required to pay interest on such Bonds, or a lesser amount requested by Owner; (iii) pay for costs of issuance of such Bonds including, without limitation, underwriter's discount, bond counsel fees, printing, and paying agent fees; (iv) as to the first series of the Bonds, pay for the costs of forming CFD No. 16-I, including reimbursement of advances of funds to the City by Owner pursuant to the Deposit Agreement to pay for the City's legal, engineering, financial, special tax, appraisal and market absorption consulting expenses incurred relating to the formation of CFD No. 16-I and issuance of the Bonds; and (v) pay the costs of the acquisition or construction of the Improvements.

The timing of the issuance and sale of each series of the Bonds, the terms and conditions upon which such Bonds shall be issued and sold, the method of sale of such Bonds and the pricing thereof shall be determined by the City and shall conform to the Goals and Policies, the Financing Plan and this Agreement. The sale of each series of the Bonds shall be subject to receipt by the City of a competitively bid or negotiated bond purchase agreement which is acceptable to the City. The sale of each series of the Bonds shall also be conditional upon the preparation of an official statement that is, in the sole judgment of the City, "deemed final" as such term is used in Rule 15c2-12 of the Securities and Exchange Commission (the "Rule").

The principal amount of each series of the Bonds to be issued shall be determined in accordance with the Goals and Policies and the Financing Plan such that the maximum projected annual special tax revenues securing such Bonds and all outstanding parity Bonds, equals at least 110% of the projected annual gross debt service on all of the Bonds following the issuance of such series of the Bonds.

Owner, on behalf of itself, any affiliates of the Owner and any successor or assign of the Owner including but not limited to all Merchant Builders, agrees (a) to provide all information regarding the development of the property within the Improvement Area for which Bonds are being issued, including the financing plan for such development, which are necessary to ensure that the official statement for each series of the Bonds complies with the requirements of the Rule and all other applicable federal and state securities laws; (b) to enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to the Improvement Area, the development thereof and the Owner as necessary to ensure ongoing compliance with the continuing disclosure requirements of the Rule and (c) to cause its counsel to provide an opinion of such counsel in a form satisfactory to the underwriter of such series of the Bonds and underwriter's counsel or disclosure counsel, as applicable.

SECTION 21. Supplemental Bill for Payment of Special Taxes. Owner acknowledges that the rate and method of apportionment of Special Taxes provides that the annual Special Tax shall be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that CFD No. 16-I, may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations. The City has represented to the Owner that delinquencies in the payment of special taxes intended to be collected on property tax bills have occurred in other community facilities districts formed by the City as a result of difficulties experienced by the office of the Treasurer-Tax Collector of the County of San Diego (the "Tax Collector") in the timely billing and collection of such special taxes. If and to the extent that the Tax Collector fails, for whatever reason, to timely bill the full amount of the special taxes levied on properties owned by the Owner or any affiliate of the Owner within CFD No. 16-I, the City, on behalf of CFD No. 16-I, may elect to directly and separately bill ("Direct Bill") the Owner for such deficiency and Owner agrees to (a) pay such deficiency within the time period specified in such Direct Bill which shall be no less than thirty calendar days from the date of mailing of such Direct Bill or (b) provide the Director of Finance with proof of payment to the Tax Collector of such deficiency in a form satisfactory to the Director of Finance. Should the Owner pay such deficiency directly to the City pursuant to a Direct Bill, the City agrees upon receipt of such payment to timely submit an amendment of the Special Tax levy on the Owner's property to the Tax Collector to reduce such levy by the amount of such payment.

Delinquency in the payment of a Direct Bill sent pursuant to the preceding paragraph shall not be enforceable as a personal obligation of the Owner but shall be enforceable in the same manner as if such delinquency had been for the payment of special taxes billed on the property tax bill.

SECTION 22. Conflict with Other Agreements. Except as specifically provided herein, nothing contained herein shall be construed as releasing Owner or the Merchant Builders from any condition of development or requirement imposed by any other agreement with City. To the extent the provisions of this Agreement conflict with any provisions of the Development Agreement, the provisions of the Development Agreement, including the Financing Plan, shall control.

SECTION 23. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval, discretion or acceptance of any party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard.

SECTION 24. Entire Agreement; Amendment. This Agreement and the agreements expressly referred to herein contains all of the agreements of the parties hereto with respect to the matters contained herein and no prior or contemporaneous agreement or understandings, oral or written, pertaining to any such matters shall be effective for any purpose. 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 25. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or seventy-two (72) hours following deposit of the same in any United States Post Office in California, registered or certified, postage prepaid, addressed as follows:

Owner: 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
Attn: Todd Galarneau, Executive Vice President

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

City: City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Manager

With a copy to:
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Attorney

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

SECTION 26. Severability. If any provision of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

SECTION 27. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Owner may not assign its rights or obligations hereunder except upon written notice to City within ten (10) days of the date of such assignment indicating the name and address of the assignee. No other owner of property within

CFD No. 16-I shall have any right to receive payments with respect to any Improvement unless such right has been expressly assigned to such owner by Owner in writing. Upon such notice and the assumption by the assignee of the rights, duties and obligations of the Owner arising under or from this Agreement, Owner shall be released by City from all future duties or obligations arising under or from this Agreement. Notwithstanding the preceding sentence, Owner may assign its rights and obligations hereunder as security to lenders for the purpose of obtaining loans to finance development within CFD No. 16-I, but no such assignment shall release Owner from its obligations hereunder to City.

SECTION 28. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California, Additionally, this Agreement and the construction of the Improvements shall be subject to all City ordinances and regulations relating to the requirement of improvement agreements, land division, improvement security or other applicable development requirements.

SECTION 29. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights under the default of any other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by any other party with the terms of this Agreement thereafter.

SECTION 30. Singular and Plural; Gender. As used herein, the singular of any work includes the plural, and terms in the masculine gender shall include the feminine.

SECTION 31. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

SECTION 32. Construction of Agreement. This Agreement has been reviewed by legal counsel for both the City and the Owner and shall be deemed for all purposes to have been jointly drafted by the City and the Owner. 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 33. Recitals; Exhibits. Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

SECTION 34. Authority of Signatories. Each signatory and party hereto hereby represents and warrants to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable such party to enter into this Agreement.

SECTION 35. Recordation. The parties shall execute, acknowledge and cause this Agreement, or a memorandum of this Agreement in a form satisfactory to the parties hereto, to be recorded against the taxable property within CFD No. 16-I in the Official Records of San Diego County.

Signature Page to
Acquisition/Financing Agreement by and between
the City of Chula Vista and
SLF IV - Millenia, LLC

IN WITNESS WHEREOF, City and Owner 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”

CITY OF CHULA VISTA

CITY MANAGER
CITY OF CHULA VISTA
STATE OF CALIFORNIA

ATTEST:

APPROVED AS TO FORM:

CITY CLERK
CITY OF CHULA VISTA
STATE OF CALIFORNIA

GLEN R. GOOGINS, CITY ATTORNEY
CITY OF CHULA VISTA
STATE OF CALIFORNIA

“OWNER”

SLV IV – MILLENIA, LLC
a Delaware limited liability company

By: SLF IV Millennia 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: _____
Title: _____

EXHIBIT “A”

**ACQUISITION AND FINANCING AGREEMENT
FOR CFD 16-I (MILLENNIA)
IMPROVEMENT DESCRIPTION AND ESTIMATED COSTS**

[SEE ATTACHED]

MILLENNIA – ESTIMATE OF CFD FACILITY COSTS

<u>IMPROVEMENT¹</u>	<u>ESTIMATED COST</u>
1. Boundary Arterials (TDIF Facilities)	
a) Eastlake Parkway widening, medians, etc	\$463,476
b) Birch Road widening, median landscaping, water quality, etc	\$556,290
2. Millenia Avenue (north and south)	\$9,346,478
a) North-Birch Road the Stylus Street	\$2,444,462
b) South-Stylus Street to Avant Street	\$6,902,016
3. Internal Streets (including Artisan Street, Group 1 and 2 streets, and all Phase 2A,B and C streets)	\$20,614,016
a) Artisan, Group 1 and Group 2 streets	\$6,881,862
b) Phase 2A-2C streets	\$13,732,153
4. Bus Rapid Transit Guideway	
a) Phase 1 Guideway Improvements	\$1,467,000
a) Phase 2 Guideway Improvements	\$2,777,581
b) Orion street mixed flow lanes (to the extent not reimbursed as part of the street improvements above)	
5. Sidewalks and Pedestrian Corridor Improvement constructed by merchant builders and not covered as part of the 2A-2C street improvements above)	\$13,522,850
6. Pedestrian Bridge facilities	
a) Pedestrian Bridge	\$2,200,000
b) Pedestrian trail to Eastlake Parkway (including retaining walls, barrier fencing, lighting and appurtenant facilities)	\$600,000
7. Traffic Signals	
8. Storm Drain Facilities	
a) Wolf Canyon Basin inlet structure modifications	\$174,800
9. Sewer Facilities	
a) On-site	Incl in streets
b) Poggi	\$345,000
c) Salt Creek lateral (costs do not include environmental mitigation costs)	\$161,000
d) Hunte Parkway Bypass (If needed)	\$407,100
10. Library (including land, airspace or condominium interests)	TBD
11. Fire Station facilities and Equipment	\$8,000,000
12. Public Parks, including land and improvements	
a) P-1	\$4,787,321
b) P-2	\$3,921,940
c) P-3	\$5,518,071
d) P-4	\$3,654,512
e) P-5	\$4,638,132
f) P-6	\$8,713,948
13. Environmental Mitigation Land (excluding any land required to be dedicated by conditions of approval)	TBD
14. Art or Cultural Venue	TBD
15. Other City-owned public facilities	TBD

¹ Improvements listed above may be acquired as discrete components as provided for in the Development Agreement and depicted on the City improvement plans

EXHIBIT "B"

SUBSTANTIAL COMPLETION CRITERIA FOR IMPROVEMENTS

General:

1. Substantial completion of an Improvement for purposes of determining the eligibility of such Improvement for the payment of the "Base Increment" therefore shall mean that the construction or work with respect to such Improvement, including each component of such Improvement, has progressed to the point where it is sufficiently complete so that it can be utilized for the purpose for which it was intended. Substantial completion criteria for each Improvement or component of an Improvement is further described below.
2. Payment for the "Retained Increment" of the Purchase Price for an Improvement shall be in accordance with Section 7, paragraph (c)(ii) and shall be made after submittal of a payment request form, as-built plans and such other documentation as is required pursuant to Section 7 paragraph (c)(ii), posting of maintenance bonds, and submittal of lien release evidence.

Substantial Completion Criteria:

- A. Grading: Grading shall be deemed to be complete upon (1) completion of all preliminary grading work (mobilization, site clearing, remedial grading, overexcavation, installation of subdrainage systems) (2) certification of compaction by the geotechnical engineer, quantity verification by the civil engineer, and confirmation by the City inspector and (3) installation of all surface grading improvements (brow ditches, retaining walls, slope protection and similar improvements) and the certification thereof by the geotechnical engineer and confirmation by the City inspector.
- B. Sewer: Sewer construction shall be deemed substantially complete upon the installation, flushing, and testing of sewer main line, laterals, cleanouts, manholes, and all other appurtenances of the sewer system as shown on the approved plans and specifications therefore and in accordance with the City standard plans and specifications and the verification of such installation by the civil engineer and confirmation of such installation by the City inspector.
- C. Storm Drain: Box culverts and headwall structures shall be deemed substantially complete upon installation as shown on the approved plans and specifications therefore and in accordance with the City standard plans and specifications and verification of such installation by the civil engineer, and confirmation of such installation by the City inspector.
- D. Drainage Facilities: Drainage structures including energy dissipation devices (rip-rap, drop structures, cut-off walls, etc), drainage diversion structures, facilities required as part of the environmental mitigation measures, and other drainage channel appurtenances including drainage pipes connecting the brow ditches to the channel, shall be deemed substantially complete for payment of the Base Increment upon the installation thereof as shown on the

approved plans and specifications therefore and in accordance with City standard plans and specifications and the verification of such installation by the civil engineer and confirmation of such installation by the City inspector.

- E. Dry Utility Backbone System: Dry utilities (electric, gas, telephone, CATV) shall be deemed substantially complete upon the installation of the conduits, junction boxes, payment of utility fees, and written acceptance of the facilities by the utility companies.
- F. Roadway Pavement and Roadway Drainage System: Roadway pavement and drainage improvements shall be deemed substantially complete upon the installation thereof as shown on the approved improvement plans therefore and in accordance with City standard plans and specifications and confirmation of such installation by the City inspector of all storm drain pipes, catch basins, drainage inlets and cleanouts for the roadway storm drain system, installation of roadway base material, concrete curb and gutter, and AC pavement including the preparation of the subgrade and base material.
- G. Other Street Surface Improvements: Street surface improvements including street lights, traffic signals and conduits, signal interconnect, street name signs, roadway signing and striping, and appurtenances shall be deemed substantially complete when installed as shown on the improvement plans and in accordance with City standard plans and specifications and upon confirmation of such installation by the City inspector.
- H. Street Landscape Irrigation and Planting: Parkway landscaping within the roadway right of way including planting, irrigation, concrete sidewalks, median maintenance strip, pedestrian ramps, channel maintenance roads and all associated subgrade and base material preparation shall be deemed substantially complete upon installation thereof as shown on the approved improvement plans therefore and in accordance with City standard plans and specifications and confirmation of such installation by the City inspector.
- I. Slope Landscaping: Landscape planting and irrigation improvements for the slopes outside of the roadway and channel right of way and the regional trail (DG) and fencing shall be deemed substantially complete upon installation thereof as shown on the approved improvement plans therefore and in accordance with City standard plans and specifications and confirmation of such installation by the City inspector.

EXHIBIT "C"

DESIGN, BID, CONTRACT AND CHANGE ORDER REQUIREMENTS

1. General

These requirements shall be applied to all improvements proposed to be constructed by the Owner and subsequently acquired by the City through CFD 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 Improvements to be acquired in accordance with this Agreement.

2. Design Phase

A. Design costs related to the Initial Improvements are not eligible for inclusion.

B. Bidding Documents. Two complete sets of bidding documents, including improvement plans, general provisions, and bid proposal forms 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 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 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. Owner 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. Owner 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 Owner at the Owner's place of business or other site mutually acceptable to the Owner and City Engineer.
 - I. 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 not accepted 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 was or shall immediately be checked for errors.
 - M. A tabulation of all bids received was 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. Owner 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 Owner, 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 Owner 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 Improvement shall be eligible for inclusion in the Purchase Price for such Improvement that increases or decreases the original contract amount for the construction of such Improvement by more than \$50,000 without City Council approval.
- B. All change orders shall be fully documented 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 Improvement.
- C. The aggregate of all change orders for TDIF Improvements constructed as 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 shall not increase the Purchase Price thereof so as to cause such Purchase Price to exceed the cost estimate for such 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 Improvement is completed, but before the payment of any portion of the Purchase Price for such Improvement is authorized by the City Engineer. Change orders that the Owner 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.

Exhibit “D”

**City of Chula Vista
Community Facilities District No. 16-I
(Millenia)**

**Base Increment
Payment Request No. _____**

The undersigned (the “Owner”) hereby requests payment in the total amount of \$_____ for the Base Increment for the Improvements (as defined in the Acquisition/Financing Agreement by and among the City of Chula Vista (the “City”) and Owner and described in Exhibit A to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby certifies, represents and warrants to the City as follows:

- A. He/she) is a duly authorized representative or signatory of Owner, qualified to execute this Payment Request for payment on behalf of Owner and is knowledgeable as to the matters set forth herein.
- B. The Improvements that are the subject of this Payment Request have been substantially completed in accordance with Exhibits B and C.
- C. This request for payment of the Base Increment for the Improvements has been calculated in conformance with the terms of the Agreement. All costs for which payment is requested hereby are eligible costs (as permitted in the Agreement) and have not been inflated in any respect. The Base Increment for which payment is requested has not been the subject of any prior payment request paid by the City.
- D. All items have been clearly delineated as DIF/Non-DIF eligible (all DIFs) and detailed backup and cost breakdown is provided supporting each item.
- E. Supporting documentation (such as third party invoices, change orders and checks) is attached with respect to each cost for which payment is requested.
- F. The Improvements for which payment is requested were constructed in accordance with the requirements of the Agreement.
- G. Owner is in compliance with the terms and provisions of the Agreement.
- H. No mechanics liens or other encumbrances have attached, or to the best knowledge of Owner, after due inquiry, will attach to the Improvements.

I. A cop(ies) of the letter(s) of unconditional lien release for the Improvements for which payment is requested is included this request. Alternatively, a copy of a letter of conditional lien release for the Improvements for which payment is requested together with a letter from the contractor(s) stating that they have been paid in full by the Owner for the Improvements for which payment is requested is also included in this request.

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

OWNER:

Dated: _____

CITY

Payment Request Approved for Submission to
Director of Finance

Director of Engineering

Dated: _____

ATTACHMENT 1

SUMMARY OF IMPROVEMENTS
TO BE ACQUIRED AS PART OF PAYMENT REQUEST NO. _____

<u>Improvement</u>	<u>Cost Estimate</u>	<u>Base Increment</u>	<u>Disbursement Requested</u>

[List here all Improvements for which payment is requested,
and attach supporting documentation]

Exhibit "E"

**City of Chula Vista
Community Facilities District No. 16-I
(Millenia)**

**Retained Increment
Payment Request No. _____**

The undersigned (the "Owner") hereby requests payment in the total amount of \$_____ for the Retained Increment of the Purchase Price of the Improvements (as defined in the Acquisition/Financing Agreement by and among the City of Chula Vista (the "City") and Owner and described in Exhibit A to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby certifies, represents and warrants to the City as follows:

- A. He/she is a duly authorized representative or signatory of Owner, qualified to execute this Payment Request for payment on behalf of Owner and is knowledgeable as to the matters set forth herein.
- B. Owner has submitted or submits herein to the City, if applicable, as-built drawings or similar plans and specifications for the Improvements and such drawings or plans and specifications, as applicable, are true, correct and complete.
- C. The Purchase Price for the Improvements has been calculated in conformance with the terms of the Agreement. All costs for which payment is requested hereby are eligible costs (as permitted in the Agreement) and have not been inflated in any respect. The Retained Increment for which payment is requested has not been the subject of any prior payment request paid by the City.
- D. All items have been clearly delineated as DIF/Non-DIF eligible (all DIFs) and detailed backup and cost breakdown is provided supporting each item.
- E. Supporting documentation (such as third party invoices, change orders, lien releases and checks) is attached with respect to each cost for which payment is requested.
- F. The Improvements for which payment is requested were constructed in accordance with the requirements of the Agreement.
- G. Owner is in compliance with the terms and provisions of the Agreement.
- H. No mechanics liens or other encumbrances have attached, or to the best knowledge of Owner, after one inquiry, will attach to the Improvements.

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

OWNER:

Dated: _____

CITY

Payment Request Approved for Submission to
Director of Finance

City Engineer

Dated: _____

ATTACHMENT 1

SUMMARY OF IMPROVEMENTS
TO BE ACQUIRED AS PART OF PAYMENT REQUEST NO. _____

<u>Improvement</u>	<u>Purchase price</u>	<u>Base Increment</u>	<u>Retained Increment</u>	<u>Disbursement Requested</u>

[List here all Improvements for which payment is requested,
and attach supporting documentation]

EXHIBIT "F"

LEGAL DESCRIPTION OF PROJECT