Title: Agreement: Sutter Park Acquisition Agreement for Statewide Community Infrastructure Program Facilities (Two-Thirds Vote Required)

Location: District 3

Recommendation: Pass a Motion: 1) suspending the competitive-bidding requirement in an agreement with –Tim Lewis Communities, LLC for the City’s acquisition of public improvements financed through the Statewide Community Infrastructure Program; and 2) authorizing the City Manager or the City Manager’s designee to execute that agreement on the City’s behalf.

Contact: Sheri Smith, Special Districts Manager, (916) 808-7204, Department of Finance

Presenter: None

Attachments:
1-Description/Analysis
2-Acquisition Agreement
Description/Analysis

**Issue Detail:** On April 18, 2017, City Council passed Resolution 2017-0136 authorizing the City of Sacramento (the City) to join the Statewide Community Infrastructure Program (SCIP) and approving a form acquisition agreement for use as part of the SCIP process. SCIP is a pooled tax-exempt bond-financing program used for development-impact fees and public infrastructure. It is administered by the California Statewide Communities Development Authority, which issues bonds secured by property assessments in participating jurisdictions. By pooling several projects from different jurisdictions, SCIP enables smaller development projects to take advantage of tax-exempt financing for a portion of the fee and infrastructure requirements.

The Sutter Park Neighbor Project is the residential reuse of the 19.4-acre Sutter Memorial Hospital site in East Sacramento, approved by City Council on April 8, 2014 (Resolution 2014-0086). In the fall of 2018, after the hospital was demolished and construction of the roads and infrastructure had begun, Tim Lewis Communities (the Developer) acquired 88 of the lots for development of single-family residences. The Developer has applied to use SCIP to finance construction of public facilities the City will acquire. In connection with the acquisition of facilities, the City and the Developer will enter into a standard-form acquisition agreement that prescribes how the Developer will construct the facilities and specifies how the City will authorize reimbursement to the Developer from SCIP bond proceeds (the Agreement). The Agreement requires, among other things, that the Developer use competitive bidding when awarding contracts; it also provides, however, that compliance with competitive bidding may be excused if the City Council determines, by a two-thirds vote, that excusing compliance is in the City’s best interests. (See §§ 2.8, 3.7, and 4.9 in Exhibit C to the Agreement.)

**Policy Considerations:** Excusing the Developer from the requirement of competitive bidding is in the City’s best interests:

1. The demolition of the hospital and preparation of the site for future residential construction was a lengthy process with unique requirements. Contracts for construction of the public facilities were awarded without public bidding, and the work begun, years before the Developer acquired the property. Excusing the Developer from complying with the competitive-bidding requirement enables the Developer to use SCIP financing and assists in the Developer’s successful completion of the complex Sutter Park project.
(2) Excusing the Developer from compliance with the competitive-bidding requirement does not expose the City or the public to excessive costs. The Agreement limits reimbursements from the City to the amount that the SCIP can support, which is far less than the actual cost of the public facilities. Furthermore, the Developer is responsible for all costs in excess of the amount available from the SCIP. As such, the Developer has ample incentive to control costs.

**Economic Impacts:** None.

**Environmental Considerations:**

California Environmental Quality Act (CEQA): The City Council certified an EIR for the Sutter Park Neighborhood Project on April 8, 2014 (Resolution 2014-0083), and the activities described in this report do not change the project but only address financing for it.

**Sustainability:** Not applicable.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** Excusing compliance with competitive bidding will allow the Developer to participate in SCIP and finance public infrastructure with competitive interest rates, lower financing costs, and minimal City staff costs. The project will add 88 new single-family residential units to the City’s housing stock.

**Financial Considerations:** The Developer will initially use its own funds to finance construction of the public improvements. Later, if and when sufficient bond proceeds are available, the City will authorize reimbursement to the Developer from SCIP bond proceeds consistent with the Agreement. There are no obligations placed on City funds.

**Local Business Enterprise (LBE):** Not applicable.
CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM

SCIP ACQUISITION AGREEMENT

BETWEEN

CITY OF SACRAMENTO

AND

TL SUTTER PARTNERS, L.P.

Dated as of April 23, 2019
SCIP ACQUISITION AGREEMENT

This SCIP Acquisition Agreement, dated as of April 23, 2019, for reference, is between the CITY OF SACRAMENTO, a California municipal corporation (the “City”), and TL SUTTER PARTNERS, L.P., [a Delaware limited partnership] (the “Developer”).

Background

A. The Developer has applied for the financing of certain public capital improvements (the “Acquisition Improvements”) and capital-facilities fees though the Statewide Community Infrastructure Program (“SCIP”) administered by the California Statewide Communities Development Authority (the “Authority”), and the City has approved that application.

B. The administration, payment, and reimbursement of the capital-facilities fees will be governed by the provisions of the SCIP Manual of Procedures as it may be amended from time to time. The administration, payment, and reimbursement of the Acquisition Improvements will be as provided in this agreement.

C. Under SCIP, the Authority intends to issue bonds to fund, among other things, all or a portion of the costs of the Acquisition Improvements, and the portion of the proceeds of the bonds allocable to the cost of the Acquisition Improvements to be constructed and installed by the Developer, together with interest earned on the proceeds before acquisition, is the “Available Amount.”

D. SCIP will provide financing for the acquisition by the City of the Acquisition Improvements and the payment of the Acquisition Price (as defined in section 1 below) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A are descriptions of the Acquisition Improvements. Those descriptions are subject to modification by written amendment of this agreement with the Authority’s approval.

E. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this agreement, the City will acquire the completed Acquisition Improvements using the Available Amount.

F. All monetary obligations of the City arising out of this agreement are the special and limited obligations of the City payable only from the Available Amount, and no other City funds are obligated to pay those obligations.

With these background facts in mind, the parties hereby agree as follows:

1. Defined Terms.

   • “Acceptable Title” means free and clear of all taxes and of all monetary liens, encumbrances, and assessments, whether recorded or unrecorded, except those items the City Engineer determines, in his sole discretion, will not interfere with the
intended use of the Acquisition Improvements and therefore need not be cleared from the title.

- "Acquisition Price" means the amount paid to the Developer upon the City’s acquisition of all the Acquisition Improvements as provided in section 3.3.

- "Actual Cost" means the construction cost of all the Acquisition Improvements, as documented by the Developer to the City’s satisfaction and certified by the City Engineer in an Actual Cost Certificate, plus an amount to reimburse the Participating Developer for the City’s $3,800 application-processing fee and an amount to reimburse the City for its costs of bidding construction contracts for the Project and verifying the Developer’s compliance with this agreement.

- "Actual Cost Certificate" means a certificate prepared by the Developer detailing the Actual Cost of all Acquisition Improvements to be acquired under this agreement, as revised by the City Engineer in accordance with section 3.3.

- "Assessment District" means the assessment district that is established by the Authority in accordance with SCIP and includes the Developer’s property for which the Acquisition Improvements are being funded.

- "Code" means the California Streets and Highways Code.

- "Developer Acquisition Account" means the account the Authority establishes by that name in accordance with SCIP for paying the Acquisition Price.

- "City Engineer" means the City’s Public Works Director (the “Director”) or the Director’s designee, who will be responsible for administering the acquisition of the Acquisition Improvements under this agreement.

- "Project" means the Developer’s land-development program for the Developer’s property in the Assessment District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within or adjacent to the Assessment District.

- "SCIP Requisition" means a requisition for payment of funds from the Developer Acquisition Account in substantially the form attached hereto as Exhibit B.

- "SCIP Trust Agreement" means the Trust Agreement between the Authority and the SCIP Trustee for the financing of the Acquisition Improvements.

- "SCIP Trustee" means Wilmington Trust, National Association, as trustee under the SCIP Trust Agreement.
• “Title Documents” means, for each Acquisition Improvement acquired under this agreement, a grant deed or similar instrument necessary to transfer title to any real property or interests in the real property (including easements) necessary or convenient to the City’s operation, maintenance, rehabilitation, or improvement of that Acquisition Improvement (including, if necessary, easements for ingress and egress) and a Bill of Sale or similar instrument evidencing transfer of title to that Acquisition Improvement to the City (other than the real property interests), where applicable.

2. Assessment District Formation and Financing Plan

2.1 Participation in SCIP. Developer has applied for financing through SCIP of the Acquisition Improvements and has paid the City’s application-processing fee, and the City has approved the application. Until the Authority completes the financing and the Available Amount is deposited in the Developer Acquisition Account, neither the Developer nor the City will be obligated under this agreement. Developer shall cooperate with the City and the Authority in the completion of SCIP financing for the Acquisition Improvements.

2.2 Deposit and Use of Available Amount.

(A) The Authority will cause the SCIP Trustee to establish and maintain the Developer Acquisition Account to hold all funds for the Acquisition Improvements. All earnings on amounts in the Developer Acquisition Account will remain there for use as provided by this agreement and SCIP.

(B) Upon completion of the SCIP financing, the Authority will deposit the Available Amount in the Developer Acquisition Account. The City shall withdraw amounts in the Developer Acquisition Account in accordance with SCIP procedures and use the withdrawn amounts to pay the Acquisition Price of the completed Acquisition Improvements within 30 days after both of the following have occurred (or as soon after as reasonably practicable): (1) the City Engineer receives the Actual Cost Certificate in accordance with section 3.3, and (2) the conditions precedent in section 3.4 are satisfied.

(C) Any funds remaining in the Developer Acquisition Account after completion of all the Acquisition Improvements and payment of all costs for the Acquisition Improvements will be used as follows: (1) first, the City may retain the amount it considers necessary to establish a reserve for claims against the account; (2) second, with the Authority’s approval, the City may pay the costs of any additional improvements eligible for acquisition with respect to the Project; and (3) third, as provided in section 10427.1 of the Code, the Authority may pay a portion of the assessments levied on the Project property within the Assessment District.
2.3. **No City Liability and No Effect on Other Agreements.** The City will incur no monetary liability for its actual or alleged acts and omissions with respect to SCIP. This agreement does not affect the Developer’s or the City’s respective obligations under any other agreements, public-improvement standards, land-use regulations, or subdivision requirements related to the Project. Those obligations are and will remain independent of the Developer’s and the City’s respective rights and obligations under this agreement.

3. **Design, Construction, and Acquisition of Acquisition Improvements**

3.1 **Letting and Administering Design Contracts.** The Developer has awarded and administered, or will award and administer, engineering-design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the City or directly to the design consultant) will be reimbursed at the time of acquisition of the Acquisition Improvements. The Developer is entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in section 3.3 and is not entitled to any payment for design costs independent of, or prior to, the acquisition of Acquisition Improvements.

3.2 **Letting and Administration of Construction Contracts.** California law requires that all Acquisition Improvements be constructed as if they were constructed under the direction and supervision of the City. To assure compliance with those provisions, except for any contracts entered into before the date of this agreement, the Developer shall comply with the City’s *Guidelines for Special District Acquisition Projects* attached as Exhibit C to this agreement. All such contracts must call for payment of prevailing wages as required by the California Labor Code.

3.3 **Sale of Acquisition Improvements.** When the Acquisition Improvements to be constructed by Developer are completed to the City’s satisfaction, the Developer shall sell to the City the Acquisition Improvements (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvements, to the extent not already publicly owned) for an amount not to exceed the lesser of the Available Amount and the Actual Cost of the Acquisition Improvements. Exhibit A to this agreement is a list of each Acquisition Improvement. When an Acquisition Improvement is completed, the Developer shall deliver to the City Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Acquisition Improvement, when necessary. If the City Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and the related Acquisition Improvement, the City Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion of the Actual Cost) has been disallowed.
and shall request further documentation from the Developer. If the further
documentation is still not adequate, the City Engineer may revise the Actual Cost
Certificate to delete any disallowed items, and that determination will be final and
conclusive.

(A) If the Actual Cost exceeds the Available Amount, the City shall withdraw the
Available Amount from the Developer Acquisition Account and transfer that
amount to the Developer. If the Actual Cost is less than the Available Amount,
the City shall withdraw an amount from the Developer Acquisition Account
equal to the Actual Cost and shall transfer that amount to the Developer. Any
amounts then remaining in the Developer Acquisition Account will be applied
as provided in section 2.2.

(B) The City is not required to pay the Developer more than the amount on
deposit in the Developer Acquisition Account when payment is requested.

3.4 Conditions Precedent to Payment of Acquisition Price. Payment by the City to the
Developer from the Developer Acquisition Account of the Acquisition Price for an
Acquisition Improvement is conditioned upon the City Engineer’s determination in
accordance with section 3.3 that the Acquisition Improvement is complete and
ready for acceptance by the City, and upon prior satisfaction of the following
additional conditions:

(A) The Developer must have provided the City with lien releases or other similar
documentation satisfactory to the City as evidence that the property subject
to the special-assessment liens of the Assessment District is not subject to any
prospective mechanic’s-lien claim respecting the Acquisition Improvements.

(B) All due and payable property taxes and installments of special assessments
must be current on property owned by the Developer (or under option to the
Developer) that is subject to the special-assessment liens of the Assessment
District.

(C) The Developer must certify that it is not in default with respect to any loan
secured by any interest in the Project.

(D) The Developer must have provided the City with Title Documents needed to
provide the City with title to the site, right-of-way, or easement upon which
the subject Acquisition Improvements are situated. All Title Documents must
be in a form acceptable to the City (or applicable governmental agency, if the
City is not taking title) and must convey Acceptable Title. The Developer must
provide a policy of title insurance as of the date of transfer, in a form
acceptable to the City Engineer, insuring the City as to the interests acquired
in connection with the acquisition of any interest for which the policy of title
insurance is not required by another agreement between the City and the
Developer. Each title insurance policy must be in the amount equal to or greater than the Acquisition Price.

3.6 **SCIP Requisition.** Upon a determination by the City Engineer to pay the Acquisition Price of the Acquisition Improvements in accordance with section 3.4, the City Engineer shall cause a SCIP Requisition to be submitted to BLX Group LLC, the SCIP Program Administrator. BLX Group LLC will review the SCIP Requisition and forward it with instructions to the SCIP Trustee, and the SCIP Trustee will pay the amount set forth in the SCIP Requisition directly to the Developer in accordance with the SCIP Trust Agreement. The SCIP Trustee will make payment strictly in accordance with the SCIP Requisition and will not be required to determine whether the Acquisition Improvements have been completed or what the Actual Costs may be with respect to the Acquisition Improvements. The SCIP Trustee may rely on the SCIP Requisition on its face without any further duty of investigation.

4. **Miscellaneous**

4.1 **Indemnification and Hold Harmless.**

(A) The Developer shall indemnify, defend, protect, and hold harmless the City and the Authority and each of the City’s and the Authority’s elected officials, directors, officers, employees, and agents from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys’ fees and litigation costs through final resolution on appeal) that result from or are alleged to have resulted from—

1. the acts or omissions of the Developer or the Developer’s officers, employees, or agents in the performance of this agreement;

2. any contract for the design, engineering, or construction of the Acquisition Improvements; or

3. any actual or alleged misstatement of fact or actual or alleged omission of a material fact by the Developer or the Developer’s officers, directors, employees, or agents to the Authority’s underwriter, financial advisor, appraiser, district engineer, or bond counsel (a) regarding the Developer, its proposed developments, its property ownership, or its contractual arrangements and (b) contained in the official statement relating to the SCIP financing (provided that the Developer received a copy of the official statement and did not object to it).

(B) This section 4.1 does not limit the City’s rights against any of the Developer’s architects, engineers, contractors, or other consultants.
(C) Except as set forth in this section 4.1, this agreement does not limit the extent of the Developer’s responsibility for payment of damages resulting from the operations of the Developer or the Developer’s agents and employees.

(D) This section 4.1 does not obligate the Developer to indemnify the City or the Authority or any of the City’s or the Authority’s elected officials, officers, directors, employees, or agents for any negligent or wrongful acts or omissions of the City or the Authority or the City’s or the Authority’s elected officials, officers, employees, agents, consultants, or contractors.

4.2 Audit. During the Developer’s normal business hours and after giving the Developer 10-days’ written notice, the City may to review Developer’s records pertaining to costs the Developer incurred in constructing the Acquisition Improvements and for which the Developer seeks reimbursement.

4.3 Cooperation. The City and the Developer shall cooperate with respect to the completion of SCIP financing for the Acquisition Improvements. The City and the Developer shall meet in good faith to resolve any differences on future matters that are not specifically covered by this agreement.

4.4 General Standard of Reasonableness. Any provision of this agreement that requires the consent, approval, or acceptance of a party or of an officer, employee, or agent of the party will be deemed to require that the consent, approval or acceptance not be unreasonably withheld or delayed, unless the provision expressly incorporates a different standard. The foregoing provision does not apply to provisions in this agreement that provide for decisions to be in the sole discretion of the party making the decision.

4.5 Third-Party Beneficiaries. This agreement is solely for the benefit of the City and the Developer. It is not intended to benefit any third parties, except as follows: the Authority and its officers, employees, agents, consultants, and contractors are third-party beneficiaries, but only with respect to section 4.1.

4.6 Conflict with Other Agreements. This agreement does not release the Developer or the City from any condition of development or requirement imposed by any other agreement between the City and the Developer. If a conflict exists between a provision in this agreement and a provision in another agreement, then the other agreement will prevail unless the City and the Developer waive the conflict in writing.

4.7 Notices. All invoices for payment, reports, notices, or other communications under this agreement (each, a “Notice”) must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 4.7 to the persons identified below. A Notice that is mailed will be effective or will be considered to have been given on the third day after it is
deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A Notice sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section 4.7

If to the City:
City of Sacramento
Public Improvement Financing
915 I Street, NCH Fifth Floor
Sacramento, California 95814
Attention: Sheri Smith, Special Districts Manager

City of Sacramento
Community Development Department
300 Richards Boulevard, Third Floor
Sacramento, California 95814

If to the Developer:
TL Sutter Partners, L.P.
3500 Douglas Blvd
Suite 270
Roseville, CA 95661
Attention: Jay Timothy Lewis, President

4.8 Severability. If a court with jurisdiction rules that any provision of this agreement is invalid, unenforceable, or contrary to law or public policy, then the parties want the court to interpret this agreement as follows:

(A) by modifying the provision to the minimum necessary to make it enforceable or, if that modification is not permitted by law, by disregarding the provision;

(B) by holding that the rest of the agreement will remain in effect as written;

(C) by holding that the provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and

(D) by holding the entire agreement unenforceable if modifying or disregarding the unenforceable provision would result in the failure of an essential purpose of this agreement.

4.9 Interpretation. This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits A, B, and C are part of this agreement.

4.10 Waiver. A party’s failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party’s waiver of another party’s breach of any provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.
4.11 **Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

4.12 **Successors and Assigns.** This agreement is binding upon the heirs, assigns and successors-in-interest of the parties. The Developer may not assign its rights or obligations under this agreement without the City’s prior written consent except to successors-in-interest to the property within the Assessment District.

4.13 **Remedies in General.**

(A) The City would not have entered into this agreement if it were to be liable in damages under or with respect to this agreement, other than for the payment to the Developer of any (1) moneys owing to the Developer under this agreement or (2) moneys paid by the Developer under this agreement that are misappropriated or improperly obtained, withheld, or applied by the City.

(B) In general, the parties may pursue any remedy at law or equity available for the breach of this agreement, except that (1) the City will not be liable in damages to the Developer or to any assignee or transferee of the Developer other than for the payments to the Developer specified in section 4.13(A); and (2) except as provided in clause (1) of this section 4.13(B), the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute that arises out of, this agreement.

4.14 **Effective Date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

4.15 **Integration and modification.** This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

*(Signature Page Follows)*
City of Sacramento

By: ________________________________
Dawn Holm
Director of Finance
Date: _____________, 20__

TL Sutter Partners, L.P. a Delaware limited partnership

By: TL Partners V, L.P.,
A California limited partnership
Its: General Partner

By: TL Management, Inc.,
A California Corporation
Its: General Partner

_________________________
Signature

_____________________
Jay Timothy Lewis
Print Name

_____________________
President
Title

Date: __April 17, 2019__

Attest
Sacramento City Clerk

By: ________________________________
Signature

Approved as to Form
Sacramento City Attorney

By: ________________________________
Senior Deputy City Attorney

Approved as to Form
[Law Firm’s Name]

By: ________________________________
[Name]
Attorneys for [Developer’s Name]
EXHIBIT A TO SCIP ACQUISITION AGREEMENT

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND BUDGETED AMOUNTS

<table>
<thead>
<tr>
<th>ACQUISITION IMPROVEMENTS</th>
<th>BUDGETED AMOUNTS</th>
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<tbody>
<tr>
<td>Sutter Park Way</td>
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<td>(grading, curb/gutter/sidewalk, paving, signage/striping, lighting)</td>
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<td>E Street</td>
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<tr>
<td></td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>
EXHIBIT B TO SCIP ACQUISITION AGREEMENT

FORM OF SCIP REQUISITION

To:    BLX Group LLC
       SCIP Program Administrator
       777 S. Figueroa St., Suite 3200
       Los Angeles, California 90017
       Attention: Vo Nguyen
       Fax: 213-612-2499

Re:    Statewide Community Infrastructure Program

The undersigned, a duly authorized officer of the CITY OF SACRAMENTO (the "City"), hereby requests a withdrawal from the Developer Acquisition Account, as follows:

Request Date:       [Insert Date of Request]
Name of Developer:  [Developer]
Withdrawal Amount:  [Insert Acquisition Price]
Acquisition Improvements:  [Insert Description of Acquisition Improvement(s) from Ex. A]
Payment Instructions:  [Insert Wire Instructions or Payment Address for Developer]

The undersigned hereby certifies as follows:

1.  The withdrawal is being made in accordance with a permitted use of the monies under the Acquisition Agreement, and the withdrawal is not being made for the purpose of reinvestment.

2.  None of the items for which payment is requested has been reimbursed previously from other sources of funds.

3.  If the amount withdrawn is greater than the funds held in the Developer Acquisition Account, the SCIP Program Administrator is authorized to amend the amount requested to be equal to the amount of those funds.

4.  To the extent the withdrawal is being made before the date bonds have been issued on behalf of SCIP, this withdrawal form serves as the City's declaration of official intent, under Treasury Regulations § 1.150-2, to reimburse itself with respect expenditures made from the Developer Acquisition Account listed above in the amount listed above.

CITY OF SACRAMENTO

By: 

Signature

Title
EXHIBIT C TO SCIP ACQUISITION AGREEMENT

Guidelines for Special District Acquisition Projects

City of Sacramento

Departments of Utilities and Public Works

Introduction

The City of Sacramento Policies and Procedures Manual for Special Assessment and Community Facilities Districts provides for the use of acquisition districts. Listed in this exhibit are guidelines that must be followed to qualify improvement project costs for reimbursement by the contemplated community facilities district (the “District”). Reimbursement is dependent upon the City’s actual receipt of special-tax proceeds or proceeds from special-tax bonds (the “Bonds”) if the Bonds are issued and upon the legality of reimbursement for individual expense items under applicable law.

1.0 Definitions

1.1 Acquisition Agreement. An agreement between the Developer and the City allowing the District to acquire certain public facilities from the Developer.

1.2 Acquisition Facility or Acquisition Facilities. Those public-facility improvements described in Acquisition Agreements or a Hearing Report, as applicable, filed in the District proceedings.

1.3 Acquisition Price. The amount the District is to pay for the Acquisition Facilities in accordance with the Acquisition Agreement.

1.4 Advertisement. A published public notice that solicits bids for a project in accordance with these guidelines and applicable law.

1.5 Bid Documents. Plans, Specifications, and proposal documents that are prepared by, or under the supervision of, the Design Engineer; conform with policies, rules, regulations, and laws applicable to the City; and are suitable for the solicitation and submittal of bids by contractors for construction of an Acquisition Facility.

1.6 City Engineer. The Engineering Division Manager of the City’s Department of Public Works or his or her designee.

1.7 Construction Security. Performance bonds and labor-and-material payment bonds or other security, provided by the Contractor to the Developer in a form assignable to the City, which guarantee that the Contractor will meet all contractual obligations.
1.8 Contractor. A person or entity that is under contract to construct the Acquisition Facility and who possesses the appropriate California contractor’s license or licenses for the work.

1.9 Design Engineer. A California-licensed professional civil engineer the Developer has retained for the purpose of designing and supervising construction of the Acquisition Facilities.

1.10 The Developer. The person or entity identified as the “Developer” in the Acquisition Agreement to which these guidelines are attached as an exhibit.

1.11 District Administrator. The Public Improvement Financing Unit of the City’s Department of Finance, or its successor.

1.12 Engineer’s Estimate. A cost estimate for the Acquisition Facilities prepared by the Design Engineer and approved by the City Engineer.

1.13 Facility. An element or increment of an entire Acquisition Facility. A Facility is eligible for acquisition when it is complete and available for public benefit (i.e., when it is a functional, usable unit of infrastructure capable of being incorporated into the City’s infrastructure system).

1.14 Hearing Report. The report required by the Mello-Roos Act of 1982 that identifies the boundaries of the District, the specific improvements to be financed by the District and the maximum special tax rate each property owner will be responsible for paying in any given tax year.

1.15 Plans. Final bid drawings prepared by the Design Engineer and its consultants and approved by the City for construction of the Acquisition Facilities.

1.16 Specifications. Documents prepared by the Design Engineer or its consultants that describe in detail for construction-contract purposes the material and workmanship required to complete an Acquisition Facility.

2.0 Pre-Advertisement Procedures

2.1 The Developer shall submit project schedules to the City Engineer.

2.2 As and if required, the City shall endeavor to obtain necessary interests in real property, but only if the Developer has provided full and complete funding and has signed a funding agreement for this purpose in a form acceptable to the City Attorney. The Developer shall negotiate all utility relocations.
2.3 The Design Engineer shall prepare and submit Plans and Specifications to the City Engineer for review and approval. The Plans must indicate those portions of the Improvements that are Acquisition Facilities qualified for reimbursement from the District. These indications are not to be construed as the City’s approval or disapproval of eligibility for cost reimbursement. The City Engineer and the District Administrator will jointly determine, independently of the Plans and the City Engineer’s approval of the Plans, whether an Acquisition Facility qualifies for reimbursement through the District.

2.4 The Developer shall pay City plan-check fees and inspection fees (normal and specific) in accordance with normal City procedures.

2.5 The Developer shall provide Construction Security in the same manner as is provided for normal City public-works projects.

2.6 The Design Engineer shall prepare the Bid Documents for the Acquisition Facilities and shall submit the documents to the City Engineer for review, and the City Engineer shall, in writing, either approve or disapprove the Bid Documents. The Bid Documents must be in conformance with all ordinances, laws, policies, rules, and regulations applicable to the City, including but not limited to the following:

(a) Compliance with all applicable City and State of California requirements for public-works contracts, including but not limited to Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).

(b) The invitation to bidders must be publicly advertised.

(c) The Developer must submit to the City Engineer, in a form acceptable to the City, a non-collusion affidavit signed by an officer or manager of Developer.

(d) The Bid Documents must comply with all other applicable City requirements.

(e) The Developer must sign a certificate affirming compliance with all of the requirements set forth in this section 2.6.

2.7 The City Engineer shall review the Bid Documents to determine whether they meet the following requirements:

(a) The Engineer’s Estimate is reasonable and has been approved by the City Engineer.

(b) The bidding procedures are consistent with advertising and bid-opening procedures for public contracts, and the bid forms clearly describe each bid item and are in a format that is substantially similar to the format of the cost breakdown in the Acquisition Agreements or Hearing Report, as applicable.
(c) The construction contract requires the Contractor and its subcontractors to comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).

(d) The Bid Documents include a non-collusion affidavit in a form acceptable to the City.

(e) The number of allotted working days specified in the contract documents is reasonable for the proposed work.

(f) Any liquidated-damage clauses are consistent with City policy.

2.8 The Developer may be excused from complying with some or all of this section 2.0, other than sections 2.6(a) and 2.7(c), if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

3.0 Advertisement and Bid-Opening Procedures

3.1 The Developer shall provide the City Engineer with complete copy of all final Bid Documents, including any addenda, and may advertise the project only after the City has approved the Plans and the City Engineer has approved the final Bid Documents.

3.2 The Developer must advertise the project in a newspaper of general circulation published within the County of Sacramento, as follows: for a daily newspaper, the Advertisement must be published at least 10 consecutive times; and for a weekly newspaper, the Advertisement must be published at least two consecutive times. The Developer may use other advertising procedures in addition to the procedures specified in this section 3.2.

3.3 The Developer shall conduct a bid opening at a location open to the public. The bids must be sealed, must be submitted on or before the specified date and time, and must be publicly opened with each bidder’s name and total bid announced at the opening in the presence of all interested parties.

3.4 The Developer shall notify the City Engineer at least 10 days before the bid-opening date and location and shall provide the City Engineer with a copy of the Advertisement or Advertisements.

3.5 The City Engineer or the City Engineer’s representative shall attend each pre-bid meeting (if any) and the public bid opening. The Developer shall have a sign-in sheet for attendees if a pre-bid meeting is held and shall provide a copy of the sheet to the City.
3.6 If the Developer requests, the City may, in the City Engineer’s sole discretion, advertise the project on the Developer’s behalf using the City’s procedures for advertising contracts for public projects.

3.7 The Developer may be excused from complying with this section 3.0, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

4.0 Construction Contract Award

4.1 The Developer shall provide the City Engineer with a summary of all bids and a copy of the lowest bid proposal submitted, together with a written evaluation of the bids and a recommendation for award. The Developer shall provide the following information with the evaluation and recommendation, in the form of a certificate stating the following:

(a) That there are no pending disputes over the bidding procedures.

(b) That all bidders received the same set of Bid Documents and all of the addenda issued.

(c) That all applicable City approvals required for the work have been obtained.

(d) That the bid proposal has not been conditioned in any way.

The Developer shall retain the original of all bids received for a minimum of four years after the date of the acceptance of the Acquisition Facility by the City.

4.2 Within five working days after receipt of the bid material specified in section 4.1, the City Engineer shall review the bid summary and a copy of the lowest bid and shall determine whether (a) to concur in the Developer’s recommendation or (b) to notify the Developer that additional review time will be required, specifying the date by which review will be complete.

4.3 The City Engineer shall give the Developer written notification of the determination under section 4.2 within the time stated in that section.

4.4 If the lowest bidder is not recommended, if the City Engineer does not concur with the Developer’s recommendation, or if the City Engineer is aware of any irregularities or possible disputes over the bidding procedure, then the Developer or the City Engineer shall notify the City Manager. This notice must be in writing and must be submitted to the City within five working days after the determination required by section 4.2 has been made. Within ten days after receiving the notice, the City Manager shall review the Bid Documents and procedures and advise the Developer of the City’s decision regarding the award of the contract.
4.5 The Developer may reject all bids received and re-advertise for bids in accordance with these guidelines or, with the City Engineer’s concurrence, may dispense with further competitive bidding. The Developer may not reject individual bids without the City Engineer’s concurrence.

4.6 The Developer must obtain the City Engineer’s formal written concurrence before awarding the construction contract.

4.7 The Developer shall award the contract, with the City Engineer’s concurrence in the form of a letter or memorandum on City letterhead, within 60 days after the bid opening and shall authorize the Contractor to proceed with the work within 60 days after award.

4.8 The Developer shall provide the following items to the City Engineer within 30 days after the Developer has authorized the Contractor to proceed:

(a) A copy of the signed contract with the Contractor, specifying the award date.

(b) A written statement (1) that the contract award amount is within the Engineer’s Estimate and does not exceed the overall funds available from the District; or (2) that the contract award amount exceeds the Engineer’s Estimate or the overall funds available from the District, and the Developer will pay all amounts by which the contract exceeds the estimate and funds available.

4.9 The Developer may be excused from complying with this section 4.0, in whole or part, if the City Council determines, by a two-thirds vote, that excusing compliance is in the best interests of the City.

5.0 Construction

5.1 Either the Developer or the Design Engineer shall schedule and conduct a pre-construction meeting before work on the Acquisition Facilities begins. The pre-construction meeting must be attended by the Developer, the Design Engineer, the City Engineer, the Contractor, representatives of each agency issuing permits, representatives of affected utilities, and other interested parties. The City Engineer and the City must receive written notice of the pre-construction meeting at least five days before the meeting, and the meeting date must be scheduled for a time, place, and date acceptable to the City Engineer and the City.

5.2 The Contractor shall coordinate all inspections of Acquisition Facilities in accordance with City policy and the improvement agreement applicable to the Acquisition Facilities.

5.3 The Developer shall hire a labor-compliance consultant to certify to the City that all requirements of Sacramento City Code sections 3.60.180 (concerning prevailing wages,
hours of work, etc.) and 3.60.190 (concerning apprentices) have been satisfied. The consultant’s certification must be submitted to the City Engineer when the Developer submits a request for reimbursement in accordance with section 7.0.

5.4 If the Developer desires to be reimbursed for any contract change-order work, then before allowing the Contractor to undertake the work the Developer must obtain from the City Representative overseeing the work (as designated in the drainage or other improvement agreement) the representative’s written acknowledgment of the need to perform the change-order work in order to complete the project satisfactorily. The City Engineer shall subsequently determine if any adjustments are to be made to the Acquisition Price as a result of the change order.

5.5 The City Engineer must review and approve in advance any revisions to the Plans, and each change order must be submitted to, and approved by, the City Engineer as a condition for reimbursement of costs associated with the change order.

5.6 For the purposes of these guidelines, the construction will be considered complete when the Acquisition Facility is fully completed and available for public benefit, when the City has accepted the Acquisition Facility in accordance with the applicable drainage or other improvement agreement, and when the Developer has obtained the following, as applicable:

(a) Approval of the City if a grading permit is required.

(b) Approval of all facilities shown on the Plans or included in the Acquisition Facilities by the affected utility companies or other affected departments of the City or the County of Sacramento.

(c) Approval of the City of all erosion-control improvements required by the Plans or the grading permit.

(d) Approval by the City’s Licensed Land Surveyor of all monumentation.

(e) Approval of the City of all street improvements (e.g., storm drains, street lighting, traffic signals) shown on the Plans through issuance of an inspection-completion report.

6.0 Prevailing Wages and Apprentices

6.1 The Contractor and all subcontractors shall comply with Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices) for all work performed on the Acquisition Facilities. The Developer shall certify to the City Engineer, in writing, that the Contractor and all subcontractors have
complied with the requirements of Sacramento City Code sections 3.60.180 and 3.60.190. Upon request, the Developer shall provide copies of certified payrolls to the City Engineer.

6.2 Consistent with California Labor Code section 1720, subdivision (c)(2), work performed on the Acquisition Facilities will be eligible for reimbursement from the District’s special-tax proceeds or the District’s bond proceeds only if all public-improvement work that is within the District and required as a condition of regulatory approval for the Developer’s project, including work not funded through the District, has been performed in compliance with Sacramento City Code sections 3.60.180 and 3.60.190.

7.0 Reimbursement

7.1 The Developer shall submit to the City Engineer a finalized copy of Plans and Specifications that incorporates all approved changes, and a copy of any recorded tract map or maps. In addition, after completion of a Facility, the Developer shall submit a request for reimbursement to the District Administrator that follows the format provided in Schedule A to this exhibit (titled “Developer Reimbursement Request Format”) and includes the following:

(a) Final quantities and final costs on each contract item, certified by the Design Engineer, and the total of all construction costs for the particular Facility accompanied by any other supporting documentation necessary to justify reimbursement.

(b) Approved contract change orders with final quantities and final costs.

(c) Certification that the Contractor and all subcontractors have complied on the project with all applicable City and State of California public-works provisions, including Sacramento City Code sections 3.60.180 (concerning prevailing wages, hours of work, etc.) and 3.60.190 (concerning apprentices).

(d) Itemized breakdown of other reimbursable costs as delineated in the applicable Acquisition Agreement.

(e) Copies of invoices, vouchers, canceled checks, and other available materials to support all of the Developer’s expenditures claimed for reimbursement.

(f) Copies of all recorded notices of completion.

(g) Certification or proof of Advertisement as required by these guidelines.

(h) Copies of final mechanics-lien releases for the Facility. If the Facility is an increment of a larger Acquisition Facility, the lien releases may be unconditional lien releases upon receipt of the progress payments applicable to the Facility.
(i) Documentation that all required easements have been transferred to the City or that other arrangements for such transfer, as required by the City, have been made.

(j) Documentation that all fee interests required for the Acquisition Facilities have been transferred to City or that other arrangements for such transfer, as required by the City, have been made.

(k) Submission of written certifications from other agencies or utilities involved in the reimbursement request, confirming that the Facility was inspected and completed according to approved Plans and Specifications and that any utilities or agency cost reimbursements are disclosed in the District reimbursement requests.

(l) Where applicable, all equipment manuals for the Acquisition Facilities.

(m) All warranties relating to the Acquisition Facilities.

In addition, the Developer shall submit to the City Engineer a finalized copy of Plans and Specifications that incorporates all approved changes, and copies of all recorded tract maps.

7.2 The District Administrator shall have the request for reimbursement and all supporting data reviewed by a professional engineer licensed in California, who may rely on the authenticity of all supporting data, documents, representations, and certifications provided by the Developer and each Design Engineer. The Developer shall sign a certification on all submitted data. If additional information is required during the review process to comply with section 7.1, then the District Administrator may request in writing that the Developer supply the supplemental data, and the Developer shall promptly comply with such a request.

7.3 Upon review of the submitted information, if complete, the District Administrator shall determine whether and to what extent the costs and expenses claimed are reimbursable, and shall provide a written recommendation to the City Manager, who shall make a final determination of reimbursement eligibility.