

MCPS
12/17/01
(For Execution)

SUPPLEMENT NO. 1

to

DEVELOPMENT AGREEMENT

Dated July 27, 2001

among

ELTEL ASSOCIATES LLC
(successor to ARCO CONSTRUCTION COMPANY),

CITY OF PONTIAC TAX INCREMENT FINANCE AUTHORITY

and

CITY OF PONTIAC

December 17, 2001

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
ARTICLE I	4
COVENANTS OF THE DEVELOPER	4
SECTION 101. SECURE COMMITMENTS AND APPROVALS FOR THE INFRASTRUCTURE.	4
SECTION 102. RESERVED	4
SECTION 103. PRIORITY OF OBLIGATIONS.	4
SECTION 104. RESERVED	4
SECTION 105. DEFAULT BY DEVELOPER AND LIMITATION ON LIABILITY	4
ARTICLE II	4
COVENANTS OF THE CITY AND PONTIAC TIFA	4
SECTION 201. ADOPTION OF AMENDMENTS TO PLANS	4
SECTION 202. ISSUANCE OF THE SERIES 2001 BONDS.	5
SECTION 203. ADDITIONAL INDEBTEDNESS	5
SECTION 204. ISSUANCE OF THE CITY BONDS.	5
SECTION 205. SCHEDULE FOR ISSUANCE OF BONDS	5
SECTION 206. MAINTENANCE OF THE PONTIAC TIFA DISTRICT, DEVELOPMENT AREA NO. 3 AND AMENDED PLANS	6
ARTICLE III	6
CONDITIONS PRECEDENT	6
SECTION 301. CONDITIONS PRECEDENT TO PONTIAC TIFA'S OBLIGATION TO CARRY OUT ITS OBLIGATIONS UNDER THIS SUPPLEMENT	6
SECTION 302. CONDITIONS PRECEDENT TO THE CITY'S OBLIGATIONS TO CARRY OUT ITS OBLIGATION UNDER THIS SUPPLEMENT	8
SECTION 303. WAIVER OF CONDITIONS.	8
ARTICLE IV	8
REPRESENTATIONS AND WARRANTIES	8
SECTION 401. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER	8
SECTION 402. PONTIAC TIFA REPRESENTATIONS	10
SECTION 403. REPRESENTATIONS AND WARRANTIES OF THE CITY	10

ARTICLE V.....	11
MISCELLANEOUS	11
SECTION 501. TERM.....	11
SECTION 502. ASSIGNMENT OF THIS SUPPLEMENT.	11
SECTION 503. NOTICES.....	11
SECTION 504. AMENDMENT.....	11
SECTION 505. ENTIRE AGREEMENT.....	11
SECTION 506. BINDING EFFECT.	12
SECTION 507. SEVERABILITY.....	12
SECTION 508. EXECUTION IN COUNTERPARTS.....	12
SECTION 509. CAPTIONS.....	12
SECTION 510. APPLICABLE LAW.	12
SECTION 511. MUTUAL COOPERATION.	12
SECTION 512. PERMITS AND APPROVALS.....	12
SECTION 513. FORCE MAJEURE.	13
SECTION 514. NONDISCRIMINATION AND LOCAL EMPLOYMENT PREFERENCE.	13
SECTION 515. CONSENT TO CONDOMINIUM.	14
SECTION 516. PARTIAL DISCHARGE OF MORTGAGE.	14
SECTION 517. PARTIAL DISCHARGE OF AGREEMENT AND SUPPLEMENT.....	14
SECTION 518. DISCHARGE OF DEVELOPER	14
SECTION 519. CURE OF DEFAULTS.	15
SECTION 520. AMENDMENT TO SECTION 3.05 OF DEVELOPMENT AGREEMENT.....	15
SECTION 521. ASSUMPTION OF OBLIGATIONS UNDER DEVELOPMENT AGREEMENT.....	15
EXHIBIT A DISTRICT AND DEVELOPMENT AREA NO. 3.....	A-1
EXHIBIT B SITE OF DEVELOPMENT.....	B-1
EXHIBIT C INFRASTRUCTURE AND COSTS (PHASE I AND PHASE II).....	C-1
EXHIBIT D PROPOSED SCHEDULE OF EVENTS FOR THE AMENDMENT OF DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN AND ISSUANCE OF BONDS	D-1
EXHIBIT E PROJECTED PROJECT TAX INCREMENT REVENUE AND DEBT SERVICE SCHEDULE	E-1

ARTICLE V.....	11
MISCELLANEOUS	11
SECTION 501. TERM.....	11
SECTION 502. ASSIGNMENT OF THIS SUPPLEMENT.....	11
SECTION 503. NOTICES.....	11
SECTION 504. AMENDMENT.....	11
SECTION 505. ENTIRE AGREEMENT.....	11
SECTION 506. BINDING EFFECT.....	12
SECTION 507. SEVERABILITY.....	12
SECTION 508. EXECUTION IN COUNTERPARTS.....	12
SECTION 509. CAPTIONS.....	12
SECTION 510. APPLICABLE LAW.....	12
SECTION 511. MUTUAL COOPERATION.....	12
SECTION 512. PERMITS AND APPROVALS.....	12
SECTION 513. FORCE MAJEURE.....	13
SECTION 514. NONDISCRIMINATION AND LOCAL EMPLOYMENT PREFERENCE.....	13
SECTION 515. CONSENT TO CONDOMINIUM.....	14
SECTION 516. PARTIAL DISCHARGE OF MORTGAGE.....	14
SECTION 517. PARTIAL DISCHARGE OF AGREEMENT AND SUPPLEMENT.....	14
SECTION 518. DISCHARGE OF DEVELOPER.....	14
SECTION 519. CURE OF DEFAULTS.....	15
SECTION 520. AMENDMENT TO SECTION 3.05 OF DEVELOPMENT AGREEMENT.....	15
SECTION 521. ASSUMPTION OF OBLIGATIONS UNDER DEVELOPMENT AGREEMENT.....	15
DISTRICT AND DEVELOPMENT AREA NO. 3.....	A-1
EXHIBIT B SITE OF DEVELOPMENT.....	B-1
EXHIBIT C INFRASTRUCTURE AND COSTS (PHASE I AND PHASE II).....	C-1
EXHIBIT D PROPOSED SCHEDULE OF EVENTS FOR THE AMENDMENT OF DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN AND ISSUANCE OF BONDS	D-1
EXHIBIT E PROJECTED PROJECT TAX INCREMENT REVENUE AND DEBT SERVICE SCHEDULE.....	E-1

SUPPLEMENT NO. 1 TO DEVELOPMENT AGREEMENT

(Oakland Technology Center and
Pontiac Woods Residential Community Project)

This Supplement No. 1 to Development Agreement (the "Supplement") is made as of December 17, 2001, among Eltel Associates LLC (successor to Arco Construction Company ("Arco")), a Michigan limited liability company whose address is 25200 Telegraph Road, Suite 410, Southfield, Michigan 48034 (the "Developer"), the City of Pontiac Tax Increment Finance Authority, a Michigan public body corporate, whose address is 8 North Saginaw Street, Third Floor, Pontiac, Michigan 48342 (the "Pontiac TIFA") and the City of Pontiac, Michigan, a Michigan municipal corporation, whose address is 47450 Woodward Avenue, Pontiac, Michigan 48342 (the "City").

R E C I T A L S

A. The City established the Pontiac TIFA and the Pontiac Tax Increment Finance Authority District (the "District") which includes Development Area No. 3 described in Exhibit A attached hereto ("Development Area No. 3") on May 12, 1981, pursuant to Act 450, Public Acts of Michigan, 1980, as amended (the "Act") to develop areas within the District, to halt and prevent property value deterioration within the District, and to encourage economic development and the creation of jobs within the District.

B. As part of its plan to revitalize and promote economic growth in Development Area No. 3, the City has adopted the Tax Increment Financing Plan and Development Plan (Development Area No. 3), as amended, pursuant to the requirements of the Act (The "TIFA Plan No. 3").

C. The TIFA Plan No. 3 provides for, among other things, the mixed use re-development, including high technology office, office, retail commercial, multi-family and single family residential components, and related facilities (collectively the "Development") of a tract of land (the "Property"), comprising approximately 216 acres (excluding existing public rights-of-way) bounded on the south and east by Elizabeth Lake Road and N. Johnson Ave., respectively, on the north by the Grand Trunk Western Railroad ROW, and on the west by the shopping center premises situated at the northwest corner of the intersection of Elizabeth Lake Road and Telegraph Road, in the City, as more particularly shown and described on Exhibit B, attached hereto (also the "Re-Development Area").

D. The parties hereto have entered into a Development Agreement, dated July 27, 2001 (the "Agreement") to implement the Development.

E. The Agreement provides that the Pontiac TIFA will use its best efforts to provide financing for a portion of the Infrastructure, as hereinafter defined.

F. The parties are entering into this Supplement to set forth the terms and conditions under which (i) the Pontiac TIFA will finance all or a part of the Infrastructure which constitutes

SUPPLEMENT NO. 1 TO DEVELOPMENT AGREEMENT

(Oakland Technology Center and
Pontiac Woods Residential Community Project)

This Supplement No. 1 to Development Agreement (the "Supplement") is made as of _____ 1, 2001, among Eltel Associates LLC (successor to Arco Construction Company ("Arco")), a Michigan limited liability company whose address is 25200 Telegraph Road, Suite 410, Southfield, Michigan 48034 (the "Developer"), the City of Pontiac Tax Increment Finance Authority, a Michigan public body corporate, whose address is 8 North Saginaw Street, Third Floor, Pontiac, Michigan 48342 (the "Pontiac TIFA") and the City of Pontiac, Michigan, a Michigan municipal corporation, whose address is 47450 Woodward Avenue, Pontiac, Michigan 48342 (the "City").

R E C I T A L S

A. The City established the Pontiac TIFA and the Pontiac Tax Increment Finance Authority District (the "District") which includes Development Area No. 3 described in Exhibit A attached hereto ("Development Area No. 3") on May 12, 1981, pursuant to Act 450, Public Acts of Michigan, 1980, as amended (the "Act") to develop areas within the District, to halt and prevent property value deterioration within the District, and to encourage economic development and the creation of jobs within the District.

B. As part of its plan to revitalize and promote economic growth in Development Area No. 3, the City has adopted the Tax Increment Financing Plan and Development Plan (Development Area No. 3), as amended, pursuant to the requirements of the Act (The "TIFA Plan No. 3").

C. The TIFA Plan No. 3 provides for, among other things, the mixed use re-development, including high technology office, office, retail commercial, multi-family and single family residential components, and related facilities (collectively the "Development") of a tract of land (the "Property"), comprising approximately 216 acres (excluding existing public rights-of-way) bounded on the south and east by Elizabeth Lake Road and N. Johnson Ave., respectively, on the north by the Grand Trunk Western Railroad ROW, and on the west by the shopping center premises situated at the northwest corner of the intersection of Elizabeth Lake Road and Telegraph Road, in the City, as more particularly shown and described on Exhibit B, attached hereto (also the "Re-Development Area").

D. The parties hereto have entered into a Development Agreement, dated July 27, 2001 (the "Agreement") to implement the Development.

E. The Agreement provides that the Pontiac TIFA will use its best efforts to provide financing for a portion of the Infrastructure, as hereinafter defined.

F. The parties are entering into this Supplement to set forth the terms and conditions under which (i) the Pontiac TIFA will finance all or a part of the Infrastructure which constitutes

"public facilities" and other qualifying financeable items under the Act and (ii) the City will finance that portion of the Infrastructure constituting water and sewer system facilities with revenue bonds pursuant to Act 94, Public Acts of Michigan, 1983, as amended ("Act 94") (the "City Bonds").

G. Under the Agreement, the City has elected to implement the Development by designating the Pontiac TIFA to acquire the Property from the State of Michigan (the "State") and causing the Pontiac TIFA to convey the same to the Developer, and the Developer has agreed to acquire the Property from the Pontiac TIFA and develop the same in accordance with and subject to the terms of the Agreement, including complying with development scheme set forth in the TIFA Plan No. 3.

H. The City and Developer have agreed that Developer, or its permitted successors and assigns, shall be primarily and substantially responsible for the development of a high technology office development (the "Office Development") on approximately forty percent (40%), but in no event more than forty-five percent (45%) of the Property and a single family residential development (the "Residential Development") on the remaining land, consisting of approximately fifty-five to sixty percent (55-60%) of the Property, all as more particularly described in the Agreement.

I. The Developer has agreed to be responsible for using proceeds of the 2001 Bonds to finance the acquisition, construction and installation of the infrastructure of roads, utilities and other improvements constituting "public facilities" under the Act (collectively, the "Infrastructure"), as described in Phase I on Exhibit C, attached hereto and made a part hereof, required to service the Development.

J. The Infrastructure will be located on the property described on Exhibit D (the "Site") which is located within Development Area No. 3.

K. The Pontiac TIFA will use its best efforts to issue and sell under authority of the Act a series of tax exempt tax increment revenue bonds (the "2001 Bonds") on a negotiated basis or at public competitive sale. The 2001 Bonds shall be secured solely by a pledge of the Tax Increment Revenues (as hereinafter defined) and additionally may be payable from municipal bond insurance or other credit enhancement. The 2001 Bonds shall not be secured by any pledge of the full faith and credit of the City. The 2001 Bonds shall be issued under Section 15(1) of the Act. It is contemplated that the Pontiac TIFA will seek an investment grade rating on the 2001 Bonds.

L. The Infrastructure shall be limited to those items that constitute "public facilities" or which may be undertaken by the Pontiac TIFA under the Act and which may be financed with tax-exempt bond proceeds under the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder (the "Code"). Proceeds of the 2001 Bonds may also be used to pay for capitalized interest, if any, and also for the costs and expenses of the parties hereto relating to this Supplement and the issuance of the 2001 Bonds, including underwriter's discount, rating agency fees, legal, financial and other professional expenses of the Pontiac TIFA and the Developer and the expenses related to the fees, bond insurance or other credit enhancement, if any. The net proceeds available from the 2001 Bonds for the Infrastructure shall

not exceed \$23.5 million. A list of the proposed Infrastructure items and a current estimate of the cost thereof is set forth in Phase I of Exhibit C attached. The Developer shall have the right to substitute items of the Infrastructure listed on Phase I of Exhibit C but only to the extent that the replacement items constitute public facilities under the Act and subject to the prior approval of the Finance Director of the City with the advice of bond counsel for the 2001 Bonds. The resolution of the Pontiac TIFA authorizing the issuance of the 2001 Bonds (the "Bond Resolution"), will provide, among other things, that the net proceeds of the 2001 Bonds shall be deposited in a Construction Fund established under the Bond Resolution (the "Construction Fund") shall be disbursed from the Construction Fund to the appropriate party for costs and expenses it incurs relating to this Supplement and the issuance of the 2001 Bonds and to the Developer from time to time during the construction of the Project for the costs it incurs for the Infrastructure upon presentation of satisfactory documentation to the Pontiac TIFA and the trustee for the 2001 Bonds, if any.

M. The Pontiac TIFA and the City have determined that it is in the best interests of the City, the District and Development Area No. 3 to adopt and approve certain amendments to the TIFA Plan No. 3 to expand the boundaries of Development Area No. 3 and to make other additions related to, among other things, the Project, the Infrastructure and additional improvements in Development Area No. 3 (the "Amended Plan").

N. The 2001 Bonds shall be secured solely by a pledge of and lien on the tax increment revenues from Development Area No. 3 which shall be collected and retained by the Pontiac TIFA from taxing units other than the Pontiac School District and the Intermediate School District (collectively, the "Tax Increment Revenues"). The lien on the Tax Increment Revenues in favor of the 2001 Bonds shall be a first lien of equal standing and priority as to the Tax Increment Revenues with other additional tax increment revenue bonds for TIFA Development Area No. 3 issuable in the future in accordance with the requirements.

O. An estimate of the Tax Increment Revenues to be collected and retained by the Pontiac TIFA during the term of the 2001 Bonds shall be set forth in the Bond Resolution.


P. In order to implement the terms and conditions set forth in this Supplement, the Pontiac TIFA, the City and the Developer understand that they must take action on the matters on the dates as set forth in the "Proposed Schedule of Events" attached as Exhibit E. The agreement of the City and the Pontiac TIFA to undertake to approve the Amended Plan and to seek approval of the 2001 Bonds as provided in this Supplement will enable the Developer to initiate work on the Project, and seek reimbursement for qualifying Infrastructure costs it has incurred promptly after the 2001 Bonds are sold.

In consideration of the Premises and the mutual covenants contained in this Supplement, the Developer, the City and the Pontiac TIFA hereby covenant and agree as follows:

ARTICLE I

COVENANTS OF THE DEVELOPER

Section 101. Secure Commitments and Approvals for the Infrastructure. The Developer hereby agrees to obtain the necessary permits and approvals for the acquisition and construction of the Infrastructure.

Section 102. Reserved. 

Section 103. Priority of Obligations. The Developer acknowledges that the Pontiac TIFA intends to either use a portion of the proceeds of the 2001 Bonds to finance other infrastructure improvements related to a certain development project on Lake Angelus Road in Development Area No. 3 (the "Lake Angelus Project"), or to issue a separate series of bonds therefor (the "Lake Angelus Bonds"). Debt Service requirements of the Lake Angelus Bonds will be payable from and secured by a lien on the Tax Increment Revenues of equal standing and priority with the debt service requirements on the 2001 Bonds. The Pontiac TIFA reserves the right to issue additional bonds payable from the Tax Increment Revenues within the limitations prescribed by the Act to finance additional infrastructure improvements related to the Development, the Lake Angelus Project or other projects in Development Area No. 3 so long as the rights of Developer under the Agreement and this Supplement are not materially adversely affected.

Section 104. Reserved.

Section 105. Default by Developer and Limitation on Liability.

The monetary liability of the Developer to the Pontiac TIFA for contractual default under this Supplement shall be limited to an amount equal to the cost of the Infrastructure identified on Exhibit C as Phase I, to which the 2001 Bonds are allocated. The Developer shall have no liability under this Supplement in the event the 2001 Bonds are not issued and funded.

ARTICLE II

COVENANTS OF THE CITY AND PONTIAC TIFA

Section 201. Adoption of Amendments to Plans. The City and Pontiac TIFA agree to use their best efforts to promptly begin and diligently pursue all actions necessary and appropriate to carry out the terms of this Supplement including initiating the process for approval of the Amended Plans and securing the authorization necessary to issue and sell the 2001 Bonds and the City Bonds and, in connection therewith, to take all action on the matters on the dates as the set forth in Exhibit D except as may be modified from time to time by the parties.

Section 202. Issuance of the Series 2001 Bonds. Provided that there shall have been no material breach of any of the covenants and agreements of the Developer required to have been observed and performed by the Developer under the terms of this Supplement, and subject further to the appropriate requirements under the Act, the Pontiac TIFA shall issue and sell the 2001 Bonds pursuant to Section 15(1) of the Act, in order to provide net proceeds from the 2001 Bonds of not

to exceed \$23.5 million for the costs of the Infrastructure. The proceeds of the 2001 Bonds shall be disbursed to the Developer from time to time during the construction of the Project upon delivery by the Developer to the Pontiac TIFA of (1) the architect's and/or engineer's acceptance and authorization to pay the invoices for the Infrastructure which have been acquired and installed or constructed together with the contractor's separate certification of the Infrastructure costs thereof separate from the rest of the Project, (2) copies of all paid invoices for the costs and expenses of the parties hereto relating to this Supplement and the issuance of the 2001 Bonds, and (3) such other proofs, certifications, sworn statements as the Pontiac TIFA or the City shall require; and upon the satisfaction of the conditions to disbursement as are set forth in the Disbursement Agreement attached hereto as Exhibit F.

The 2001 Bonds shall be term bonds and/or serial bonds, maturing in each year in amounts to be determined by the Finance Director of the City at the time of issuance thereof; provided, however, that the final maturity of the 2001 Bonds shall not exceed the weighted average useful life of the Infrastructure components financed with proceeds of the 2001 Bonds. The 2001 Bonds shall be payable from and secured solely by a lien on the Tax Increment Revenues as herein described. The 2001 Bonds shall bear interest accruing from the date of issuance thereof payable semiannually, at the rates and mature on the dates and in the amounts as permitted by Act 202, Public Acts of Michigan, 1943, as amended ("Act 202"), and the Act, all as provided in the Bond Resolution and as approved by Pontiac TIFA.

Section 203. Additional Indebtedness. The Pontiac TIFA reserves the right to issue additional bonds payable from the Tax Increment Revenues on a parity with the 2001 Bonds and the Lake Angelus Bonds or subordinate in lien thereto within the limitations of the Act.

Section 204. Issuance of the City Bonds. Anything in this Supplement to the contrary notwithstanding, the City reserves the right to determine whether it would be in its best interest to be responsible for the acquisition, construction and equipping of water and sewer system extensions and improvements constituting a portion of the Infrastructure as set forth on Exhibit C hereto (the "Water and Sewer Improvements") with proceeds of the City Bonds. The Developer and the Pontiac TIFA acknowledge and agree that the City Bonds may be issuable in one or more series of water revenue bonds and sewer revenue bonds under Act 94 and that a portion of the proceeds thereof may be used by the City to finance other water and sewer projects in the City. The Pontiac TIFA and the Developer will work with the City's Department of Public Works and Engineers to coordinate the financing, acquisition and installation of the Water and Sewer Improvements with the construction plans for the Development.

Section 205. Schedule for Issuance of Bonds. So long as the City and Pontiac TIFA are proceeding diligently and in good faith, the failure to accomplish any action on the date set forth in Exhibit E, shall not constitute a default hereunder. The Pontiac TIFA and the City shall use their best efforts to issue the 2001 Bonds and the City Bonds, provided, however, that neither the Pontiac TIFA nor the City shall incur any liability to Developer in case the 2001 Bonds are not sold, due to reasons beyond the control of Pontiac TIFA and the City.

Section 206. Maintenance of the Pontiac TIFA District, Development Area No. 3 and Amended Plans. The existence of the Pontiac TIFA under the Act and the District, Development Area No. 3 and Amended Plan will be maintained for the period of time necessary for the full

performance of the obligations of the Pontiac TIFA under this Supplement. So long as the 2001 Bonds remain outstanding or unpaid, the District, Development Area No. 3 and Amended Plan shall not be altered or amended to impair the ability of the Pontiac TIFA to meet its obligations hereunder.

ARTICLE III

CONDITIONS PRECEDENT

Section 301. Conditions Precedent to Pontiac TIFA's Obligation to Carry out its Obligations Under This Supplement. The obligations of the Pontiac TIFA to adopt the Amended Plan, issue the 2001 Bonds, and to cause the Infrastructure to be financed as contemplated herein, are subject to the following conditions precedent which must be satisfied by the City or the Developer, as required herein, or waived by the Pontiac TIFA, as provided for in Section 303, except as otherwise specifically provided herein:

- (a) Obligation to Adopt Plan. The Pontiac TIFA's obligation and the City's obligation to approve and adopt the Amended Plans is subject to the condition that the Developer provide assistance as necessary in the presentation of its plans for the Development to the Pontiac TIFA Board and the City Council.
- (b) Obligation to Issue the 2001 Bonds. The Pontiac TIFA's obligation to issue the 2001 Bonds is conditioned on:
 - (1) receipt of an offer to purchase the 2001 Bonds through a negotiated or public sale;
 - (2) receipt of an Order Approving Bonds or an Order Providing for Exception from Prior Approval of Bonds, issued in accordance with Act 202 by the Michigan Department of Treasury;
 - (3) no action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Developer, the City or the Pontiac TIFA is a party, or any action, suit or proceeding is threatened against Developer, the City or the Pontiac TIFA contesting the validity or binding effect of this Supplement or the validity of the Plan or Amended Plan, or which could result in an adverse decision which would have a material adverse effect upon the ability of the Pontiac TIFA to collect and use Tax Increments to pay the 2001 Bonds, or which would have a material adverse effect on the Developer's, the Pontiac TIFA's or the City's ability to comply with the obligations and Terms of this Supplement, the Amended Plan or the 2001 Bonds;

- (a) Approval by the Mayor and City Council, after completion of any public hearings required by law, of the Amended Plan or any other required amendments to the Plans and completion of the 60 day period after such approval for such amendments to be uncontestable under Section 18(1) of the Act. With respect to the City Bonds, approval by the City Council and the adoption of the necessary ordinances and resolutions under Act 94 to authorize the issuance and sale of the City Bonds after the end of the 45-day referendum periods for the City Bonds required by Act 94.
- (b) No action, suit, proceeding or investigation shall be pending before any court, public board, or any body to which the Developer, the City or the Pontiac TIFA is a party, or threatened against the Developer, the City or the Pontiac TIFA contesting the validity of the Plan or Amended Plan, or which could result in an adverse decision which could have a material adverse effect on the ability of the Pontiac TIFA to collect and use the Tax Increment Revenues to finance and acquire the Site or Infrastructure, or which would have a material adverse effect on the Developer's, the Pontiac TIFA's or the City's ability to comply with the obligations and terms of this Supplement, the Amended Plan, or the 2001 Bonds.
- (c) There shall have been no breach of any of the covenants and agreements of the Developer required to have been observed and performed by the Developer under the terms of the Agreement or this Supplement.

Section 303. Waiver of Conditions. The Pontiac TIFA may waive, in writing, any of the conditions precedent set forth in Section 301 on or before the date specified for satisfaction thereof, and the City may waive, in writing, any of the conditions precedent set forth in Section 302 on or before the date specified for satisfaction thereof.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 401. Representations and Warranties of the Developer. In order to induce the Pontiac TIFA and the City to enter into this Supplement, the Developer hereby represents and warrants to the Pontiac TIFA and the City as follows:

- (a) Organization and Qualification. It is a duly organized limited liability company, validly existing and in good standing under the laws of the State of Michigan and it has full power and authority to carry on its business as it is now being conducted.
- (b) Power to Make Supplement. It has the power to make, deliver and incur obligations under this Supplement; to finance the [Oakland Plaza Development Project] and Infrastructure in accordance with the terms and conditions of the Agreement and this Supplement and has taken all necessary action to authorize the foregoing and to authorize the execution, delivery and performance of this Supplement.

- (4) there shall have been no breach of any of the covenants and agreements of the Developer required to have been observed and performed by the Developer under the terms of the Agreement or this Supplement;
 - (5) the receipt of a Mortgage against the Site in favor of the Pontiac TIFA in the form attached hereto as Exhibit G (the "Mortgage"), which Mortgage shall be recorded and superior to all interests other than the Condominium Documents (defined herein), a mortgage in favor of the Development Lender, the Agreement, this Supplement, and matters of record at closing acceptable to Pontiac TIFA;
 - (6) the receipt of a mortgagee's insurance policy (payable from proceeds of the 2001 Bonds) in favor of the Pontiac TIFA in a form satisfactory to the Pontiac TIFA.
- (c) Legal Opinion of Developer's Counsel. The Developer shall cause a legal opinion of Developer's legal counsel to be delivered to the Pontiac TIFA and the City, dated the date of execution hereof, and supported by a certificate from the Developer to the effect that:
- (1) That Developer is a duly organized limited liability company, validly existing and in good standing under the laws of the State of Michigan and is in good standing in each jurisdiction where the nature of the business conducted by it or the properties owned or leased by it requires such qualification.
 - (2) The Developer has the power to make, deliver and perform this Supplement, and has taken all necessary action to authorize the foregoing.
 - (3) This Supplement has been duly executed and delivered by a duly authorized manager or member of the Developer, and this Supplement constitutes a valid obligation of the Developer, legally binding and enforceable upon it in accordance with its terms.
 - (4) The execution, delivery and performance of this Supplement will not violate any provision of any existing law or regulation, order or decree of any court or governmental entity, or any provision of the articles of organization or operating agreement of the Developer or so far as is known to such counsel, or violate any provision of or constitute a default under any agreement or contract to which the Developer is a party.
 - (5) No Default known to such counsel has occurred and is continuing under the Agreement or this Supplement.

Section 302. Conditions Precedent to the City's Obligations to Carry Out its Obligation Under This Supplement.

- (c) Lack of Legal Impediments. The execution, delivery and performance of this Supplement will not violate any provision of any existing law, regulation, order or decree of any court or governmental entity, and will not violate any provisions of, or constitute a default under, any agreement or contract to which it is a party.
- (d) Legal Operation. It is in compliance with all existing laws and regulations applicable to it, the violations of which would or could materially adversely affect its operations or would or could materially adversely affect its ability to fulfill its obligations under this Supplement.
- (e) Litigation. As of the date of this Supplement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to its knowledge, is any such litigation or proceeding presently threatened, against their Property or that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Supplement.
- (f) Other Information. All other written information, reports, papers, and data given to the Pontiac TIFA and the City by the Developer with respect to it are accurate and correct in all material respects and substantially complete insofar as completeness may be necessary to give the Pontiac TIFA and the City a true and accurate knowledge of the subject matter and all projections of future results are, in its opinion, reasonable.
- (g) Other Agreements. It is not a party to any agreement or instrument materially and adversely affecting the Development not disclosed to the Pontiac TIFA and the City in writing; and it is not in default in the performance, observance, or fulfillment of any of the material obligations, covenants or conditions set forth in any agreement or instrument to which it is a party which affects the Property.
- (h) Brokerage and Finder's Fees and Commissions. It will indemnify the Pontiac TIFA and the City and hold them harmless with respect to any commissions, fees, judgments, or expense of any nature and kind which they may become liable to pay by reason of any claims by or on behalf of brokers, finders or agents incident to the Supplement and the transaction contemplated hereby resulting from any acts by the Developer or any litigation or similar proceeding arising therefrom.
- (i) Survival. All of the representations and warranties contained in this Section 401 shall survive the delivery of the 2001 Bonds and shall remain in full force and effect until the Certificate of Completion for the Development is issued. The Pontiac TIFA shall indemnify and hold the Developer harmless from and against, and shall be obligated to pay and reimburse the Developer for, any and all loss and damage (including reasonable attorneys' fees) which the Developer may sustain or incur as a result of any misrepresentation or breach of warranty on the part of the Pontiac TIFA.

Section 402. Pontiac TIFA Representations. The Pontiac TIFA represents and warrants to the Developer that:

- (a) Organization and Qualification. It is a Michigan public body corporate, validly existing and in good standing under the laws of the State of Michigan and has full power and authority to carry on its business as is now being conducted.
- (b) Power to Make Supplement It has the power to make, deliver and perform as required under this Agreement and has taken all necessary action to authorize the foregoing.
- (c) Lack of Legal Impediments. To the best of Pontiac TIFA's knowledge, the execution, delivery and performance of this Supplement will not violate any provision of any existing law, regulation, order or decree of any court or governmental entity, and will not violate any provisions of, or constitute a default under, any agreement or contract to which it is a party.
- (d) Litigation. As of the date of this Supplement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to its knowledge, is any such litigation or proceeding presently threatened, against it or that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Supplement.
- (e) Survival. All of the representations and warranties contained in this Section 402 shall survive the delivery of the 2001 Bonds and shall remain in full force and effect until the Certificate of Completion for the Infrastructure is issued.
- (f) Limitation of Liability. In the event that the Pontiac TIFA fails to comply with the representations and warranties set forth in Section 402 (c) or (d), the liability of the Pontiac TIFA for any such violation shall not exceed the amount of actual damages suffered by the Developer resulting from such violation. The Developer acknowledges that in any event Developer has no claim or cause of action against the Indemnified Persons for any liability of any kind or nature whatsoever.

Section 403. Representations and Warranties of the City.

- (a) Organization and Qualification. It is a Michigan public body corporate, validly existing and in good standing under the laws of the State of Michigan and has full power and authority to carry on its business as is now being conducted.
- (b) Power to Make Agreement. It has the power to make, deliver and perform as required under this Supplement and has taken all necessary action to authorize the foregoing.
- (c) Lack of Legal Impediments. To the best of the City's knowledge, the execution, delivery and performance of this Supplement will not violate any provision of any existing law, regulation, order or decree of any court or governmental entity, and will not violate any provisions of, or constitute a default under, any agreement or contract to which it is a party.

- (d) Litigation. As of the date of this Supplement, no litigation or administrative proceeding of or before any court or administrative body is presently pending, nor, to its knowledge, is any such litigation or proceeding presently threatened, against it or that, if adversely determined, would or could materially affect its ability to fulfill its obligations under this Supplement.
- (e) Survival. All of the representations and warranties contained in this Section 403 shall survive the delivery of the 2001 Bonds and shall remain in full force and effect until the Certificate of Completion for the Infrastructure is issued.
- (f) Limitation of Liability. In the event that the City fails to comply with the representations and warranties set forth in Section 403(c) or (d), the liability of the City for any such violation shall not exceed the amount of actual damages suffered by the Developer resulting from such violation. The Developer acknowledges that in any event Developer has no claim or cause of action against the Indemnified Persons for any liability of any kind or nature whatsoever.

ARTICLE V

MISCELLANEOUS

Section 501. Term. The term of this Supplement shall commence on the date first written above and shall expire upon the payment in full of the 2001 Bonds as herein provided.

Section 502. Assignment of this Supplement. This Supplement may only be assigned or transferred as provided in the Agreement.

Section 503. Notices. All notices, certificates or communications required by this Supplement to be given shall be sufficiently given and shall be deemed delivered when personally served or when mailed by express courier or registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses listed above.

Section 504. Amendment. No amendment or modification to or of this Supplement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties hereto.

Section 505. Entire Agreement. The Agreement and this Supplement contain all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in the Agreement and this Supplement.

Section 506. Binding Effect. This Supplement shall be binding upon the parties hereto and upon their respective successors and assigns. Except as amended or supplemented hereby the Agreement shall remain in full force and effect.

Section 507. Severability. If any clause, provision or section of this Supplement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or

unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions or sections of this Supplement.

Section 508. Execution in Counterparts. This Supplement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 509. Captions. The captions and headings in this Supplement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Supplement.

Section 510. Applicable Law. This Supplement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

Section 511. Mutual Cooperation. Each party to this Supplement shall:

- (a) take all actions required of it by the terms of this Supplement as expeditiously as possible;
- (b) cooperate, to the fullest extent possible, with the other party to this Supplement and with any individual, entity or governmental agency involved in or with jurisdiction over the engineering, design, construction or operation of the Infrastructure, or any other improvements which are undertaken in connection with the foregoing, in the granting and obtaining of all easements, rights of way, permits, licenses, approvals and any other permissions necessary for the construction or operation thereof;
- (c) execute and deliver all documents necessary to accomplish the purposes and intent of this Supplement, including, but not limited to, such documents or agreements as may be required by the Developer's lenders with respect to the Infrastructure to secure the Developer's financing from such lenders;
- (d) use its best efforts to assist the other party to this Supplement in the discharge of their respective obligations hereunder; and
- (e) use its best efforts and cooperate with the other party to assure that all conditions precedent to the issuance of the 2001 Bonds and the completion of the Infrastructure is timely satisfied.

Section 512. Permits and Approvals. The Developer shall be responsible for obtaining, at its sole cost and expense, all easements, rights-of-way, licenses, permits, approvals and any other permissions necessary for the construction of the Infrastructure.

Section 513. Force Majeure. No party hereto shall be liable for the failure to perform its obligations hereunder if such failure is due to unforeseeable events beyond, the party's reasonable control and without such party's fault or negligence, including, but not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, flood, epidemics, quarantine restriction, strikes and embargoes, and delays of contractors due to such causes. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; provided, however, that the party seeking relief from

its obligations under this Section 513 shall notify the other parties in writing, Setting forth the event giving rise to such failure to perform, within 10 business days following the occurrence of such event.

Section 514. Nondiscrimination and Local Employment Preference. In addition to the requirements regarding "Construction and Use of the Property - Compliance with Laws" set forth in Article IV of the Agreement. The Developer hereby agrees as follows:

- (a) During the period of construction of the Infrastructure contemplated hereunder, the Developer (including its successors and assigns) shall contractually require that any and all contractors, subcontractors, and suppliers employed or utilized for the Infrastructure shall be required to comply with the requirements set forth in this section as to nondiscrimination and local employment practices.
- (b) Developer (including its successors and assigns) shall comply, and it shall contractually require any and all operators of the Infrastructure, for the term of the financing provided for in this Supplement to comply, with the requirements of this section as to nondiscrimination and local employment practices.
- (c) The contractors, suppliers, and operators of the Infrastructure shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, handicap, marital status, height, weight or sexual preference in the retention of contractors and subcontractors, the hiring of employees, or the purchase of materials and supplies for the Infrastructure, and shall promote the full realization of equal employment opportunity through continuous affirmative action programs.
- (d) The contractors, suppliers, and operators, to the full extent permitted by law, shall provide a preference for City residents and City based businesses which are union and qualified contractors, in the retention of contractors, subcontractors, and the hiring of employees, or the purchase of materials and supplies for the construction and/or operation of the Infrastructure provided for hereunder. City based businesses as referred to herein shall be businesses whose principal place of business is located, or who have a substantial business office located within the corporate limits of the City, or businesses whose principals reside within the City.
- (e) Any and all advertisements or solicitations for employment of contractors or subcontractors, hiring of employees, or purchase of materials or supplies for the construction or operation of the Infrastructure provided for hereunder shall make reference to the requirements of this section. The Contract Compliance Office of the City shall be notified of all employment opportunities and shall be notified of all contracting and subcontracting opportunities, prior to the advertising and solicitation for the trades.

- (f) The Developer, its successors and assigns, and any general contractors or operating entities retained for the construction or operation of the Infrastructure shall provide reports as to their compliance with the provisions of this section to the Pontiac TIFA and the City Contract Compliance Office, and reasonable access to their books and records in relation thereto, to representatives of Pontiac TIFA and City Contract Compliance Office, upon request of Pontiac TIFA and/or City.
- (g) The relevant provisions of this section shall be included in any and all contracts by the Developer (including its successors and assigns) with contractors, suppliers, and employees.

Section 515. Consent to Condominium. The Developer shall prepare condominium documents (the "Condominium Documents") (as required in the Michigan Condominium Act (P.A. 59 of 1978) and the regulations issued pursuant thereto) with respect to the Pontiac Oakland Technology Center and Pontiac Woods Residential Development (as such terms are defined in the Agreement) and deliver the same to the Pontiac TIFA. Within five (5) business days of receipt of the Condominium Documents the Pontiac TIFA shall consent to the Condominium Documents if such documents are consistent with the terms hereof and the Agreement (which consent shall not be unreasonably withheld) and execute such evidence of its consent in recordable form as shall be prepared and delivered by the Developer.

Section 516. Partial Discharge of Mortgage. Subsequent to satisfaction of the requirements of the Michigan Condominium Act and the regulations issued pursuant thereto relative to the creation of the Pontiac Oakland Technology Center Condominium and the Pontiac Woods Residential Development Condominium, including but not limited to the recording of the Master Deeds therefor, the Chairperson of the Pontiac TIFA or his designee shall execute a partial discharge (the "Partial Discharge") of the Mortgage as to a portion of the Property (the "Discharged Property"), in the form attached hereto as Exhibit H, subject to satisfaction of the following conditions:

- (i) The Partial Discharge shall be required: (a) in connection with the closing of an arm's length sale of the Discharged Property to a third party; (b) in connection with the transfer of property to the City pursuant to the Agreement; (c) in connection with closing of additional or new financing obtained by Developer or its affiliates to further develop the Discharged Property, as applicable; or (d) in connection with any partial discharge granted by Flagstar Bank, FSB with respect to a condominium unit comprising a portion of the Mortgaged Property.
- (ii) Developer shall, with respect to each discharge requested, submit a written request for discharge, specifying the property to be discharged, at least seven (7) days prior to the date such discharge is desired.
- (iii) All such discharges shall be granted without any additional compensation payable to the City or the Pontiac TIFA; provided that any and all recording fees, escrow charges, survey costs or other expenses incurred in

connection with the partial or full discharge of the Mortgage shall be paid by Developer.

Section 517. Partial Discharge of Agreement and Supplement. Subsequent to satisfaction of the requirements of the Michigan Condominium Act and the regulations issued pursuant thereto relative to the creation of the Pontiac Oakland Technology Center Condominium and the Pontiac Woods Residential Development Condominium, including but not limited to the recording of the Master Deeds therefor, the Chairperson of the Pontiac TIFA or his designee shall execute a partial discharge (the "Partial Discharge") of any Affidavit of Interest recorded in connection with the Agreement and this Supplement as to a portion of the Property (the "Discharged Property") in the form attached hereto as Exhibit I, subject to satisfaction of the following:

- (i) The Partial Discharge shall be required: (a) in connection with the closing of an arm's length sale of the Discharged Property to a third party; (b) in connection with the transfer of property to the City pursuant to the Agreement; (c) in connection with closing of additional or new financing obtained by Borrower or its affiliates to further develop the Discharged Property, as applicable; or (d) in connection with any partial discharge granted by Flagstar Bank, FSB with respect to a condominium unit comprising a portion of the Mortgaged Property.
- (ii) Developer shall, with respect to each discharge requested, submit a written request for discharge, specifying the property to be discharged, at least seven (7) days prior to the date such discharge is desired.
- (iii) All such discharges shall be granted without any additional compensation payable to the City or Pontiac TIFA; provided that any and all recording fees, escrow charges, survey costs or other expenses incurred in connection with the partial or full discharge of the Agreement (as amended and supplemented from time to time) shall be paid by Developer.

Section 518. Discharge of Developer Upon: (i) completion of the Infrastructure by the Developer, as approved by the Pontiac TIFA pursuant to the Disbursement Agreement; (ii) the dedication of the eligible Infrastructure to the City; and (iii) the reconveyance by the Developer to the City of the Community Center, the Developer shall be discharged of the responsibilities to complete the Infrastructure Work under the Agreement, provided however that, as set forth in Section 6.14 of the Agreement, Article IV, the representations and warranties set forth in Sections 1.08 and 1.09, and the indemnities set forth in Section 2.05 shall survive such discharge.

Section 519. Cure of Defaults. The cure provisions under Section 5.01(b) of the Agreement shall apply to any default under this Supplement.

Section 520. Amendment to Section 3.05 of Development Agreement.

The initial paragraph of Section 3.05 of the Agreement is amended and restated as follows:

"If, within the sooner of three (3) months after obtaining possession of any uncompleted portion of the Development, or three (3) months following expiration of Developer's statutory redemption rights after a foreclosure or six (6) months written notice to the City of Development Lender's commencement of foreclosure proceedings (any of the above, the "Lender Period"), a Development Lender or its successors or assigns have not yet commenced or diligently continued construction, the City may either:"

Section 521. Assumption of Obligations Under Development Agreement.

The Developer hereby assumes all of the liabilities, obligations, duties, covenants of Arco under and pursuant to the Agreement, and agrees to be bound by the terms thereof, as supplemented and amended by this Supplement, with the understanding that the Infrastructure Work to be performed by the Developer with the proceeds of the initial \$23.5 Million in TIFA Bond proceeds shall be limited to the Work described as Phase I Work on attached Exhibit C (it being further understood and agreed that the Infrastructure Work, described as the Phase II Work on attached Exhibit C, will be performed by Developer when, and only when, the proceeds of the second \$11.5 Million TIFA Bond sale for the Development are made available to Developer for such purpose). In addition and in further clarification and confirmation of the terms and conditions of the Agreement, the parties acknowledge and agree that the public dedication of any of the Infrastructure improvements at the Property shall not take place until such time as such improvements are completed and all claims for labor or materials relating thereto have been fully satisfied and paid. The approval of the plans, agreement to fund the costs of any improvements, satisfactory inspection or other approvals by the City shall not be construed in any way to indicate that the subject Infrastructure improvements are or will be accepted by the City.

Arco is hereby released from its obligations under the Agreement.

The City and the Pontiac TIFA consent to aforementioned assumption by Developer.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed as of the date first written above.

ELTEL ASSOCIATES LLC

By: 

Its: Member

PONTIAC TAX INCREMENT FINANCE AUTHORITY

By: 

Its: Chairman

CITY OF PONTIAC

By: 

Its: Mayor

EXHIBIT A

PONTIAC TAX INCREMENT FINANCE AUTHORITY
DISTRICT AND DEVELOPMENT AREA NO. 3

EXHIBIT B

SITE OF DEVELOPMENT

Land located in the City of Pontiac, Oakland County, State of Michigan, described as follows:

Tax Item No. _____.

EXHIBIT C

INFRASTRUCTURE AND COSTS (PHASE I AND PHASE II)

Pontiac CVC
Arco Construction / Charter Development
Combination Tech Park and Residential Development
TIFA Cost Estimate

FINAL BUDGET 12/06/01

	TIFA Bond Issue #1 (Phase I)	TIFA Bond Issue #2 (Phase II)
Construction Contracts (See Attachment 'A' for Detailed Line Items)		
Total Site Preparation	\$5,598,968	\$60,000
Total Underground Work	\$4,889,377	
Total Utilities	\$1,548,091	\$1,508,867
Total Roads and Pavement	\$2,803,320	\$893,589
Total Site Lighting		\$1,259,254
Total Landscaping	<u>\$1,257,790</u>	\$1,377,114
Total Community Center		<u>\$4,634,664</u>
Total All Construction Contracts	\$16,097,546	\$9,733,488
General Overhead 2.0%, General Requirements 4.0%, G.C. Fee 10%	<u>\$2,575,607</u>	<u>\$1,557,358</u>
Total Construction Costs	\$18,673,154	\$11,290,846
Professional Services and Fees		
Construction Contingencies – 8.5%	\$1,587,218	\$959,722
Bonding	\$186,732	\$112,908
Permit Fees	\$250,000	\$15,000
Inspection Fees	\$750,000	\$50,000
A&E Fees	\$850,000	\$450,000
Engineering Inspection Fees	\$36,000	\$10,000
Testing Engineering Fees	\$54,796	
Landscape Planning Fee	\$100,000	\$15,000
Soil Borings	\$30,000	\$2,000
Site Survey Fees	\$100,000	\$62,000
Construction Staking	\$300,000	\$25,000
Site Environmental Fees	\$57,100	\$32,900
Wetlands Mitigation Engineering	\$75,000	
TIFA Title Work	\$50,000	\$25,000
Legal Services	<u>\$400,000</u>	<u>\$125,000</u>
Total Professional Services and Fees	\$4,826,846	\$1,884,530
Total Cost	\$23,500,000	\$13,175,376
Total TIFA Bond Allocation	<u>\$23,500,000</u>	<u>\$11,500,000</u>
TOTAL TIFA Allocation – Phase I & II		<u>\$35,000,000</u>

Pontiac CVC
Arco Construction / Charter Development
Combination Tech Park and Residential Development
TIFA Cost Estimate

Final Construction Cost Estimate – 12/06/01 – Phase I & II Work

	Units	Calculation Notes	Unit Quantity	Items/Actions	TIFA Bond Issue #1 (Phase I Work)	TIFA Bond Issue #2 (Phase II Work)
Site Preparation						
Clearing of Housing Area	acres	Heavy Trees (20% Coverage)	26.8		\$107,200	
Clearing of Housing Area	acres	Light Trees	107.2		\$21,440	
Clearing of Open area of Tech Park	acres	Heavy Trees (60% Coverage)	36.6		\$146,400	
Clearing of Open area of Tech Park	acres	Light Trees	24.4		\$4,880	
Clearing of Ravine and Tree Stand in North Portion of Parcel	acres	Heavy Trees	21.0		\$147,000	
Undercutting and Removal of Unsuitable Soils and Foundations in Housing Area	square foot	unit cost based on 10' deep (\$20 per cubic yard) determined by calculating possible basement area of former buildings where foundations could be - Pending Soil Boring results	87,100.0		\$653,250	
Undercutting and Removal of Unsuitable Soils and Foundations in Tech Park	square foot	Costs will be born by developer of individual parcels Pending Soil Boring results				
Undercutting and Removal of Unsuitable Soils in Ravine and Tree Stand in North Portion of Parcel	allowance	Assumed area of Pending Soil Boring results and final configuration of lots	1.0		\$100,000	
Mass Grading in Housing Area	cu yd	Based on Computer Cut/Fill Analysis (Includes removal of top soil)	800,000.0		\$2,400,000	
Mass Grading in Open Area of Tech Parks	cu yd	Based on Computer Cut/Fill Analysis (Includes removal of top soil)	400,000.0		\$1,200,000	
Mass Grading in Ravine and Tree Stand in North Portion of Parcel	acres	Fill Ravine Area (Includes compacting soils)	21.0		\$294,000	
Erosion Control and storm sewer maintenance - Residential Property	acres	inlet filters \$100 each - silt fence \$1 per lineal foot	134.0		\$67,000	
Erosion Control Maintenance		Weekly cleaning of inlet filters	52.0		\$26,000	
Erosion Control and storm sewer maintenance of Tech Center	acres	inlet filters \$100 each - silt fence \$1 per lineal foot	82.0		\$41,000	
Erosion Control Maintenance		Weekly cleaning of inlet filters	52.0		\$26,000	
Seed and Mulch (erosion Control)	Acre	Assume 20% of Site	43.2		\$60,480	
Excavation of Pond	acres		3.5		\$49,000	
Construction of Pond liner		3.5 Acres with 2 Feet of clay liner equates to approximately 12,000 C.Y. (assumes Imported Material)	12,000.0		\$150,000	
Well to charge Pond	ea.	8" dia. 100 foot deep well with all pumps and accessories (Giffels Estimate)	2.0	Install as part of Phase II work		\$60,000
Flow control for Pond		Included in storm sewer costs				
Environmental Clean-up	allowance	Potential clean up of additional sites State does not clean up	1.0		\$100,000	
Mitigation of wetlands in ravine and pond area	acres	Cost to either mitigate or purchase off-site land	5.0		\$300,000	
Total Site Preparation						
Underground Work						
Water						
Ductile Iron CL. 54 W.M. (8")	lineal feet	(John Carlo Quote)	16,197.6		\$471,511	
Ductile Iron CL. 54 W.M. (12")	lineal feet	(John Carlo Phone)	6,635.4		\$259,512	
Gate Valves	gate valve in well	(John Carlo Quote)	73.0		\$177,938	
Accessories	tapping sleeve w/ valve in well	(John Carlo Quote)	4.0		\$25,000	
Hydrants	hydrant assembly	(John Carlo Quote)	73.0		\$143,137	
Sanitary						
Sewers 8"	lineal feet	(John Carlo Quote)	22,512.0		\$881,795	
Connection to existing Sanitary Sewer	ea	(PI-Con Quote)	8.0		\$12,000	
Manholes	4' dia.	(John Carlo Quote)	102.0		\$144,095	
Service Leads 6" PVC	linear feet	40 feet per unit, 602 units - Tap fee paid for by Builder	24,080.0		\$541,800	
Manholes over existing Sanitary	4' dia.	(John Carlo Phone)				
Storm		(PI-Con Quote)	1.0		\$3,250	
Sewers 24" average	lineal feet	Subject to Final Eng (John Carlo Quote)	45,298.7		\$1,811,946	
Sub-Total					\$5,893,650	\$60,000
Less Negotiate Contract for 5% savings					(\$294,683)	
Revised Total Site Preparation					\$5,598,968	\$60,000

Pontiac CVC
Arco Construction / Charter Development
Combination Tech Park and Residential Development
TIFA Cost Estimate

Final Construction Cost Estimate – 12/06/01 – Phase I & II Work

	Units	Calculation Notes	Unit Quantity	Items/Actions	TIFA Bond Issue #1 (Phase I Work)	TIFA Bond Issue #2 (Phase II Work)
24" End Section	ea	(PI-Con Quote)	3.0		\$4,095	
Manholes	4' dia.	(John Carlo Quote)	153.0		\$205,369	
Catch Basins (paving)	ea	(John Carlo Quote)	185.0		\$231,250	
Inlets (pavement)	ea	(PI-Con Quote)	7.0		\$5,775	
Sump Pump Leads 4"PVC	linear feet	20 feet per unit, 602 units (John Carlo Phone)	12,040.0		\$132,440	
Catch Basins (yard)	ea	(John Carlo Quote)	102.0		\$91,800	
Connection to existing storm sewer	ea	(PI-Con Quote)	4.0		\$4,000	
Total Underground Work				Sub-Total	\$5,146,713	
				Negotiate Contract for 5.0% savings	(\$257,336)	
				Revised Total Underground Work	\$4,889,377	
Utilities						
Electricity						
Service Conduit, Cable, Switch Cabinets, and Accessories	allowance	Based on overhead lines in Tech Park and one transformer		install one transformer system per DTE quote on 10/15/01 and install second transformer in Phase II	\$1,548,091	\$1,508,867
Gas		To be installed and paid by Consumers Energy				
Total Utilities					\$1,548,091	\$1,508,867
Roads and Pavement						
		(John Carlo's numbers except where noted)				
Commercial Road (In Tech Park)	square yard	Concrete Pavement 34' wide length as measured	16,829.0		\$591,034	
Fine Grade	square yard	(B&V Quote)	16,829.0		\$13,631	
Commercial Curb and Gutter	linear feet	As measured	8,908.0		\$125,603	
Cul de sacs in off commercial road in Tech Park	per unit	Includes pavement, curb and gutter, water, storm, sanitary, and all manholes, catch basins etc.	3.0		\$434,079	
Telegraph Road deceleration lane and curb cut	allowance		1.0		\$250,000	
Residential Road	square yard	Asphalt pavement 28' wide length as measured (3" on 8" Base)	58,657.0		\$800,081	
Fine Grade	square yard	(B&V Quote)	58,657.0		\$47,512	
Residential Curb and Gutter	linear feet	As measured	49,995.0		\$449,955	
Main Elizabeth Lake Road deceleration lane and curb cut	allowance		1.0		\$150,000	
Secondary Elizabeth Lake Road deceleration lanes and curb cuts (2 required)	allowance		2.0		\$150,000	
Alley	square yard	Asphalt pavement 20' wide	22,320.0	Reduce cost by 66% by eliminating all single family alleys and go to front entrance garages.	\$101,993	
Fine Grade	square yard	(B&V Quote)	22,320.0	Reduce cost by 66% by eliminating all single family alleys and go to front entrance garages.	\$911	
Pedestrian Sidewalks including ADA corners (Tech Park)	Square foot	Only includes Sidewalk along areas not for sale in Tech Park (5' wide) Parking Lot 1 Side	15,500.0	Install as part of Phase II work		\$57,970
Pedestrian Sidewalks including ADA corners (Residential)	49,995 x 5 ft wide = 249,975 sf	Sidewalk length would approximately equal the residential curb length	249,975.0	Install as part of Phase II work		\$934,907
Total Roads and Pavement				Sub-Total	\$3,114,800	\$992,877
				Negotiate Contract for 10% savings	(\$311,480)	(\$99,288)
				Revised Total Roads and Pavement	\$2,803,320	\$893,589
Site Lighting						
Parking Lots	number of fixtures	Number of fixtures needed for 93,000sf of parking	9.0	Install as part of Phase II work		\$48,600
Decorative Pedestrian	number of fixtures	Decorative Lighting at 150-200' intervals on all sidewalks using fiberglass Poles in lieu of metal	200.0	Install as part of Phase II work		\$740,000
Street	number of fixtures	One Light at every intersection and mid block - maximum 300' between lights	104.0	Install as part of Phase II work		\$509,600
Total Site Lighting				Sub-Total		\$1,298,200
				Negotiate Contract for 3.0% Savings		(\$38,946)
				Revised Total Site Lighting		\$1,259,254
Landscaping						
Landscape of open space	acre	Based on Design Team Estimate			\$108,719	
Irrigation of open space	acre	Based on Design Team Estimate			\$70,945	
Buffer area between residential and tech park (trees and shrubs see below)	acre	Based on Design Team Estimate		Install as part of Phase II work		\$103,868

Pontiac CVC
Arco Construction / Charter Development
Combination Tech Park and Residential Development
TIFA Cost Estimate

Final Construction Cost Estimate - 12/06/01 - Phase I & II Work

	Units	Calculation Notes	Unit Quantity	Items/Actions	TIFA Bond Issue #1 (Phase I Work)	TIFA Bond Issue #2 (Phase II Work)
Railroad Buffer (trees and shrubs see below)	acre	Based on Design Team Estimate		Install as part of Phase II work		\$148,600
Residential - Street Trees	tree	Based on Design Team Estimate		Install as part of Phase II work		\$574,897
Residential - Linear Park	tree	Based on Design Team Estimate			\$153,688	
Residential - Park	Tree	Based on Design Team Estimate			\$27,925	
Residential - Perimeter Landscape	tree	Based on Design Team Estimate			\$84,637	
Residential - Open Space	tree	Based on Design Team Estimate			\$85,127	
Tech Park - Street Trees	tree	Based on Design Team Estimate		Install as part of Phase II work		\$135,560
Tech Park - Additional Street Trees	tree	Based on Design Team Estimate		Install as part of Phase II work		\$40,746
Shrubs (buffer areas)	allowance	Based on Design Team Estimate		Install as part of Phase II work		\$64,600
Pond Fountains (floating units in large pond)	unit	Based on Design Team Estimate	2.0			\$10,000
Main Entrance Feature to Pontiac Woods	allowance	Based on Arco's Estimate	1.0		\$200,000	
Secondary Entrances to Pontiac Woods	allowance	Based on Arco's Estimate	2.0		\$80,000	
Entrance feature at Tech Park - Sign w/ lighting and landscaping	allowance	Based on Arco's Estimate	1.0		\$250,000	
Site Amenities (gazebo benches etc.	allowance	Based on Design Team Estimate			\$40,000	
Additional Landscaping required by City of Pontiac	allowance	Based on Madhu's memo after Planning Commission Meeting	1.0	Install as part of Phase II work		\$334,154
12 month landscape maintenance	allowance	Based on Arco's Estimate	1.0		\$124,000	
Street Signs on decorative poles	per pole	2 per 4 way intersection	65.0		\$65,000	
Total Landscaping					\$1,290,041	\$1,412,424
				Negotiate Contract for 2.5% savings	(\$32,251)	(\$35,311)
				Revised Total Landscaping	\$1,257,790	\$1,377,114
Community Center						
Structure and Systems	Square Feet	2 floors x 12,000sf = 24,000 sf	24,000.0	Install as part of Phase II work		\$3,960,000
Landscape	allowance		1.0	Install as part of Phase II work		\$50,000
Fountain	allowance	7,853 sf area	1.0	Install as part of Phase II work		\$150,000
Pool	Square Feet		3,319.0	Install as part of Phase II work		\$300,004
Parking (Both Residential and Tech Park side)	per car	93014 / 350 per car =	265.0	Install as part of Phase II work		\$318,000
Total Community Center						
				Sub-total		\$4,778,004
				Negotiate Contract for 3.0% savings		(\$143,340)
				Revised Total Community Center		\$4,634,664
Total All Items					\$16,097,546	\$9,733,488
General Overhead, General Requirements, G.C. Fee		12.5% x total all items		General Overhead 2.0%, General Requirements 4.0%, G.C. Fee 10%	\$2,575,607	\$1,557,358
Total Construction Costs					\$18,673,154	\$11,290,846

EXHIBIT D

PROPOSED SCHEDULE OF EVENTS FOR THE AMENDMENT OF DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN AND ISSUANCE OF BONDS

<u>DATE</u>	<u>ACTION</u>
_____, 2001	TIFA Board approves required amendments to Development Plan and Tax Increment Financing Plan (the "Amendments") and submits the Amendments to City Council.
_____, 2001	TIFA Board approves Development Agreement .
_____, 2001	TIFA Board submits the proposed Amendments to City Council which adopts Resolution setting Public Hearing on the proposed Amendments for September 27, 2001.
_____, 2001	First Notice of Public Hearing on the Amendments is published in <u>The Oakland Press</u> (not less than 20 days prior to the date of the Public Hearing) by City Clerk and is mailed to the taxpayers of record by the TIFA staff as required by Section 17(1). Notice containing information required in Section 17(2).
_____, 2001	Second Notice of Public Hearing on the Amendments is published in <u>The Oakland Press</u> by City Clerk.
September 27, 2001	City Council holds Public Hearings on the Amendments.
September 27, 2001	City Council adopts Resolution approving the Amendments pursuant to Section 18(1).
November 27, 2001	TIFA Board adopts Bond Authorizing Resolution and Resolution approving Supplement.
_____, 2001	City Council approves Supplement.
December __, 2001	TIFA Staff applies for Treasury Approval or Exception Therefrom.
_____, 2001	Michigan Department of Treasury issues Order of Approval or Exception from Prior Approval of the bond issue.
November 26, 2001	Expiration of 60 days following date City Council adopted Resolution approving the Amendments, the period within which a challenge may be filed to the procedures, adequacy of notice and the findings of the City Council under Section 18(l).
December __, 2001	Preliminary Official Statement published.

December __, 2001 Pricing of Bonds occurs and TIFA Board adopts Sale Resolution (unless authority to approve sale is delegated by the TIFA Board to the Chairman).

_____, 2001 Bond Purchase Agreement executed.

December 19, 2001 Closing and Delivery of the Bonds.

EXHIBIT E

Projected Project Tax Increment Revenue
and Debt Service Schedule

[To Come]

Exhibit F

Form of Disbursement Agreement

Exhibit G
Form of Mortgage

Exhibit H
Form of Partial Discharge of Mortgage

PARTIAL DISCHARGE OF MORTGAGE

THIS PARTIAL DISCHARGE OF MORTGAGE, executed as of the ____ day of _____, 200__, by the **CITY OF PONTIAC TAX INCREMENT FINANCE AUTHORITY** ("Pontiac TIFA"), whose address is 8 N. Saginaw Street, Pontiac, Michigan 48342 in favor of **ELTEL ASSOCIATES LLC** ("Eltel"), whose address is 25200 Telegraph Road, Suite 410, Southfield, Michigan 48034.

WITNESSETH:

WHEREAS, the City of Pontiac, Pontiac TIFA and Arco Construction Company ("Arco") entered into a Development Agreement dated as of July 27, 2001 (the "Original Agreement");

WHEREAS, the rights of Arco under the Original Agreement were assigned to Eltel;

WHEREAS, the City of Pontiac, Pontiac TIFA and Eltel have entered into Supplement No. 1 to Development Agreement dated as of December __, 2001 (the "Supplement") which amends the Original Agreement to address, inter alia, matters relating to the issuance of certain tax exempt increment revenue bonds to finance the acquisition, construction and installation of infrastructure improvements in the City of Pontiac, as more particularly described in the Supplement. The Original Agreement as amended and supplemented from time to time, is referred to herein as the "Development Agreement";

WHEREAS, in connection with the Development Agreement and to secure its obligations thereunder, Eltel granted to Pontiac TIFA a Mortgage and Security Agreement dated as of December __, 2001 (the "Mortgage"), which Mortgage was recorded in the office of the Register of Deeds for the County of Oakland, State of Michigan, in Liber ____, Page ____ against certain real property more particularly described therein (the "Property");

WHEREAS, Eltel has requested the discharge of a portion of the Property set forth on Exhibit "A" hereto (the "Discharged Property") from the provisions of the Mortgage, and Pontiac TIFA is amenable to granting such discharge on the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Pontiac TIFA does hereby expressly discharge the Discharged Property from the lien and security interest of the Mortgage.

This discharge is effective as to only the land described below, and not as to any other land described in the Mortgage.

Witnesses:

THE CITY OF PONTIAC TAX
INCREMENT FINANCE AUTHORITY

By: _____

Its: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by _____, the _____ of the CITY OF PONTIAC TAX INCREMENT FINANCE AUTHORITY, on behalf of the Authority.

_____, Notary Public
_____, County, Michigan
My Commission Expires:

DRAFTED BY:

Anthony J. Mavrinac, Esq.
Miller, Canfield, Paddock
and Stone, P.L.C.
150 W. Jefferson St.
Detroit, Michigan 48226

WHEN RECORDED RETURN TO:

Gregory J. DeMars, Esq. _____
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226-3583

Exhibit I

Form of Partial Discharge of Development Agreement

PARTIAL DISCHARGE FROM DEVELOPMENT AGREEMENT

THIS PARTIAL DISCHARGE FROM DEVELOPMENT AGREEMENT, executed as of the ____ day of _____, 200__, by the **CITY OF PONTIAC TAX INCREMENT FINANCE AUTHORITY** ("Pontiac TIFA"), whose address is 8 N. Saginaw Street, Pontiac, Michigan 48342 in favor of **ELTEL ASSOCIATES LLC** ("Eltel"), whose address is 25200 Telegraph Road, Suite 410, Southfield, Michigan 48034.

WITNESSETH:

WHEREAS, the City of Pontiac, Pontiac TIFA and Arco Construction Company ("Arco") entered into a Development Agreement dated as of July 27, 2001 (the "Original Agreement");

WHEREAS, the rights of Arco under the Original Agreement were assigned to Eltel;

WHEREAS, the City of Pontiac, Pontiac TIFA and Eltel have entered into Supplement No. 1 to Development Agreement dated as of December __, 2001 (the "Supplement") which amends the Original Agreement to address, inter alia, matters relating to the issuance of certain tax exempt increment revenue bonds to finance the acquisition, construction and installation of infrastructure improvements in the City of Pontiac, as more particularly described in the Supplement. The Original Agreement as amended and supplemented from time to time, is referred to herein as the "Development Agreement";

WHEREAS, an Affidavit of Interest in favor of Pontiac TIFA dated as of December __, 2001 was recorded in the office of the Register of Deeds for the County of Oakland, State of Michigan, in Liber _____, Page ____ against certain real property more particularly described therein (the "Property"), so that the terms and conditions of the Development Agreement would be a burden upon, and run with, the Property;

WHEREAS, Eltel has requested the discharge of a portion of the Property set forth on Exhibit "A" hereto (the "Discharged Property") from the provisions of the Development Agreement, and Pontiac TIFA is amenable to granting such discharge on the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Pontiac TIFA does hereby expressly discharge the Discharged Property from the terms and conditions of the Development Agreement, including, without limitation, any right of reverter; provided that such discharge does not extend to any obligations or covenants of Eltel under the Development Agreement.

This discharge is effective as to only the land described below, and not as to any other land described in the Development Agreement.

Witnesses:

THE CITY OF PONTIAC TAX
INCREMENT FINANCE AUTHORITY

By: _____

Its: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by _____, the _____ of the CITY OF PONTIAC TAX INCREMENT FINANCE AUTHORITY, on behalf of the Authority.

_____, Notary Public
_____, County, Michigan
My Commission Expires:

DRAFTED BY:

Anthony J. Mavrinac, Esq.
Miller, Canfield, Paddock
and Stone, P.L.C.
150 W. Jefferson St.
Detroit, Michigan 48226

WHEN RECORDED RETURN TO:

Gregory J. DeMars, Esq. _____
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226-3583

