



# REPORT TO COUNCIL

## City of Sacramento

915 I Street, Sacramento, CA 95814-2604  
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**Staff Report**  
**March 16, 2010**

**Honorable Mayor and  
Members of the City Council**

**Title: Agreement: Township 9 Proposition 1C Grant Agreements**

**Location/Council District:** District 1, River District

**Recommendation:** Adopt a Resolution: 1) establishing the Township 9 Infill Infrastructure Capital Improvement Project (B18219000); 2) establishing a \$30 million capital grant (Fund 3704) revenue and expenditure budget in B18219000 to be funded with the Proposition 1C grant funds; 3) approving an Assignment Agreement for the Proposition 1C Infill Infrastructure Grants for the Township 9 Project to Capitol Station 65, LLC; 4) approving a Loan Commitment to Township 9 Sacramento L.P. for the St. Anton Affordable Housing Parking Garage; and 5) authorizing the City Manager to assign the St. Anton loan commitment to the Sacramento Housing and Redevelopment Agency.

**Contact:** Rachel Hazlewood, Senior Project Manager (808-8645)  
Sheryl Patterson, Senior Deputy City Attorney (808-7292)

**Presenters:** Rachel Hazelwood

**Department:** Economic Development

**Division:** Downtown Group

**Organization No:** 18000

### **Description/Analysis**

**Issue:** In 2008 and 2009, the City was awarded Proposition 1C Infill Infrastructure grants from the State Department of Housing and Community Development (HCD) for the Township 9 project. Part of the HCD grants provides funds for project infrastructure and part is in support of the affordable housing project. This action establishes a Capital Improvement Project (CIP) revenue and expenditure budget for the grant funds. It also approves two agreements to convey the City's interests in the grants. An Assignment Agreement would assign the City's grant interest in the infrastructure funding to the property owner and developer, Capitol Station 65, LLC. A Loan Commitment would convey the City's grant interest in the parking garage component to the affordable housing developer, Township 9 Sacramento

L.P. (St. Anton). It further authorizes the City Manager to assign the St. Anton loan commitment to the Sacramento Housing and Redevelopment Agency (SHRA) so that SHRA can administer the loan along with its other project financing.

The City, on behalf of the Township 9 project, requested an allocation of \$30 million in Proposition 1C funds as a Qualified Infill Area. In June, 2008, the City was awarded \$19.1 million (round one) and in July, 2009, the City was awarded the additional \$10.9 million (round two) funding. The City has executed the grant agreement with HCD for the round one award and is expected to execute the grant agreement for the second round award shortly. The terms of the grant agreements for round one and round two are the same with the exception of the number of market-rate and affordable housing units required to be developed. At the time the grant applications were approved, the City Council authorized the City Manager to execute the HCD Proposition 1C grant agreements for the Township 9 project. The proposed actions would implement the round one grant agreement by allocating funding for the authorized improvements to be constructed by the respective developers.

The Proposition 1C grants were awarded for specified infrastructure improvements and for the parking garage that is to be constructed as an integral part of the affordable housing project. The specific improvements to be funded with the Proposition 1C grant funds are listed in the Background, Attachment 1.

The HCD grant agreement allows the City to provide the Proposition 1C grant funds to Capitol Station 65, LLC as the grant subrecipient for the infrastructure projects and to Township 9 Sacramento L.P. as the grant subrecipient for the affordable housing parking garage improvement. St. Anton has requested that the City separately loan its portion of the Proposition 1C grant proceeds. This loan would be forgiven over its 55 year term; the developer would not be obligated to repay the loan proceeds except in the event of a default.

The combined \$30 million in HCD grants will provide \$22.8 million to fund infrastructure improvements, including streets and utilities, the light rail station and park development. For the affordable housing project, the Proposition 1C funding will cover the \$7.2 million cost to construct the parking garage.

In addition to the Proposition 1C funding, prior actions of the City Council in support of the Township 9 project have provided \$2.2 million in CIP funding for the reconstruction of North 7<sup>th</sup> Street (Resolution No. 2008-283) and \$1.1 million in Community Development Block Grant-Recovery Act (CDBG-R), stimulus funding, for building demolition (Resolution No. 2009-321). The CDBG-R funds are being reprogrammed in the CDBG Action Plan amendment to support the infrastructure improvements needed to serve the affordable housing units.

The City previously allocated \$3 million in Housing Trust Funds (Resolution No. 2009-225) for construction of the housing units and St. Anton intends to seek additional SHRA loans in the amount of up to \$2.5 million, depending on the final cost estimates and availability of other funding sources. SHRA has identified federal HOME funding and River District redevelopment housing set-aside tax increment

funds as possible resources which could be made available and has provided written assurance of its intent to consider recommending allocation of Agency funding for this project to the extent additional gap financing is required.

**Policy Considerations:** The recommendation is consistent with the City Council direction and actions regarding the Proposition 1C grant applications for the Township 9 project on March 18, 2008 (Resolution No. 2008-164) and on March 10, 2009 (Resolution No. 2009-147). The recommendation is also consistent with the City's Smart Growth Principles, the River District Redevelopment Implementation Plan, the 2002 Infill Strategy and the transit-supportive housing policies in the 2030 General Plan.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The environmental impacts of construction of the infrastructure improvements, the affordable housing project, and the market-rate housing, which are the subject matters of the agreements referenced in this report, were included in the Township 9 Project Environmental Impact Report (EIR), which was certified on August 28, 2007 (Resolution No. 2007-641). There have been no project changes or new information of substantial importance which would require reevaluation of the EIR for compliance with CEQA to support the proposed actions.

**Sustainability Considerations:** The improvements to be funded with the Proposition 1C grant funds have been reviewed for consistency with the goals, policies and targets of the City's Sustainability Master Plan and the 2030 General Plan. The improvements comply with many of the goals, in particular Goal Number Six - Urban Design, Land Use, Green Building and Transportation specifically by reducing dependence on the private automobile by providing efficient and accessible public transit and transit-supportive land uses, and reducing long commutes by providing a wide array of transportation and housing choices near jobs for a balanced, healthy City.

**Commission/Committee Action:** NA

**Rationale for Recommendation:** The Township 9 project is a major infill and transit-oriented development project, with 15% of the housing to be built for low and very low income households (179 affordable units plus one manager unit) per the requirements of the Proposition 1C HCD grants. It is expected to promote increased transit ridership in Sacramento. The Proposition 1C HCD grants will fund a portion of the infrastructure needed for the housing development, the future light rail station on Richards Boulevard, Riverfront Park, the North 7<sup>th</sup> Street Parkway and the parking garage for the affordable housing project.

**Financial Considerations:** The Township 9 infrastructure (light rail station, streets, utilities and park facilities) is estimated to cost \$27.6 million. The two Proposition 1C HCD grants will help fund \$22.8 million of these costs. In addition, under the project's traffic mitigation obligations, the developer has to dedicate the land for the light rail station and track alignment to Regional Transit at no cost. The following table outlines the funding for the infrastructure project.

<b>Township 9 Infrastructure</b>			
<b>City Funding</b>			
<u>Project Number</u>	<u>Fund Name / Number</u>		<u>Budget</u>
B18219000	Other Capital Grant (Prop 1C)	3704	22,800,000
T15088800	Measure A	2001	2,200,000
		Subtotal City Funding:	25,000,000
<b>Other Funding Sources</b>			
			<b>Budget</b>
SHRA	CDBG-R	2700	1,100,000
TBD	Developer Funding	3702	1,500,000
		Subtotal Other Funding:	2,600,000
		<b>Total Township 9 Infrastructure Funding:</b>	<b><u>\$27,600,000</u></b>

For the affordable housing project, the total cost for the 180 unit project is estimated at \$37.6 million (see table below). The developer, St. Anton, will seek tax credits and a 4% bond allocation totaling \$22.4 million. The City has already allocated \$3 million in housing trust funds for this housing project. The round one Proposition 1C grant will fund \$7.2 million of these costs for the parking garage under a loan agreement. Up to an additional \$2.1 million may be needed for the financing gap, and federal HOME funds and redevelopment housing set-aside funds are expected to become available so that the can be undertaken in accordance with the milestone schedule set out in the Proposition 1C grant agreements.

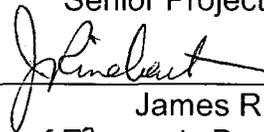
<b>Township 9 Housing (Proposed)</b>			
<b>City Funding</b>			
<u>Project Number</u>	<u>Fund Name / Number</u>		<u>Budget</u>
B18219000	Other Capital Grant (Prop 1C)	3704	7,200,000
<b>Other Funding Sources</b> <i>(not budgeted through the City)</i>			
			<b>Budget</b>
Tax Credits/Bond Loan		Private	22,400,000
Housing Trust Funds		SHRA	3,000,000
Developer Funding		Developer	2,900,000
HOME / Tax Increment (Housing)		SHRA	<u>2,100,000</u>
		Subtotal Other Funding:	30,400,000
		<b>Total Township 9 Housing Funding:</b>	<b><u>\$37,600,000</u></b>

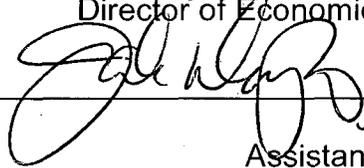
The City is the recipient of the Proposition 1C grants and is responsible for delivery of the infrastructure improvements and the market rate and affordable housing units. HCD recognizes in the grant agreements that the City will delegate its obligations to Capitol Station 65, LLC, as the master developer and to Township 9 Sacramento L.P. as the affordable housing developer under the Assignment Agreement and the loan; however, the City is ultimately responsible for the performance of its grant subrecipients. HCD will record a covenant on the property to insure that the grant obligations can be enforced against existing and future property owners. The City's

Assignment Agreement includes performance bonds, indemnity obligations and other remedies in the event of a default by Capitol Station 65, LLC. The \$7.2 million loan to Township 9 Sacramento L.P. for the parking garage will not close until SHRA determines that the affordable housing project has secured all of the funding required and is ready to proceed into construction.

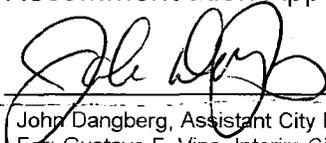
**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report.

Respectfully Submitted by:   
Rachel Hazlewood  
Senior Project Manager

Approved by:   
James R. Rinehart  
Director of Economic Development

Approved by:   
John Dangberg  
Assistant City Manager

Recommendation Approved:



John Dangberg, Assistant City Manager  
For: Gustavo F. Vina, Interim City Manager, March 11, 2010

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## Attachment 1

### Background

The Proposition 1C funding is provided by HCD for specified improvements necessary for development of both the affordable and the market rate housing which are part of the Township 9 project. The Proposition 1C grant funds would be used for the following Township 9 project components:

#### Infrastructure Improvements

##### Proposition 1C Round One Grant Scope of Work:

1. North 7<sup>th</sup> Street Light Rail Station - Demolition of the existing buildings and improvements; site preparation; underground utilities including sewer, water and storm drain and dry utilities; hardscape surface improvements; landscaping; station structures; signage and monumentation.
2. Richards Boulevard - Improvements along Richards Boulevard, between North 5<sup>th</sup> Street and North 7<sup>th</sup> Street, and demolition of existing improvements; site preparation; underground utilities including sewer, water and storm drain and dry utilities; hardscape surface improvements; landscaping; station structures; signage and monumentation.
3. North 7<sup>th</sup> Street/Parkway - Reconstruction and expansion of North 7<sup>th</sup> Street between Richards Boulevard and the American River Parkway, including demolition of existing improvements, site preparation, installation of underground utilities including sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signalization, signage, striping, landscaping, site furniture, and water features.
4. Internal Streets "D", "E", and "F" - As shown on the approved tentative map as necessary to support development of the affordable housing project, including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.
5. Riverfront Drive – Preliminary improvements to Riverfront Drive, between North 5<sup>th</sup> Street and North 7<sup>th</sup> Street, including site preparation and grading.

##### Proposition 1C Round Two Grant (\$10.9 million) Scope of Work:

6. Internal Streets "D", "E", and "F" - Completion of residential streets, including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.
7. Riverfront Drive – Completion of improvements to Riverfront Drive, including site preparation, grading and the installation of underground utilities including sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, landscaping, and site furniture.

8. Riverfront Park – Development of the park abutting the levee, including site preparation, grading excavation and soil import, and the installation of underground utilities including sewer, water, and storm drain, curb, gutter, sidewalk, paving, signage, striping, landscaping, site furniture, water features and dry utilities.

**Affordable Housing Project (180 units)**

HCD Round One Grant Scope of Work:

1. Parking Garage – Construction of a 180 space structured parking garage designed to support the housing units to be located above the garage.

## **RESOLUTION NO. 2010-**

Adopted by the Sacramento City Council

### **ESTABLISHING A CAPITAL IMPROVEMENT PROJECT AND A REVENUE AND EXPENDITURE BUDGET FOR THE TOWNSHIP 9 INFILL INFRASTRUCTURE PROJECT, APPROVING AN ASSIGNMENT AGREEMENT FOR TOWNSHIP 9 INFILL PROPOSITION 1C HCD GRANTS WITH CAPITOL STATION 65, LLC, AND APPROVING THE LOAN COMMITMENT WITH TOWNSHIP 9 SACRAMENTO L.P. FOR THE AFFORDABLE HOUSING PARKING GARAGE**

#### **BACKGROUND**

- A. The Township 9 project is a catalyst, transit-oriented, mixed-use development project located in the River District along Richards Boulevard between North 5<sup>th</sup> Street and North 7<sup>th</sup> Street. The Township 9 project will include a total of 2,350 housing units, of which 179 units will be affordable to low, very low and extremely low income households, and approximately 800,000 square feet of office, and 150,000 square feet of neighborhood serving commercial uses. The Township 9 project will be served by the first phase of the Downtown-Natomas-Airport light rail line, with a station at Township 9 along Richards Boulevard. The City Council approved the entitlements for the Township 9 project for the property owner, Capitol Station 65, LLC, on August 28, 2007.
- B. On March 18, 2008 (Resolution No. 2008-164), the City Council approved submittal of an application to the State Department of Housing and Community Development (HCD) for an Infill Infrastructure Grant under the Proposition 1C program on behalf of the Township 9 project as a Qualified Infill Area under HCD's grant regulations. In June of 2008, HCD awarded the City \$19.1 million in Infill funding for the Township 9 project.
- C. On March 10, 2009 (Resolution No. 2009-147), the City Council approved submittal of a second application to HCD for the Township 9 project for an additional Infill grant because the project was not awarded the full amount of its eligibility during the first round of applications. In July of 2009, HCD awarded the City an additional \$10.9 million in Proposition 1C Infill funding for the Township 9 project.
- D. The Proposition 1C grants will fund certain streets, utilities, and parks needed for development of the Township 9 project (collectively "Improvements"), a parking garage that is an integral part of the affordable housing project ("Parking Garage"), and preparation of the light rail station site and related station improvements ("Light Rail Station").

- E. The City has executed the HCD agreements for the initial \$19.1 million Proposition 1C grant and anticipates execution of the agreements for the second \$10.9 million Proposition 1C grant shortly. Some of the same infrastructure and park improvements are to be funded under both grants.
- F. Capitol Station 65, LLC ("Master Developer") has prepared preliminary design plans for the Improvements and desires to commence construction of the Improvements and the Light Rail Station in the near future in order to meet the milestone and disbursement deadlines in the Proposition 1C grant agreements. Commencement of construction of the market-rate housing components of the Township 9 project would occur thereafter. The City desires to assign its rights and obligations under the Proposition 1C grants to the Master Developer to allow for the Proposition 1C funding to be made available to pay for the Improvements and the Light Rail Station and Master Developer desires to assume such obligations.
- G. Master Developer has entered into an option and development agreement with Township 9 Sacramento L.P. ("Affordable Housing Developer") to transfer title to parcels 11A and 11C as shown in the Township 9 Tentative Master Parcel Map for development of the 180 unit affordable housing project. The Master Developer will undertake the off-site improvements needed for development of these parcels with the initial Proposition 1C grant. The Master Developer consents to City loaning a portion of the initial Proposition 1C grant to the Affordable Housing Developer to fund the costs of the Parking Garage.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The Township 9 Infill Infrastructure Project (B18219000) is hereby established as a new Capital Improvement Project.
- Section 2. A \$30 million revenue and expenditure budget for the Township 9 Infill Infrastructure Project (B18219000) to be funded with the Proposition 1C grant funds (Fund 3704) is hereby established.
- Section 3. The Township 9 Infill Grant Assignment and Assumption Agreement ("Assignment Agreement") whereby \$11.9 million is to be provided to Capitol Station 65, LLC to fund the Improvements and the Light Rail Station in accordance with the terms of the initial Proposition 1C grant agreement, as the grant subrecipient for the Infrastructure Project, is hereby approved. The City Manager, or his designee, is authorized to execute in the Assignment Agreement, which is attached as Exhibit 1, and to execute any documents that may be required for implementation of the Proposition 1C grant, including authorizing HCD to make direct payments to Capitol Station 65, LLC, subject to City's approval of each draw request.
- Section 4. The City Manager, or his designee, is authorized to execute an amendment to the Assignment Agreement with Capitol Station 65 LLC to

provide an additional \$10.9 million in Proposition 1C grant funding for the Improvements in accordance with the terms of the second Proposition 1C grant agreement, once that HCD grant agreement has been fully executed.

Section 5. The Township 9 Affordable Housing Loan Commitment, whereby a total of \$7.2 million in Proposition 1C grant funding (the "Loan") is to be provided to Township 9 Sacramento L.P. to fund the Parking Garage that is to be built to serve the 180 unit affordable housing project in accordance with initial Proposition 1C grant agreement, is hereby approved. The Loan terms are to include interest on the principal at the current market rate, but payment is to be forgiven over a term of fifty five (55) years as long as the housing remains affordable in accordance with the recorded HCD covenant. The City Manager, or his designee, is authorized to execute the Loan Commitment, which is attached as Exhibit 2. Subject to City Attorney approval, the City Manager, or his designee, is authorized to negotiate the terms and conditions of the Loan agreement, execute the Loan documents with Township 9 Sacramento L.P. or its affiliate, enter into subordination agreements and perform similar lender functions, and to execute any documents that may be required for implementation of the Proposition 1C grant for the Township 9 affordable housing project, including authorizing HCD to make direct payments to Township 9 Sacramento L.P. or its affiliate, subject to City's approval of each draw request.

Section 6. The City Manager, or his designee, is authorized to assign the Loan to the Sacramento Housing and Redevelopment Agency ("SHRA") for purposes of providing oversight of the Parking Garage and affordable housing construction, monitoring compliance with the HCD affordability covenant, entering into subrogation agreements and performing similar lender functions. If the Loan is so assigned, the City Manager, or his designee, is authorized to execute a designated payee authorization to allow HCD to make Proposition 1C grant payments for the Parking Garage directly to SHRA.

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Exhibit 1 – Assignment Agreement

Exhibit 2 – Loan Commitment

Exhibit 1

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
PROPOSITION 1C INFILL INFRASTRUCTURE PROGRAM GRANT  
TOWNSHIP 9 PROJECT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010 ("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and CAPITOL STATION 65 LLC, a limited liability company (hereinafter the "DEVELOPER"). CITY and DEVELOPER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

**RECITALS**

A. **Project Site.** The Township 9 project is located on 65 acres of land which lie north of Richards Boulevard between North 5<sup>th</sup> and North 7<sup>th</sup> Streets in the River District area of the City of Sacramento (the "Project Site"). DEVELOPER owns the land encompassing the Project Site, referred to as Assessor Parcel Numbers 001-0020-003, -019, -034, -036, -041, -044, -045, -046, and 001-0200-012, -013 and -034 (the "Property").

B. **Development Project.** On August 28, 2007, the City Council approved certain entitlements for development of 2,350 housing units, 839,628 square feet of office, 147,000 square feet of retail, 5,389 off-street parking spaces and 27 acres of parks and open space at the Project Site based on the development scenario B that was evaluated in the environmental impact report (the "Development Project"). By Resolution No. 2007-643 and Ordinance No. 2007-071, the City Council approved the Township 9 Planned Unit Development ("PUD") Schematic Plan and PUD Design Guidelines (collectively "PUD Plan and Guidelines") to specify the development standards and design requirements for the Development Project, and rezoned the Property consistent with the PUD Schematic Plan.

C. **Tentative Map.** On August 28, 2007, by Resolution No 2007-644, the City Council approved the tentative map to authorize subdivision of the 65 acre Project Site into 36 parcels, to require the construction of infrastructure improvements which are needed for the Development Project, and to impose certain requirements before a final map for a parcel can be recorded ("Tentative Map"). The requirements include compliance with the entitlements, PUD Plan and Guidelines and CEQA Mitigation.

D. **Environmental Mitigation.** On August 28, 2007, by Resolution No. 2007-641, the City Council certified the environmental impact report ("EIR"). As part of the EIR certification, the City Council adopted mitigation measures and approved a mitigation monitoring plan for the Development Project (collectively "CEQA Mitigation").

E. **Development Agreement.** On August 28, 2007, by Ordinance No. 2007-069, CITY and DEVELOPER entered into a contract (Agreement No. 2007-1081, the Development Agreement") to vest certain rights of DEVELOPER and to impose certain obligations in regards to the Development Project. The Development Agreement was amended on September 3, 2008 to include and clarify termination and lender notice and cure rights (Agreement No. 2007-1081-1). Under the Development Agreement, DEVELOPER agreed to dedicate the land for the light rail station and to undertake the design

and construction of all park improvements under a turnkey agreement.

F. **North 7<sup>th</sup> Street Reconstruction Agreement.** On May 13, 2008, by Resolution No, 2008-283, the City Council authorized allocating \$2.2 million for the North 7<sup>th</sup> Street Reconstruction Project. CITY and DEVELOPER entered into the North 7<sup>th</sup> Street Reconstruction Project Agreement (Agreement No. 2008-0407), whereby CITY is to pay DEVELOPER \$2.2 million to fund a portion of the costs for reconstruction and widening of North 7<sup>th</sup> Street, from Richards Blvd to the American River Parkway, and DEVELOPER is to design and reconstruct the street in compliance with specified CITY procedures, specifications, codes and standard contract provisions.

G. **Proposition 1C Grant.** CITY has been awarded a grant by the State Department of Housing and Community Development ("HCD") under Proposition 1C, the Housing and Emergency Shelter Act of 2006, pursuant to the Infill Infrastructure Grant Program Guidelines, (the "Proposition 1C Grant") to fund certain improvements which are part of the Development Project. The grant was approved in June, 2008 for \$19.1 million and the CITY has executed the grant agreement. The Proposition 1C Grant Agreement, defined in Section 2A, below, authorizes state funding for the DEVELOPER's costs to design and construct certain streets, utilities, parks and building demolition projects, the QIP Parking Garage (as defined in Recital H., below), and the North 7<sup>th</sup> Street light rail station improvements, which are referred to therein as the "Infrastructure Project." The Infrastructure Project, with the exception of the QIP Parking Garage, is collectively referred to herein as the "Public Improvements." With the exception of the North 7<sup>th</sup> Street light rail station improvements, CITY is to take title to the Public Improvements after completion of construction by DEVELOPER.

H. **Affordable Housing Project.** A condition in the Proposition 1C Grant Agreement is the development of a specified amount of affordable housing, referred to as the "Qualifying Infill Project" or "QIP," as well as the development of 397 market rate housing units ("Additional Housing Development") at the Project Site on Parcels 3A, 3B, 4 and 12 consistent with the PUD Plan and Guidelines. The QIP, based on the commitment under the Proposition 1C Grant Agreement, is for 90 units to be constructed as one apartment building located on Parcel 11C (1.8 acres), with an estimated cost of \$23 million. The Proposition 1C Grant Agreement is to fund the parking garage portion of this apartment building in the amount of \$7.2 million (the "QIP Parking Garage"). The QIP Parking Garage will be privately owned and is not part of the Public Improvements referred to herein.

I. **Parking Garage Loan.** Under a separate agreement, DEVELOPER has selected St. Anton Partners LLC to serve as the Township 9 affordable housing developer for the QIP and will transfer to it ownership of Parcel 11C. The Proposition 1C Grant identifies the owner and developer of the QIP as the Housing Sub-Recipient. CITY will provide \$7.2 million of the Proposition 1C Grant Proceeds to fund the QIP Parking Garage in the form of a forgivable loan to St. Anton Partners (the "QIP Parking Garage Loan Agreement"), and the CITY may assign the loan to the Sacramento Housing and Redevelopment Agency for administration.

J. **Assignment of CITY Grants.** DEVELOPER desires to enter into this Assignment Agreement to be entitled to receive funding under the Proposition 1C Grant Agreement for the Public Improvements as specified herein, so that DEVELOPER can commence construction of the Development Project to meet the specified milestone schedules for the Public Improvements and the Additional Housing Development as set out in Proposition 1C Grant Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Assignment Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Effective Date; Termination.** This Assignment Agreement shall commence as of the Effective Date and shall expire on the date ("Expiration Date") that both of the following conditions have been met: (i) recording of DEVELOPER's conveyance and CITY's acceptance of the Public Improvements as defined in Sections 3, 4 and 5, and (ii) DEVELOPER's completion of the North 7<sup>th</sup> Street light rail station improvements; subject to the indemnity and payment obligations that survive the termination of this Assignment Agreement as set out in Sections 6, 7 and 8. Neither Party may terminate this Assignment Agreement for its convenience prior to the Expiration Date; however, either Party may terminate this Assignment Agreement for default prior to the Expiration Date subject to the cure provisions set forth in Sections 9 and 10. DEVELOPER's obligations under this Agreement shall apply solely to actions taken on or after the Effective Date, although DEVELOPER is nonetheless entitled to reimbursements of costs incurred for the Public Improvements with the Proposition 1C Grant Proceeds, as defined in Section 2B, below, prior to the Effective Date under the Proposition 1C Grant Agreement.
- 2. Assignment and Assumption.** As of the Effective Date, CITY hereby assigns and transfers to DEVELOPER any and all of CITY's rights under the Proposition 1C Grant Agreement, as defined below, and DEVELOPER hereby accepts and assumes all of the duties and obligations of CITY under the Proposition 1C Grant Agreement and shall comply with all of the terms and conditions set out therein, with the exception of the development of the QIP and the QIP Parking Garage as specified in Section 8. The Proposition 1C Grant identifies the owner and developer of the Property on which the Infrastructure Project and the Additional Housing Development will be built as the Infrastructure Sub-Recipient. DEVELOPER's entitlement to the Proposition 1C Grant Proceeds for the Public Improvements shall be subject to the approval of HCD and DEVELOPER shall have no recourse against CITY for HCD's decisions.

  - A. HCD Grant - The "Proposition 1C Grant Agreement" which is assigned to DEVELOPER herein contains the Standard Agreement dated October 20, 2009 and the Disbursement Agreement dated March 8, 2010 between CITY and the State Department of Housing and Community Development ("HCD") for receipt of funding in the amount of \$11.9 million under the Infill Infrastructure Grant Program for the Public Improvements which are part of the Development Project. The Standard Agreement is attached and incorporated herein as Exhibit A. The Disbursement Agreement is attached and incorporated herein as Exhibit B.
  - B. Grant References - The funds under the Proposition 1C Grant Agreement to be paid to DEVELOPER, either directly by HCD or through the CITY, under this Assignment Agreement are herein referred to as the "Proposition 1C Grant Proceeds."
  - C. Partial Assignment - Notwithstanding the foregoing assignment by CITY and assumption by DEVELOPER of the Proposition 1C Grant Agreement, the CITY remains as the named grantee and party to that agreement because HCD has not approved this Assignment Agreement and released CITY from its obligations under the Proposition 1C Grant Agreement. However, HCD has acknowledged that DEVELOPER is to serve as the Infrastructure Sub-Recipient to receive the Proposition

1C Grant Proceeds for the Public Improvements as set out therein, and HCD will accept draw requests from DEVELOPER and will pay DEVELOPER the Proposition 1C Grant Proceeds directly once CITY executes HCD's direct payee form and in reliance on CITY's plan reviews and construction inspection reports. DEVELOPER must nonetheless submit to CITY copies of all plans, draw requests, other required documents and all correspondence submitted to HCD for CITY to comply with its grant oversight obligations.

- D. Grant Amendments – The Parties acknowledge that HCD may be amenable to amend the Proposition 1C Grant Agreement to change the milestone schedules, to extend the grant term and/or to extend the time period for final distribution of the Proposition 1C Grant Proceeds. There may be other amendments which may be desired by either Party, or HCD may propose amendments during the term of this Assignment Agreement or thereafter during the term of the Proposition 1C Grant Agreement. Any written amendment, modification or waiver of any term or condition of the Proposition 1C Grant Agreement, which is supported by both CITY and DEVELOPER and which is approved by HCD in the form of a grant amendment or other written acknowledgment, shall become binding under the terms of this Assignment Agreement and such written amendment, modification or waiver shall be attached and incorporated into this Assignment Agreement by this reference without the need for a formal amendment. CITY shall not unilaterally amend or terminate the Proposition 1C Grant Agreement without DEVELOPER's prior written approval unless DEVELOPER is in default of its obligations under this Assignment Agreement and the applicable cure period(s) within which to cure such default set forth in Sections 9 and 10 have expired without a cure having been made.
- E. Enforcement – CITY and HCD shall each have the right to enforce all of the terms and conditions set out in the Proposition 1C Grant Agreement and DEVELOPER's obligations therein relating to the design and construction of the Public Improvements, including, without limitation, requirements for bonds, insurance, prevailing wages, mechanics liens, signage, assignment of contracts, indemnity, audits, and record retention. All of the rights accruing to HCD as set out in the Proposition 1C Grant Agreement with respect to the Public Improvements, including, without limitation, assumption and enforcement of the design and construction contracts, shall also accrue to CITY. DEVELOPER acknowledges and agrees that under the terms of this Assignment Agreement, CITY has the right to enforce the covenants and obligations set out in the Proposition 1C Grant Agreement on behalf of HCD, even after the Expiration Date, as provided in Sections 8 and 9, subject to the provisions of Section 10.

3. Public Improvements. DEVELOPER shall undertake the design and construction of the "Infrastructure Project" as specified in the Proposition 1C Grant Agreement in accordance with the scope of work and schedule set out therein.

4. Street Improvements. To the extent funds made available to DEVELOPER by CITY under the Proposition 1C Grant Agreement are for Public Improvements that will be owned by CITY (the "Street Improvements"), DEVELOPER shall undertake the design and construction of the Street Improvements in accordance with those terms of the Proposition 1C Grant Agreement which are applicable to the Street Improvements, the applicable CITY permits, and all of the following requirements:

- A. CITY Standards - Standard Specifications for Public Construction (2007), Street Design Standards, Pedestrian Friendly Street Standards, Utilities Standards, Street

Lighting and Traffic Signal Design Standards, and those other portions of the Design and Procedures Manual and the applicable provisions of the Project Delivery Manual as identified by CITY.

- B. Project Entitlements – The PUD Plan and Guidelines, Tentative Map, and CEQA Mitigation.
- C. Other Entities - All required permits and approvals from all applicable utility companies and state and local regulatory agencies (other than CITY).
- D. Public Works - All applicable state laws pertaining to contracting and construction of public works with public funds, including, without limitation, competitive bidding, obtaining 100% payment and performance bonds, and payment of prevailing wages.
- E. North 7<sup>th</sup> Street Agreement – All of the terms and conditions set out in the North 7<sup>th</sup> Street Reconstruction Project Agreement shall apply to the Street Improvements. The applicable requirements and procedures include, without limitation, design and contracting, inspection, bonds, insurance, and approval of change orders. CITY shall not be obligated to approve payments for the North 7th Street improvements with the Proposition 1C Grant Proceeds in the event of a default under the CITY's North 7th Street Agreement.

5. **Park Improvements.** DEVELOPER shall undertake the design and construction of that portion of the Public Improvements which includes Riverfront Park and the North 7<sup>th</sup> Street Parkway as described in the Proposition 1C Grant Agreement (collectively the "Park Improvements"), with the Proposition 1C Grant Proceeds in accordance with the terms of the Proposition 1C Grant Agreement and the requirements set out in CITY's standard park turnkey agreement. CITY shall not be obligated to approve payments for the Park Improvements with the Proposition 1C Grant Proceeds in the event of a default under the CITY's park turnkey agreement.

The design of the Park Improvements shall be in compliance with the PUD Plan and Guidelines and Tentative Map. In addition, DEVELOPER will be required to obtain permits from the County of Sacramento and the Sacramento Area Flood Control Agency for construction of Riverfront Park along the American River Parkway and abutting the flood control levee.

6. **Indemnity.** DEVELOPER shall indemnify, defend and hold harmless CITY (including its officers, employees and agents) from and against any and liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the extent arising from any acts or omissions of DEVELOPER (including its officers, employees, contractors, subcontractors, and agents) in connection with the design and construction of the Public Improvements under this Assignment Agreement, except to the extent arising from the active negligence or willful misconduct of CITY. DEVELOPER hereby waives and releases any and all Claims of whatever sort or nature which may arise against CITY in connection with CITY's review and inspection of the design and construction of the Public Improvements, except those resulting from the active negligence or willful misconduct of CITY.

7. **Payment of Costs.** CITY will approve DEVELOPER as the direct payee for reimbursement by HCD of DEVELOPER's Public Improvement costs under the Proposition 1C Grant Agreement. If HCD requires that draw requests under the Proposition 1C Grant

Agreement be submitted to CITY for review and approval, CITY will promptly undertake that work and forward DEVELOPER's invoices to HCD for payment. The total compensation to be requested by DEVELOPER and paid by HCD for the Public Improvements costs under the Proposition 1C Grant Agreement shall not exceed \$11.9 million.

DEVELOPER's draw requests shall comply with the requirements set out in the Proposition 1C Grant Agreement. DEVELOPER shall indemnify, defend and hold harmless CITY from and against all demands and claims filed by HCD against CITY seeking reimbursement of the Proposition 1C Grant Proceeds due to DEVELOPER's improper invoices or any other violation of any term or condition in the Proposition 1C Grant Agreement in regards to payment of the Public Improvement costs.

Except for payments to be provided to DEVELOPER under the Proposition 1C Grant Agreement and any other agreements between CITY and DEVELOPER, CITY shall have no further liability to DEVELOPER for the costs of the Public Improvements under this Assignment Agreement.

**8. Housing Development.** DEVELOPER acknowledges and agrees in regards to the obligation to development housing under the terms of the Proposition 1C Grant Agreement as follows:

- A. HCD Covenants - DEVELOPER acknowledges and agrees that HCD will be permitted to record a "Declaration of Restrictive Covenant for the Development of Market Rate Housing" and a "Covenant Regarding Development of Affordable Housing" (collectively the "HCD Covenants") against the specified portions of the Property as set out in the Proposition 1C Grant Agreement. CITY and DEVELOPER understand that HCD will release these covenants against that portion of the Property which is not the subject of the Proposition 1C Grant Agreement when final maps are recorded for each parcel and that the "Declaration of Restrictive Covenant for the Development of Market Rate Housing" will thereafter only remain on Parcels 3A, 3B, 4, and 12 and the "Covenant Regarding Development of Affordable Housing" will thereafter only remain on Parcel 11C.
- B. QIP Covenant - The HCD "Covenant Regarding Development of Affordable Housing" will require DEVELOPER to insure that the 90 unit affordable housing project referred to as the Qualifying Infill Project (QIP), including the QIP Parking Garage, be constructed and operated by an affordable housing developer, as selected by DEVELOPER and approved by HCD, in accordance with the terms and schedule set out in the Proposition 1C Grant Agreement. HCD has approved St. Anton Partners LLC as the Housing Sub-Recipient. CITY shall enter into the QIP Parking Garage Loan Agreement with St. Anton Partners LLC once it demonstrates that it has: (i) ownership of Parcel 11C, and (ii) all other financing commitment required to construct the QIP. The closing of the QIP Parking Garage Loan Agreement will occur simultaneously with the transfer of ownership of Parcel 11C from the DEVELOPER to St. Anton Partners LLC. The QIP Parking Garage Loan Agreement shall provide that DEVELOPER will have the right to cure any defaults of St. Anton Partners LLC and that the QIP Parking Garage Loan Agreement may be assumed by DEVELOPER in the event CITY declares a default by St. Anton Partners LLC under that loan agreement.
- C. Additional Housing Development - The HCD "Covenant Declaration of Restrictive Covenant for the Development of Market Rate Housing" will require DEVELOPER to undertake construction of the specified Additional Housing Development on Parcels

3A, 3B, 4 and 12 in accordance with the terms and schedule set out in the Proposition 1C Grant Agreement. Failure of DEVELOPER to comply with this HCD Covenant that is not timely cured within the applicable cure period(s) shall constitute a default under the Proposition 1C Grant Agreement and this Assignment Agreement and in such event a proportionate share of the Proposition 1C Grant Proceeds must be repaid by DEVELOPER in accordance with the terms of the Proposition 1C Grant Agreement.

- D. HCD Covenants Enforcement - CITY is relying on the HCD Covenants as security for DEVELOPER's compliance with the provisions in the Proposition 1C Grant Agreement regarding (i) meeting its obligations in regards to facilitating development of the QIP (i.e., transfer of Parcel 11C and under taking the Public Improvements which serve that parcel), and (ii) undertaking the Additional Housing Development after the Public Improvements are completed and the term of this Assignment Agreement expires. DEVELOPER acknowledges and agrees that under the terms of this Assignment Agreement, CITY has the right to enforce the HCD Covenants and to demand repayment of the proportionate amount of the Proposition 1C Grant Proceeds upon declaration by HCD of a default by DEVELOPER of its obligations as a Sub-Recipient for the Infrastructure Project and the Additional Housing Development under the Proposition 1C Grant Agreement. The terms of this Section 8 shall survive the termination of this Assignment Agreement and shall extend until the HCD Covenants are released or terminated by HCD from each parcel of land comprising the Property as described in the Proposition 1C Grant Agreements.
- E. Suspension of Permits During Default - If a dispute arises between HCD and DEVELOPER regarding DEVELOPER's obligations to facilitate development of the QIP and insure construction of the specified Additional Housing Development under the terms of the HCD Covenants and the Proposition 1C Grant Agreement, during the pendency of such dispute where: (i) HCD has issued to CITY a written notice of default, (ii) after expiration of any applicable cure period DEVELOPER (or its lender) has not cured the default, (iii) DEVELOPER has not obtained a time extension from HCD for construction of the Additional Housing Development, and (iv) HCD has issued to CITY a written demand for payment of all or a part of the Proposition 1C Grant Proceeds; in that event CITY may withhold approval of final maps, other discretionary entitlements and issuance of building permits for any non-residential development within that portion of the Development Project covering Parcels 3A, 3B, 4, 11C and 12 notwithstanding any contrary provision of the Development Agreement, Tentative Map, PUD Plan and Guidelines, the City Code, the Subdivision Map Act or any other applicable state or local law or regulation.

9. **Default.** After issuance of a written notice of default and expiration of any applicable cure period, any violation of any material term or condition of the Proposition 1C Grant Agreement by DEVELOPER or CITY, or the material failure of performance or a substantial and unreasonable delay in performance by either Party, including, without limitation, the voluntary or involuntary filing of bankruptcy protection or appointment of a receiver, shall be a breach under this Assignment Agreement and the non-defaulting party shall be entitled to cancel this Assignment Agreement for default and be awarded actual damages (excluding consequential damages and lost profits) and injunctive or declaratory relief.

The Party receiving such default notice shall be afforded a period of thirty (30) days following receipt of the notice within which to effectuate a cure, provided that if such default or breach cannot reasonably be cured within such thirty (30) day period and if curative action is commenced within such thirty (30) day period and is being continuously and diligently pursued by such Party, then such Party shall be given such additional period of time as is reasonably

necessary for such Party in the exercise of due diligence to cure such default or breach. During any such period, the Party charged shall not be considered in default or breach for purposes of termination of this Assignment Agreement or institution of legal proceedings. Notwithstanding the foregoing, the cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY in reliance on a written default determination issued by HCD under the terms of the Proposition 1C Grant Agreement. CITY will provide DEVELOPER and Lender with copies of any notice of default CITY receives from HCD.

**10. Lender Rights.** Any bank, mortgage company or other legal entity (together with its successors or assigns, collectively "Lender") that has loaned money to DEVELOPER and has a recorded a mortgage or deed of trust against the Property as of the Effective Date or thereafter shall have the following default notice and cure rights and releases from the obligations under this Assignment Agreement:

- A. Prior to Lender Possession. No Lender shall have any obligation or duty under this Assignment Agreement to construct or complete the construction of the Public Improvements, QIP or Additional Housing Development, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of DEVELOPER or DEVELOPER's successors in interest. Except as otherwise expressly provided in this Section 10, nothing in this Section 10 shall be construed to grant to Lender rights of DEVELOPER hereunder, or to limit any remedy CITY has hereunder in the event of default by DEVELOPER, including but not limited to, cancellation of this Assignment Agreement.
- B. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to (i) pay any fees or charges which are obligations of DEVELOPER under this Assignment Agreement, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof, (ii) cure any defaults under this Assignment Agreement, or (iii) repay the Proposition 1C Grant Proceeds. However, a Lender shall not be eligible to become a successor in interest to this Assignment Agreement and receive payments of the Proposition 1C Grant Proceeds or be eligible to apply for or receive entitlements or permits with respect to development of the Property for the Development Project covering Parcels 3A, 3B, 4, 11C and 12, or otherwise be entitled to develop or devote that portion of the Property to any uses or to construct any improvements thereon, other than for the QIP and the Additional Housing Development, unless and until DEVELOPER's defaults under this Assignment Agreement have been cured by Lender pursuant to the terms and conditions of Section 10D below.
- C. Notice of DEVELOPER's Default. If CITY receives notice from a Lender making a reference to this Assignment Agreement, requesting a copy of any notice of default given DEVELOPER hereunder and specifying the address(es) for service thereof, then CITY shall deliver to such Lender at such address(es) the following: (i) concurrently with service thereon to DEVELOPER, any notice given to DEVELOPER with respect to any claim by CITY that DEVELOPER has committed a default or breach; and (ii) concurrently with service thereon to DEVELOPER, any notice on the part of CITY to cancel this Assignment Agreement for default under the terms of Section 9. The foregoing includes CITY providing Lender with copies of any notice of default CITY receives from HCD.
- D. Lender's Right to Cure. With respect to any default or breach by DEVELOPER under this Assignment Agreement, CITY shall provide written notice (a "Cure Period

Expiration Notice”) to Lender, promptly upon expiration of the DEVELOPER’s cure period set forth in Section 9, specifying the nature of such default or breach and stating that DEVELOPER’s period of time within which to cure such default or breach has expired without a cure having been effectuated. Lender shall have the right to cure such default within thirty (30) days after the date of the Cure Period Expiration Notice; provided, however, if such default is susceptible to cure but cannot reasonably be cured within such thirty (30) day period and if curative action shall be commenced within such thirty (30) day period and is being continuously and diligently pursued by Lender, then Lender shall be given an additional period of time as is reasonably necessary for Lender in the exercise of due diligence to cure such default. Without limiting the foregoing, if it is necessary for Lender to obtain possession of the Property in order to cure such default, Lender shall have such additional period of time as is reasonably necessary for the Lender in the exercise of reasonable diligence to obtain possession of the Property, and such additional time as is reasonably necessary for the Lender in the exercise of reasonable diligence to cure the default. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Assignment Agreement unless such Lender shall agree in writing to perform all obligations of DEVELOPER hereunder under the terms of an assumption agreement between Lender and CITY. In the event that Lender takes possession of all or any portion of the Property and assumes the obligations of Developer hereunder, then the recourse of CITY for such obligations shall be limited to the interest of the Lender in the Property and shall not include personal recourse to Lender. Notwithstanding the foregoing, Lender’s cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY to DEVELOPER in reliance on a written default determination issued by HCD under the terms of the Proposition 1C Grant Agreement.

- E. No Impairment. Neither DEVELOPER’s entering into this Assignment Agreement nor its default under this Assignment Agreement shall alter, defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith by the Lender and for value. This Assignment Agreement shall not prevent or limit DEVELOPER in any manner, at DEVELOPER’s sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security instrument securing financing with respect to development of the Property for the Development Project. This Assignment Agreement shall not prevent or limit Lender in any manner from pursuing foreclosure of a mortgage, deed of trust or other security instrument that is secured against the Property.

**11. Governing Law and Venue.** This Assignment shall be governed by and construed in accordance with the laws of the State of California. Any litigation concerning this Assignment must be brought and prosecuted in the Sacramento County Superior Court and the prevailing party shall be entitled to reimbursement of its attorneys’ fees and litigation costs.

**12. Successors and Assigns.** This Assignment Agreement may not be assigned by DEVELOPER without the CITY’s prior written consent; provided that this Agreement may be assigned by DEVELOPER to a Lender as collateral for Lender’s loan and, in the event that such Lender takes possession of the Property or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure if the Lender undertakes efforts to cure DEVELOPER’s defaults, and such Lender complies with all of its obligations under Section 10, above, and enters into an assumption agreement with CITY, then such Lender shall succeed to the rights of DEVELOPER under this Assignment Agreement. The obligations in this Assignment Agreement shall inure to and bind the successors and assigns of each Party and the successors in interest in the Property, and CITY may record a memorandum of this Assignment Agreement. Lender shall be an express third party beneficiary of this Assignment

Agreement.

**13. Warranties and Representations.** Each person who signs this Assignment Agreement on behalf of a Party warrants and represents that he or she has the capacity and legal authority to execute this Assignment Agreement for that Party and to bind that Party to the obligations imposed on it by this Assignment Agreement.

**14. Notices.** All notices required or provided for under this Assignment Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the CITY and DEVELOPER, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

A. Notice to the CITY:

City of Sacramento  
915 I Street  
Sacramento, California, 95814  
ATTN: City Manager

B. Notice to DEVELOPER:

Capitol Station 65 LLC  
640 Bercut Drive, Suite C  
Sacramento CA 95811-0131  
ATTN: Steve Goodwin

and

Scott Syphax  
Nehemiah Corporation of America  
640 Bercut Drive, Suite A  
Sacramento, CA 95811-0131

with copies to:

Alberto Esquivel  
Esquivel Real Estate, Inc.  
1801 "F" Street  
Sacramento, CA 95816

C. Notice to Lender:

ISIS Lending, LLC  
c/o TDA  
2031 Pioneer Court  
San Mateo, CA 94403  
ATTN: Paula Purcell

with copies to:

Cox Castle & Nicholson LLP  
555 California Street, Suite 1000  
San Francisco, CA 94101-1513  
ATTN: Bruce E. Prigoff, Esq.

**15. Survivorship.** The DEVELOPER's obligations arising under this Assignment Agreement pertaining to indemnity and repayment obligations as set out in Sections 6, 7 and 8 shall survive the expiration, termination or cancellation of this Agreement.

**16. Entire Agreement.** This Assignment Agreement sets forth the entire understanding of each Party regarding the matters set forth herein. It supersedes all prior or contemporaneous agreements, representations, and negotiations, whether written, oral, express or implied, in regards to the assignment and assumption of the Proposition 1C Grant Agreement and this Assignment Agreement may only be modified by another written agreement signed by the Parties.

[signature page follows]

**IN WITNESS WHEREOF**, the parties have executed this Assignment Agreement as of the Effective Date.

**CITY OF SACRAMENTO**  
a municipal corporation

By: \_\_\_\_\_  
Gus Vina  
Acting City Manager

Attest:

By: \_\_\_\_\_  
City Clerk

Approved as to Legal Form:

By: \_\_\_\_\_  
Senior Deputy City Attorney

**CAPITOL STATION 65 LLC**  
a California limited liability company

By: \_\_\_\_\_  
Steve Goodwin  
Managing Member

By: \_\_\_\_\_  
Scott Syphax  
Managing Member

**EXHIBIT A**

**Standard Agreement for the Infill Infrastructure Grant Program**

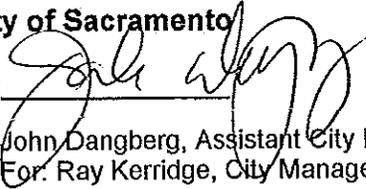


**CONTRACTOR**

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Contractor (If other than an individual, state whether a corporation, partnership, etc.)

**City of Sacramento**

By: 

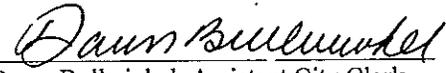
John Dangberg, Assistant City Manager  
For: Ray Kerridge, City Manager, October 6, 2009

Date: 10-6-09

Attest on: 10-8-09 (date)

Address:

915 I Street, 5<sup>th</sup> Floor  
Sacramento, CA 95814

  
Dawn Bullwinkel, Assistant City Clerk

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**EXHIBIT A**

**AUTHORITY, PURPOSE AND SCOPE OF WORK**

**Infill Infrastructure Grant Program - Qualifying Infill Area**

**1. Authority & Purpose**

This Standard Agreement, Std. 213 (hereinafter "Agreement") is the result of Recipient's application ("Application") for funding under the Infill Infrastructure Grant Program ("Program") pursuant to:

- A. Part 12 of Division 31 of the Health and Safety Code (commencing with Section 53545.12);
- B. The Infill Infrastructure Grant Program Guidelines dated February 28, 2008 ("Guidelines"), issued by the State of California, Department of Housing and Community Development ("Department"); and,
- C. The Program's Notice of Funding Availability ("NOFA") issued by the Department, dated February 28, 2008. In accepting this grant award, the Recipient agrees to comply with the terms and conditions of the Guidelines, the NOFA, this Agreement, and the Disbursement Agreement, more particularly described in Exhibit B hereto.
- D. The Recipient has applied for assistance under the Qualifying Infill Area ("QIA") component of the Program as described in the NOFA. In the Application, the Recipient described the boundaries of the QIA, a Qualifying Infill Project located within the QIA, additional housing projects to be developed within the QIA, and amenities and access to transit as required by the Program.
- E. In response to the Application, the Department has awarded a grant to Recipient to build the Infrastructure Project described below,

**2. Definitions**

Capitalized terms in this Agreement shall have the meaning of the definitions set forth in the Guidelines, in addition:

**EXHIBIT A**

- A. "Recipient" refers to the entity or entities submitting an application, or to a related entity approved by the Department entering into this Agreement and identified as "Contractor" on page 1 of this Agreement (Std. 213). In the case of joint applicants, "Recipient" shall refer to each applicant or the approved assignee of such applicant. Each joint applicant shall be jointly and severally liable for all obligations of a Recipient as set forth herein.
- B. "Infrastructure Project" means the Capital Improvement Project described in Paragraph 3.A., of this Exhibit A.
- C. "Qualifying Infill Project" or "QIP" means the housing development described in Paragraph 3.B., of this Exhibit A that is supported by the Infrastructure Project.
- D. "Additional Housing Development" means the housing development or developments described in Paragraph 3.C., of this Exhibit A.
- E. "Total Housing Development" means the aggregate of the QIP and the Additional Housing Development.

**3. Scope of Work**

The Scope of Work ("Work") for this Agreement shall consist of the development and construction by or on behalf of the Recipient as follows:

- A. The Infrastructure Project that is within the border of the QIA described as follows:

The Richards Boulevard light rail station and plaza development, landscaping and lighting for Richards Boulevard, underground parking for the QIP, Streets D through F, North 7<sup>th</sup> Street, utilities, and a scaled down Riverfront Park development.

- B. The residential housing development designated in the Application as the Qualifying Infill Project for the QIA, to be developed and constructed by the Recipient, or other developer, as provided in the Application and meeting the following criteria:

**EXHIBIT A**

Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County	Qualifying Infill Project		
	Township 9 Parcel 11C		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	IIG Restricted	Income Limit (% of AMI)
1	36	36	60
1	7	7	50
1	2	2	30
2	35	35	60
2	8	8	50
2	1	1	30
2	1	0	N/A
<b>Total</b>	90	89	
<b>Net Density (see Guidelines sec. 302(o))</b>		114.6 (For all 487 Units)	

and:

- C. Other residential housing development located within the QIA proposed and designated in the Application ("Additional Housing Development"), to be developed and constructed by the Recipient, or other entity approved by the Department and meeting the following criteria:

**EXHIBIT A**

<b>Location of Housing Development</b>		<b>Township 9 Parcel 12</b>	
<b>Enter the number of units by bedroom size and income level.</b>			
<b># of Bedrooms</b>	<b># of Units</b>	<b>IIG Restricted</b>	<b>Income Limit (% of AMI)</b>
0	35	0	N/A
1	45	0	N/A
2	25	0	N/A
<b>Total</b>	105	0	
<b>Net Density (see Guidelines sec. 302(o))</b>		114.6 (For all 487 Units)	

<b>Location of Housing Development</b>		<b>Township 9 Parcel 3A</b>	
<b>Enter the number of units by bedroom size and income level.</b>			
<b># of Bedrooms</b>	<b># of Units</b>	<b>IIG Restricted</b>	<b>Income Limit (% of AMI)</b>
0	17	0	N/A
1	37	0	N/A
2	22	0	N/A
<b>Total</b>	76	0	
<b>Net Density (see Guidelines sec. 302(o))</b>		114.6 (For all 487 Units)	

**EXHIBIT A**

Location of Housing Development	Township 9 Parcel 3B		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	IIG Restricted	Income Limit (% of AMI)
0	23	0	N/A
1	58	0	N/A
2	46	0	N/A
3	20	0	N/A
<b>Total</b>	147	0	
<b>Net Density (see Guidelines sec. 302(o))</b>		114.6( For all 487 Units)	

Location of Housing Development	Township 9 Parcel 4		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	IIG Restricted	Income Limit (% of AMI)
0	15	0	N/A
1	24	0	N/A
2	20	0	N/A
3	10	0	N/A
<b>Total</b>	69	0	
<b>Net Density (see Guidelines sec. 302(o))</b>		114.6 ( For all 487 Units)	

The percentage of Affordable Units and units restricted to other income limits and rents shall be maintained or exceeded through the completion of each development phase or each residential development proposed in Recipient's Application. The Department may modify the requirements set forth above to conform to a similar local public agency requirement, or

## **EXHIBIT A**

changes in the proposed development of Additional Housing Development, provided that the Department determines that the local requirement or the proposed changes will reliably result in completion of the total amount of Affordable Units and maintenance of the approved overall density within a reasonable period of time.

- D. The Infrastructure Project is an integral part of, or necessary to facilitate development of the QIA. The Recipient is responsible for and shall ensure the completion of the Infrastructure Project and the completion and occupancy of the Total Housing Development in accordance with the criteria set forth above. The Department reserves the right to review and approve all Work to be performed by the Recipient, or contracted by the Recipient, in relation to this Agreement. Any substantial revision to the Work shall and be submitted in writing for review and approval by the Department and shall require an amendment to this Agreement.
- E. The Department, the Recipient and other parties as required by the Department, shall enter into a Disbursement Agreement governing among other things the disbursement of Program funds, as more particularly described in Exhibit B hereto.

### **4. Density**

The Net Density of the QIA shall meet or exceed the minimum densities set forth in the Guidelines, Section 303(a)(4). If in response to submissions in the Application, the Department awarded rating points for the extent to which the average Net Density of the QIA exceeds the required density (Guidelines Section 309(c)), then, at the request of the Department, Recipient shall provide evidence sufficient to support such award of points by the Department. The Department may refuse to commence or continue the disbursement of Program funds, or may require repayment of disbursed Program funds unless and until Recipient responds to such a request in a manner satisfactory to the Department.

### **5. Proximity to Amenities and Access to Transit**

- A. Proximity to Amenities – As provided in the Recipient's application, the Recipient was awarded points for the number of amenities located in the QIA or within ½ mile of its boundary pursuant to Section 309(e) of the Guidelines. The following completed or proposed amenities are or will be located within the QIA or within ½ mile of its boundary. The proposed or planned amenities shall be completed by the date the QIP for the QIA is completed.

**EXHIBIT A**

<b>Amenity Type</b>	<b>Number of amenities in the QIA or within ½ mile of its boundary</b>
1. Public Park	2
2. Employment Center	6
3. Retail Center	0
4. Public School or Community College	1
5. Social Service Facility	3
6. Senior Center or Service Facility	0

- B. Access to Transit – As provided in the Recipient’s application, the Recipient was awarded points based on the percentage of residential units in the QIA which met the criteria for proximity to Transit Station or Major Transit Stop pursuant to Guidelines Section 309(d). Based on the points awarded to the Recipient, at least 100% of the residential units comprising the Total Housing Development shall be constructed within ½ mile of a Transit Station or Major Transit Stop. The completed, planned, or proposed Transit Stations or Major Transit Stops noted below are located within the QIA. All proposed or planned Transit Stations or Major Transit Stop as defined in Section 302 (w) of the Guidelines shall be completed by April 4, 2013.

<b>List of Transit Stations or Major Transit Stops</b>	<b>Name of housing development in proximity to Transit Station/Major Transit Stop</b>	<b>Number of units within ½ mile of Transit Station/Major Transit Stop</b>
1. Downtown-Natomas-Airport (DNA) project, Phase I, aka MOS-1.	Parcel 11C	90
2. Same as 1	Parcel 12C	105
3. Same as 1	Parcel 3A	76
4. Same as 1	Parcel 3B	147
5. Same as 1	Parcel 4	69

- C. At the request of the Department, Recipient shall provide evidence sufficient to demonstrate that the Recipient has met the Proximity to Amenities and Access to Transit requirements. The Department may refuse to commence or continue the disbursement of Program funds, or may require repayment of disbursed Program funds until Recipient responds to such a request in a manner satisfactory to the Department.

**EXHIBIT A**

**6. Performance Milestones**

Recipient shall ensure the completion of the PERFORMANCE MILESTONES set forth in this Exhibit, attached hereto and made a part hereof, by the designated dates. Recipient may apply to the Department for an extension of these timelines based on good cause shown and best efforts and assurances from the Recipient for timely completion of the remaining Milestones.

**7. State Contract Coordinator**

The State Contract Coordinator for this Agreement is the Infill Infrastructure Grant Program Chief, Division of Financial Assistance, or the Chief's designee. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the State Contract Coordinator at the following address:

Eugene Lee, Chief  
Infill Infrastructure Grant Program  
Division of Financial Assistance  
Department of Housing and Community Development  
P. O. Box 952054  
Sacramento, California 94252-2054

**8. Recipient Contract Coordinator**

The Recipient's Contact Coordinator for this Agreement is listed below. Unless otherwise informed, any notice, report, or other communication required by this Agreement shall be mailed by first class to the contact at the following address:

Recipient:	City of Sacramento
Name:	Desmond Parrington
Phone No.:	(916) 808-5044

**EXHIBIT A**

**PERFORMANCE MILESTONES**

Performance Milestone	Total Infrastructure Project		Qualifying Infill Project	
	Single Phase	Multi-Phase	Single Phase	Multi-Phase
Executed binding agreement between the Recipient and developer of the proposed QIP detailing the terms and conditions of the QIP development.		N/A	December 2009	N/A
Site Control of the QIP site(s) by proposed housing developer.			Complete	N/A
Completion of all necessary environmental clearances, including those required under CEQA and NEPA.	Complete		Complete	N/A
Obtaining all necessary and discretionary public land use approvals.	Complete		Complete	N/A
Obtaining all enforceable funding commitments for at least the first phase of the QIP supported by the infrastructure Project.			December 2010	N/A
Obtaining all enforceable funding commitments for all construction period financing.	Complete		December 2010	N/A
Obtaining enforceable commitments for all construction/permanent financing described in the Sources and Uses including substantially final construction/permanent loan documents, and Tax Credit syndication documents for remaining phases of the Project.	Complete		December 2010	N/A
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	December 2009		September 2010	N/A
Commencement of construction.	December 2009		January 2011	N/A
Construction complete, filing of the Notice of Completion, and dedication of infrastructure improvements.	June 2011		December 2012	N/A
Program funds fully disbursed.	February 1, 2012		February 1, 2012	N/A

**EXHIBIT A**

<b>Performance Milestone</b>	<b>Additional Housing Development</b>				
Executed binding agreement between the Recipient and developer of the QIA detailing the terms and conditions of the Total Housing Development.	November 2009				
	<b>Phase 2</b>	<b>Phase 3</b>	<b>Phase 4</b>	<b>Phase 5</b>	
Executed binding agreement between the developer of the QIA and the developer of the Additional Housing Development phase detailing the terms and conditions of that phase of the Additional Housing Development.	January 2013	January 2013	January 2013	January 2013	
Recorded Final Map.	January 2013	January 2013	January 2013	January 2013	
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	June 2013	June 2013	June 2013	June 2013	
Commencement of construction.	June 2013	June 2013	June 2013	June 2013	
Construction complete and the filing of the Notice of Completion.	June 2015	June 2015	June 2015	June 2015	
Occupancy of Affordable Units by eligible households.	N/A	N/A	N/A	N/A	

## EXHIBIT B

### **BUDGET DETAIL AND PAYMENT PROVISIONS**

#### **1. Project Budget**

The preliminary projected budget ("Budget") set forth in this Exhibit contains the cost items for the design, development and construction of the approved Infrastructure Project, including the sources and uses of funds. Recipient agrees that any cost overruns or increases resulting in a total cost for Infrastructure Project exceeding that set forth in the Budget shall be the responsibility of Recipient.

#### **2. Contract Amount**

- A. For the purpose of performing the Work, the Department agrees to provide the amount identified on page 1, number 3, of this Agreement (Std. 213) in the form of a grant for the uses identified in the Budget. In no instance shall the Department be liable for any costs for the Work in excess of this amount, or for any unauthorized or ineligible costs.
- B. The Department may approve a request from the Recipient to reallocate funds between authorized activities and itemized amounts stated in the Budget. Changes in aggregate of ten percent (10%) or less, of the total grant amount between activity categories during the term of this Agreement, and expenditures pursuant thereto, may be made only after the Department's express written approval, but do not require a written amendment to this Agreement.

#### **3. Other Funding Sources**

Where the Budget set forth in this Exhibit identifies funds other than Program funds, those funds shall be expended and applied to Project costs as provided in the Budget. Recipient agrees that it will make best efforts to ensure that the other funds specified in the Budget are available for disbursement as provided in this Exhibit, and approved for the use specified in the Budget, except to the extent the Budget may be updated and modified by the Disbursement Agreement described below. The Recipient shall provide evidence and assurance of the commitment and availability of such other sources of funding identified in the Sources and Uses as provided in the Disbursement Agreement. The terms and

## EXHIBIT B

conditions of all construction financing to be used in conjunction with the Program funds shall be subject to the Department's review and approval.

### 4. Completion Dates

- A. Pursuant to Section 312(a) of the Infill Infrastructure Grant Program Guidelines, dated February 28, 2008, all Program funds must be disbursed no later than February 1, 2012. All un-disbursed funds remaining as of February 1, 2012, will no longer be available for this Project. All invoices for payment must be submitted to the Department no later than December 1, 2011.
- B. This Agreement shall expire on June 30, 2016.

### 5. Method of Payment

- A. Payment shall be made as progress payments as set forth in the Disbursement Agreement. Recipient shall request payment for Work completed on forms provided by the Department and subject to such documentation as the Department may require.
- B. The Department shall not authorize payments unless it determines the Program funds shall be expended in compliance with the terms and provisions of the Guidelines, the NOFA, this Agreement and the Disbursement Agreement.

### 6. Disbursement Agreement

- A. The Recipient, the Department and such other parties as may be reasonably required by the Department, shall enter into a Disbursement Agreement in a form provided by the Department. The Disbursement Agreement shall contain a specific description of the Infrastructure Project and an updated Budget including an updated table of sources and uses of funds, and the specific terms and conditions for the disbursement of Program funds.
- B. The requirement for a Disbursement Agreement set forth in this paragraph may be waived by the Department where, at its sole discretion, it determines that: 1. satisfactory completion of the Work, 2. proper disbursement and use of Program funds, 3. performance of, and compliance with, all the obligations, terms and conditions of this

**EXHIBIT B**

Agreement, and 4. compliance with all applicable statutes, laws and regulations, all have been or will be achieved without the execution of a Disbursement Agreement. The Department may require the submittal by the Recipient of such information, records, documents, certificates and other material as it deems necessary to make this determination.

EXHIBIT B INFRASTRUCTURE DEVELOPMENT BUDGET					
QIP Development Name: Township 9					
Hard and Soft Cost Categories Only					
ESTIMATED CAPITAL IMPROVEMENT COSTS		BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE			
COST CATEGORY	TOTAL COST	IIG	Developer Contribution	City Contribution	
Hard Costs	\$ 19,750,601	\$ 17,550,601	\$ -	\$ 2,200,000	
Soft Costs	\$ 5,975,501	\$ 1,549,399	\$ 4,426,102	\$ -	
Other Capital Asset Costs	\$ -	\$ -	\$ -	\$ -	
Total Project Costs	\$ 25,726,102	\$ 19,100,000	\$ 4,426,102	\$ 2,200,000	

EXHIBIT C

**HCD GENERAL TERMS AND CONDITIONS**

**GENERAL**

**1. Effective Date, Commencement of Work and Completion Dates**

This Agreement is effective upon approval by the State which is the date stamped by the Department in the lower right hand corner of the coversheet of this Agreement. The Recipient agrees that construction of the Capital Improvement Project has not commenced as of the deadline for submittal of applications set forth in the NOFA. The Recipient agrees that the Work shall be completed as specified in this Agreement, subject to the termination date specified on page 1, number 2, of this Agreement (Std. 213), unless a written request for an extension is submitted and written approval by the Department is provided within ninety (90) days prior to the termination date of the Agreement. Any extension to the termination date shall require an amendment to this Agreement.

**2. Termination**

The Department may terminate this Agreement at any time for cause by giving at least fourteen (14) days notice in writing to the Recipient. Cause shall consist of violations by Recipient of any terms and/or special conditions of this Agreement, to include but not limited to Paragraph 45 of this Exhibit. Upon termination of this Agreement, unless otherwise approved in writing by the Department, any unexpended funds received by the Recipient shall be returned to the Department within fourteen (14) days of the Notice of Termination.

**3. Infill Infrastructure Grant Documents**

In addition to this Agreement the Recipient shall execute and enter into a Disbursement Agreement, which shall govern the terms, disbursement and use of the Program funds, the Covenant described below, and other additional agreements and documents as the Department may deem reasonable and necessary to meet the requirements of the Program and the terms and conditions of this Agreement.

**4. Covenant Regarding Development of Affordable Housing**

Prior to the disbursement of Program funds, the Recipient shall enter into a written Covenant Regarding Development of Affordable Housing ("Covenant") with the

### EXHIBIT C

Department, including such other parties as the Department may reasonably require. The Covenant shall require the development and construction of the Housing Developments with, the number of units and the number of bedrooms per unit, the extent and depth of affordability, Net Density, as set forth in Exhibit A, and other uses and amenities for which points were granted to the Application. The Covenant shall be recorded against the parcel or parcels of real property on which all the projects comprising the Total Housing Development are to be located and shall be binding on all successors, transferees, and assignees acquiring any interest in the Total Housing Development as follows:

- A. For rental housing developments, the Covenant shall require the continuation of the affordability of the Housing Developments for a period of not less than fifty-five (55) years from the date of filing the Notice of Completion for each of the rental projects comprising the Total Housing Development.
- B. For homeownership housing developments the Covenant shall require the continuation of the affordability of the QIP and each homeownership Housing Development for a period of not less than thirty (30) years from the date of filing the Notice of Completion for the completion for each of the homeownership projects comprising the Total Housing Development. The affordability will be ensured through a resale restriction or equity sharing upon resale.
- C. The Department may waive this requirement for the Covenant upon the Department's determination that sufficient protections are in place to ensure the development and continued operation and occupancy of the Housing Developments in accordance with this Agreement.

#### 5. Site Control

The Recipient must have and maintain site control sufficient to ensure the timely commencement of the Infrastructure Project and the Housing Developments as determined by the Department. The Recipient shall also obtain all licenses, easements and rights-of-way or other interests required for completion of the Infrastructure Project and the Housing Developments, and provide evidence of such instruments satisfactory to the Department prior to the initial disbursement of Program funds.

**EXHIBIT C**

**6. Appraisals**

Recipient shall, at the request of the Department, provide an appraisal of the real property to be acquired as part of the Infrastructure Project, or the Total Housing Development, or any portion thereof, prepared in a form, by a qualified appraiser, acceptable to the Department.

**7. Relocation Plan**

If there is or will be any residential or commercial displacement directly or indirectly caused by the Infrastructure Project, or any portion of the Total Housing Development, as defined in state law, the Recipient shall provide a relocation plan conforming to the requirements of state law and regulations issued by the Department in California Code of Regulations, Title 25, Section 6000 et seq. The relocation plan shall be subject to the review and approval of the Department prior to the initial disbursement of Program funds. In addition to actions that satisfy the regulatory requirements, the relocation plan shall contain a line item budget. The project and/or the development budget shall contain sufficient funds to pay all costs of relocation benefits and assistance as set forth in the relocation plan accepted by the Department.

**8. Article XXXIV**

The Recipient shall submit evidence satisfactory to the Department that the requirements of Article 34, Public Housing Project Law, of the California Constitution do not apply or have been satisfied, respective to each of the Total Housing Developments.

**9. Environmental Conditions**

The Recipient shall provide to the Department the following:

- A. All Environmental Site Assessment ("ESA") Reports (to include Phase I, II, III, supplemental or update assessments and reports) for the Infrastructure Project and the Housing Developments, in conformance with ASTM Standard Practice E 1527, evaluating whether the Infrastructure Project or any of the projects comprising the Total Housing Developments are affected by any recognized environmental conditions.
- B. Documentation and/or a certification satisfactory to the Department that all

## EXHIBIT C

Environmental Site Assessment Report recommendations, including remediation and/or mitigation work, have been completed.

- C. Mitigation requirements required as a result of the Final Environmental Impact Report ("EIR") or Mitigated Negative Declaration, if applicable, and evidence satisfactory to the Department that all mitigation requirements have been satisfied.

### 10. Compliance with State and Federal Laws, Rules, Guidelines and Regulations

The Recipient agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Infrastructure Project and Housing Developments, the Recipient, its Contractors or Subcontractors, and all grant activities.

### 11. Litigation

- A. If any provision of this Agreement, or an underlying obligation, is held invalid by a court of competent jurisdiction, such invalidity, at the sole discretion of the Department, shall not affect any other provisions of this Agreement and the remainder of this Agreement shall remain in full force and effect. Therefore, the provisions of this Agreement are, and shall be, deemed severable.
- B. The Recipient shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of the Department.

### 12. Milestones

Recipient shall ensure the completion of the designated activities within the dates identified in Exhibit A, Performance Milestones, and as further set forth in the Disbursement Agreement.

### 13. Insurance

The Recipient shall have and maintain in full force and effect forms of insurance, at such levels and for such periods, in accordance with the Disbursement Agreement.

## EXHIBIT C

### 14. Change of Conditions

Notwithstanding the Department's obligations to provide payments pursuant to Exhibit B hereof, the Department reserves the right to evaluate the Infrastructure Project's need for Program funds based on new information or funding sources. If the Department determines that the Program funds, or a portion thereof, are no longer necessary to complete the Infrastructure Project, the Department may reduce the amount of the grant accordingly. In the event the Department determines that the Infrastructure Project or any of projects comprising the Total Housing Development are no longer financially feasible, the grant commitment issued by the Department and this Agreement may be terminated.

### 15. Obligations of Recipient with Respect to Certain Third Party Relationships

The Recipient shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Infrastructure Project and the Total Housing Development with respect to which assistance is being provided under this Agreement. The Recipient shall comply with all lawful requirements of the Department necessary to ensure the completion, occupancy and use of the Infrastructure Project and the Total Housing Development in accordance with this Agreement.

### 16. Waivers

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The failure of the Department to enforce at any time the provisions of this Agreement or to require at any time performance by the Recipient of these provisions shall in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of the Department to enforce these provisions.

### 17. Identity of Interests

As a condition of disbursement, Recipient shall execute a Certificate of Identity of Interest ("Certificate") listing all relationships constituting an identity of interest with entities providing goods or services in connection with Recipient's performance of the Work. The Certificate shall be in a form provided by the Department. At the Department's request, Recipient shall submit contracts, instruments, documents, correspondence or other writings relating to Recipient's relationship with entities listed in the Certificate. The existence and nature of such relationships shall be

## EXHIBIT C

subject to review and approval of the Department to ensure compliance with Program requirements and this Agreement.

### DESIGN

#### 18. Architect

The Recipient shall utilize the services of an architect and/or an engineer to provide professional design and engineering services for the Infrastructure Project and each of the projects comprising the Total Housing Development. Recipient shall ensure that an architect and/or an engineer shall supervise the construction work, conduct periodic site visits, prepare periodic inspection reports, verify the validity of the Construction Contractor's payment requests, prepare or review change orders, and upon completion of construction, provide the certification described in Paragraph 33 of this Exhibit C. At the request of the Department, Recipient shall submit any and all contracts for these services to the Department for review and approval.

#### 19. Plans and Specifications and Project Cost Estimates

At the request of the Department, the Recipient shall submit plans and specifications and project cost estimates for the Infrastructure Project and each of the projects comprising the Total Housing Development to the Department for review and approval. The Infrastructure Project and each of the projects comprising the Total Housing Development shall be constructed in substantial compliance with the plans and specifications, subject to any change order(s) accepted by the Department where such acceptance is required.

#### 20. Reasonable Development Costs

At the request of the Department, the Recipient shall provide evidence acceptable to the Department that the total costs of the Infrastructure Project and each of the projects comprising the Total Housing Development are reasonable and necessary

for the proposed improvements. To verify cost reasonableness, the Department may require qualified third party verification of cost, evidence of the competitive bidding of major cost components and appraisals.

#### 21. Adaptability and Accessibility

The Infrastructure Project and each of the projects comprising the Total Housing

## EXHIBIT C

Development shall comply with all applicable federal, state and local laws regarding adaptability and accessibility for persons with disabilities in the design, construction and rehabilitation of projects.

### 22. Acoustics Report

Upon request, the Recipient shall provide the Department with acoustics reports for each of the projects comprising the Total Housing Development in a form acceptable to the Department.

### 23. Approval by Public Works Department

Where approval by a local public works department, or its equivalent, is required for the Infrastructure Project, the Recipient must submit, prior to the disbursement of Program funds, a statement from that department, or other documentation acceptable to the Department, indicating that the Infrastructure Project has been approved by that department.

## CONSTRUCTION

### 24. Construction Contract

Except for work performed by its own employees, the Recipient, or alternative entity approved by the Department shall enter into a written construction contract or contracts ("Construction Contract(s)") with a duly licensed contractor or contractors ("Contractor(s)") for the construction work of the Infrastructure Project and each of the projects comprising the Total Housing Development. The Construction Contract(s) shall require, where applicable, prevailing wages be paid in conformance with Labor Code Section 1720 et seq. and applicable provisions of this Agreement. The Construction Contract(s) and any amendments thereto shall be subject to the prior approval of the Department.

### 25. Contractor's Assurance of Completion

A. The Contractor(s) shall provide security to assure completion of the Infrastructure Project by furnishing the Recipient with Performance and Payment Bonds, or a Letter of Credit, which shall remain in effect during the entire term of the Construction Contract(s), and which shall be in a form and from an issuer which is acceptable to the Department. The Performance Bond shall be in an amount equal to one hundred percent (100%) of the approved construction costs included in the Construction Contract(s) to

### EXHIBIT C

provide security for the faithful performance of the Construction Contract(s) including a warranty period of at least twelve (12) months after completion.

- B. The Payment Bond shall be in an amount equal to one hundred percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the payment of all persons performing labor on the Infrastructure Project and furnishing materials in connection with the Construction Contract.
- C. A Letter of Credit shall be in an amount equal to at least twenty percent (20%) of the approved construction costs included in the Construction Contract(s), in the form of an unconditional irrevocable, stand-by letter of credit.
- D. The Department shall be named as an additional obligee in the Bonds or an additional beneficiary under the Letter of Credit.

#### 26. Prevailing Wages

Pursuant to Section 314 of the Guidelines, for the purposes of the State Prevailing Wage Law (Labor Code Sections 1720 – 1781), a grant under the Program shall be considered public funding for the construction, rehabilitation, demolition, relocation, preservation, or other physical improvement of the Infrastructure Project subject to the provisions of the State Prevailing Wage Law. Program funding of an Infrastructure Project shall not necessarily, in and of itself, be considered public funding for the Housing Developments unless such funding is otherwise considered public funding under the State Prevailing Wage Law. It is not the intent of the Department to subject the projects comprising the Total Housing Development to the State Prevailing Wage Law by reason of Program funding of the Infrastructure Project in those circumstances where such public funding would not otherwise make the projects comprising the Total Housing Development subject to the State Prevailing Wage Law. Compliance with State Prevailing Wage Law is the sole and complete responsibility of Recipient, with Recipient assuming all the liabilities, obligations and duties of the "awarding body" as that term is used in the State Prevailing Wage Law. Although the use of Program funds does not require compliance with Federal Davis-Bacon wages, other funding sources may require compliance with Federal Davis-Bacon wages. The Recipient shall prepare a plan for compliance with this section, which plan shall be subject to the review and approval of the Department.

## EXHIBIT C

### 27. Construction Phase Information

If requested, the Recipient shall provide the Department:

- A. Information during the construction period including but not limited to all change orders and modifications to the construction documents and all inspection reports of the Infrastructure Project and each of the projects comprising the Total Housing Development. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not responded to in writing within ten (10) business days of receipt by the Department. Recipient shall not authorize or approve any change orders rejected by the Department where the Department's approval is required.
- B. Information during the construction period including but not limited to all change orders and modifications to the construction documents, all inspection reports prepared for each of the projects comprising the Total Housing Developments architect(s) and other consultants, and information relative to each of the projects comprising the Total the Housing Developments income, expenses, occupancy, relocation benefits and expenses, contracts, operations and conditions of the Housing Developments. Upon written notice to Recipient, the Department may require its advance written approval of all future change orders and modifications. Deviations from the plans and specifications which have the effect of reducing the quality, life or utility of a specified item or system must receive the prior written approval of the Department. Should change orders be submitted to the Department for its approval, they shall be deemed accepted if not responded to in writing within ten (10) business days of receipt by the Department. Recipient shall not authorize or approve any change orders rejected by the Department where the Department's approval is required.

### 28. Signage

Recipient shall place signs on the construction site for the Infrastructure Project and Housing Developments stating that the Department is providing financing

## EXHIBIT C

through the Program in an appropriate location(s), typeface and size containing the following message:

(Township 9 Project)

THIS PROJECT HAS BEEN MADE POSSIBLE  
BY FINANCING FROM VOTER-APPROVED  
PROPOSITION 1C  
INFILL INFRASTRUCTURE GRANT PROGRAM  
THROUGH THE CALIFORNIA DEPARTMENT  
OF HOUSING AND COMMUNITY DEVELOPMENT

The sign shall be maintained in a prominent location visible and legible to the public through construction completion. If the job sign includes the acknowledgment and/or logo of one or more other public lenders or grantors, the Department acknowledgement and logo shall also be displayed in a similar size and layout. A copy of the Department logo can be obtained by contacting the Department Contract Coordinator.

Upon installation of the sign, the Recipient shall submit a digital photograph thereof to the Department. Upon request, the Recipient shall also provide the Department with copies of any photographs that may be taken of the Infrastructure Project and the Housing Developments by or on behalf of the Recipient or its architect. The Recipient shall provide an acceptable written consent and release agreement authorizing use of said photographs, at no expense to the Department.

### INSPECTION OF GRANT ACTIVITIES

#### **29. Site Inspection**

The Department reserves the right, upon reasonable notice, to inspect the Infrastructure Project, or any of the projects comprising the Total Housing Development site and any structures or other improvements thereon to determine whether the Infrastructure Project, or the projects comprising the Total Housing Development site meet the requirements of Program and this Agreement. If the Department reasonably determines that the site is not acceptable for the proposed Infrastructure Project, or any of the projects comprising the Total Housing Development in accordance with the Guidelines, the Department reserves the right to cancel its funding commitment and this Agreement.

**EXHIBIT C**

**30. Infrastructure Project and Housing Development Inspection**

- A. The Department and any authorized representative of the Department shall have the right, during construction and thereafter, to enter upon and inspect the construction of the Infrastructure Project and Housing Development to ensure that the construction is being and has been performed in accordance with the applicable federal, state, and/or local requirements, the Guidelines and the terms of this Agreement. Such right to inspect shall include, but shall not be limited to, the right to inspect all work done, all materials and equipment used or to be used, and all books and records, including payroll records, maintained in connection with the construction work. Such right of inspection shall be exercised in a reasonable manner.
- B. The Recipient shall be required to correct all circumstances found by such inspections not to conform to the applicable Program requirements, and to withhold payment to the Contractor and/or Subcontractor(s) until action(s) to correct the non-conforming circumstances is/are corrected by the Recipient and approved by the Department.
- C. The Department reserves the right to withhold payment for any costs found not to conform to applicable Program requirements until such actions have been taken to correct the non-conforming circumstances and such corrective actions have been approved by the Department.
- D. The Department shall have no affirmative duty to inspect the Infrastructure Project or any of the projects comprising the Total Housing Development and shall incur no liability for failing to do so. Once having undertaken any inspection, neither the Department, nor any representative of the Department shall incur any liability for failing to make any such inspection properly, or for failing to complete any such inspection. The fact that such inspection may or may not have occurred shall not relieve the Recipient, the contractor, the construction lender, the architect, the structural engineer, the locality or anyone else of any obligation to inspect the Infrastructure Project and any of the projects comprising the Total Housing Development.

**31. Audit/Retention and Inspection**

- A. The Department, its representatives or employees, or its delegatee shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Recipient shall provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice,

### EXHIBIT C

during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material. Recipient further agrees to maintain such records for a minimum period of four (4) years after final payment under this Agreement, unless a longer period of records retention is stipulated.

- B. Payment for any cost which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Recipient.
- C. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Infrastructure Project or any of the projects comprising the Total Housing Development. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.
- D. The audit shall be performed by a qualified state department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
- E. If there are audit findings, the Recipient shall submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Recipient in writing. If the Department is not in agreement, the Recipient will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.
- F. If so directed by the Department upon termination of this Agreement, the Recipient shall cause all records, accounts, documentation and all other materials relevant to this Agreement to be delivered to the Department as depository.

### COMPLETION OF CONSTRUCTION

#### **32. Relocation Plan Implementation Report**

The Recipient shall provide a report, in a form acceptable to the Department, summarizing the actions taken and identifying all recipients of relocation

## EXHIBIT C

assistance and benefits, the amounts paid, and benefits provided, to or on behalf of each recipient.

**33. Architect Certification**

Where required by the Department, the Recipient shall cause the Infrastructure Project architect(s) or other appropriate professional to certify to the Department, in a form acceptable to the Department, that all construction is completed in accordance with the "as-built" plans and specifications and in compliance with all applicable federal, state and local laws relating to disabled accessibility.

**34. Cost Certification**

At the request of the Department, the Recipient shall submit cost certification(s) for the Infrastructure Project and any of the projects comprising the Total Housing Development that shall have been audited by an independent certified public accountant in accordance with the requirements of the Department and the California Tax Credit Allocation Committee, if applicable. The Recipient (and the developer or builder if there is an identity of interest with the Recipient) shall keep and maintain records of all construction costs not representing work done under the Construction Contract and to make such records available for review by the Department.

**35. Recorded Notice of Completion**

The Recipient shall provide to the Department a certified copy of any Notice of Completion for each of the projects comprising the Total Housing Development recorded in the county in which the project is located.

**36. "As-built" Plans and Specifications**

Upon completion, at the request of the Department, the Recipient shall submit "as-built" plans and specifications for the Infrastructure Project and the projects comprising the Total Housing Development acceptable to the Department.

**37. Intentionally left blank.**

## EXHIBIT C

### HOUSING DEVELOPMENT REQUIREMENTS

#### **38. Confirmation of Permitted Housing Units**

Conditions precedent to the first disbursement of Program funds shall include receipt of all required public agency entitlements and all required funding commitments for the QIP. Alternatively, if the QIP includes multiple phases or developments, no program funds shall be disbursed until all entitlements and funding commitments for at least the first phase of the QIP have been received. The housing units to be developed in the QIP must be completed, as evidenced by receipt of a certificate of occupancy, within the time period established in this Agreement.

#### **39. Proximity to Amenities**

To ensure the Total Housing Development meets or exceeds the proximity to amenities proposed in the Application, the Recipient shall submit evidence to the Department for approval prior to the final disbursement of funds that the amenities will be in service and located in distances consistent with Section 310 of the Guidelines, as applicable, when construction of the QIP for the QIA is completed.

#### **40. Access to Transit**

To ensure the Recipient's Housing Developments meets or exceeds the access to transit distance proposed in the Application, the Recipient shall submit evidence to the Department for approval, prior to the final disbursement of funds, that the transit stations or major transit stops meet the definitions in Section 302(x) and 302(l) of the Guidelines, respectively, and meet the criteria for proximity to a transit stop or major transit stop set forth in Paragraph 309(d)(1) of the Guidelines relative to the total number of housing units in the QIA. The evidence shall substantiate completion of the transit stations identified in the application by April 4, 2013.

### REPORTING REQUIREMENTS

#### **41. Reports on Infrastructure Project**

Recipient shall submit, upon request of the Department, a periodic performance report regarding the construction of the Infrastructure Project. The reports will be filed on forms provided by the Department.

## EXHIBIT C

### 42. Reports on the Total Housing Developments

Recipient shall submit to the Department periodic reports, as required by the Department, but not less than annually, describing the development, construction and occupancy of the Total Housing Development. The report shall include, but not limited to, information regarding unit affordability and occupancy, construction and permanent financing evidenced by commitment letters, and a construction and completion schedule demonstrating compliance with this Agreement and the Guidelines. The reports will be filed on forms provided by the Department.

### 43. Updated Information

Recipient shall provide the Department updated documentation for any substantial change in the information previously provided relating to the Infrastructure Project and the Total Housing Development and the conditions described above.

### 44. Monitoring Requirements

The Program may perform program and/or fiscal monitoring of the grant. The Recipient agrees to cooperate with any such monitoring and provide reasonable access to all Infrastructure Project files, records, documents and other information to employees or representatives of the Department. The Recipient shall resolve any monitoring findings to the Department's satisfaction by the deadlines set by the Department.

## REPAYMENT OF GRANT FUNDS

### 45. Breach of this Agreement

In the event of a breach or violation by the Recipient of any of the provisions of this Agreement, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than thirty (30) days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default of the Agreement and may seek remedies for the default, including the following:

- A. The Department may terminate this Agreement and demand repayment of the Program funds to the extent that work for costs to be paid by Program funds as provided in Exhibit B remains unperformed or uncompleted. Recipient shall be liable for all costs to complete all such uncompleted or unperformed work.

### EXHIBIT C

- B. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Infrastructure Project in accordance with Program requirements.
- C. The Department may seek such other remedies as may be available under this Agreement or any law.
- D. This Agreement may be canceled by the Department under any of the following conditions:
  - 1) An uncured breach or violation by Recipient of this Agreement or the Disbursement Agreement;
  - 2) The objectives and requirements of the Program cannot be met by continuing the commitment or this Agreement;
  - 3) Construction of the Infrastructure Project or any of the projects comprising the Total Housing Development cannot proceed in a timely fashion in accordance with the Performance Milestones in Exhibit A of this Agreement; or
  - 4) Funding or disbursement conditions have not been or cannot be fulfilled within required time periods.

#### **46. Repayment of Grant Funds for Failure to Develop Housing**

Recipients will be required to repay disbursed Program grant funds where construction of residential units in the Total Housing Development used as the basis for calculating the grant amount pursuant to Section 305(a) of the Guidelines has not received building permits within five (5) years from the date of the Program grant award. The Department may provide one extension to these deadlines, for a term not to exceed five (5) years, if the Recipient demonstrates that construction has not begun for reasons outside their control, such as deteriorating market conditions. The amount to be repaid shall be the same proportion to the total grant amount as the number of residential units where construction has not timely commenced to the total number of designated residential units in the Total Housing Development.

EXHIBIT D

**STATE OF CALIFORNIA**  
**GENERAL TERMS AND CONDITIONS**

1. **Approval**

This Agreement is of no force and effect until signed by both parties.

2. **Amendment**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. **Assignment**

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. **Indemnification**

Recipient agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm or corporation furnishing or supplying work services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

5. **Disputes**

Recipient shall continue with the responsibilities under this Agreement during any dispute.

6. **Termination for Cause**

The State may terminate this Agreement and be relieved of any payments should the Recipient fail to perform the requirements of this Agreement at the time and in the manner herein provided.

**EXHIBIT D**

**7. Independent Recipient**

Recipient, and the agents and employees of Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

**8. Non-Discrimination Clause**

A. During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

B. Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

**9. Timeliness**

Time is of the essence in this Agreement.

**10. Governing Law**

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

**EXHIBIT D**

**11. Child Support Compliance Act**

If this Agreement is in excess of \$100,000, by executing this Agreement, Recipient acknowledges and agrees to the following:

- A. Recipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- B. Recipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**12. Severability**

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

**13. Drug-Free Workplace Requirements**

Recipient shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Recipient's policy of maintaining a drug-free workplace; (3) any available counseling, rehabilitation and employee assistance programs; and (4) penalties that may be imposed upon employees for drug abuse violations.

## EXHIBIT D

- C. Every employee who works on the proposed contract will: (1) receive a copy of the Recipient's drug-free workplace policy statement; and (2) agree to abide by the terms of the Recipient's statement as a condition of employment under this agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and Recipient may be ineligible for award of any future State agreements if the Department determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violated the certification by failing to carry out the requirements as noted above. (Government Code Section 8350 et seq.)

### DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California:

#### 14. Conflict of Interest

Recipient needs to be aware of the following provisions regarding current or former state employees. If Recipient has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

##### A. Current State Employees (Public Contract Code Section 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

##### B. Former State Employees (Public Contract Code Section 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a

## EXHIBIT D

contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving state service.

- C. If Recipient violates any provisions of above paragraphs, such action by Recipient shall render this Agreement void. (Public Contract Code Section 10420).
- D. Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contract Code Section 10430 (e)).

### 15. Labor Code/Workers' Compensation

Recipient needs to be aware of the provisions which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and Recipient affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

### 16. Americans With Disabilities Act

Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. § 12101 et seq.)

### 17. Recipient Name Change

An amendment is required to change the Recipient's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the State will process the amendment.

**EXHIBIT D**

**18. Corporate Qualifications to Do Business in California**

- A. If Recipient is a corporation, the State may verify that the Recipient is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.
- B. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Recipient performing within the State not be subject to the franchise tax.
- C. Both domestic and foreign corporations (those incorporated outside California) must be in good standing in order to be qualified to do business in California. If Recipient is a corporation, the State will determine whether Recipient is in good standing by contacting the Office of the Secretary of State.

**19. Resolution**

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

**20. Air or Water Pollution Violation**

Under State laws, the Recipient shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of the provisions of federal law relating to air or water pollution.

**21. Payee Data Record Form Std. 204**

This form must be completed by all Recipients that are not another state agency or other government entity.

**EXHIBIT D**

**22. National Labor Relations Board Certification**

If Recipient is receiving federal funds under this Agreement, Recipient certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Recipient within the immediately preceding two-year period because of Recipient's failure to comply with an order of a Federal court, which orders Recipient to comply with an order of National Labor Relations Board. (Not applicable to public entities.)

## EXHIBIT E

### SPECIAL TERMS AND CONDITIONS

1. The Recipient shall submit a revised development budget and sources and uses for the Capital Improvement Project (CIP) supporting the Qualifying Infill Project (QIP) and an operating budget and 15-year multi-year proforma for the QIP subject to the review and approval by the Department prior to first disbursement.
2. The Recipient shall provide an independent market study for the proposed QIP subject to the review and approval by the Department prior to the initial disbursement of Program funds.
3. The last sentence of the text of Paragraph 5.B of Exhibit A is modified to read as follows: "All proposed or planned Transit Stations or Major Transit Stop as defined in Section 302 (w) of the Guidelines shall be completed by the Sacramento Regional Transit District by April 4, 2013."
4. Notwithstanding any other provision of this Agreement, Performance Milestones in Exhibit A shall not require the submission of funding commitments for any portion of the Housing Developments listed in Exhibit A, other than the QIP.
5. Notwithstanding any other provision of this Agreement, a Covenant as referred to in Paragraph 4 of Exhibit C shall be recorded against all of the property described in Exhibit A to the Disbursement Agreement. Upon recordation of the final master parcel map for the project, the Department will release or terminate this Covenant as to the parcels created by said final master parcel map that do not contain any of the Housing Developments listed in Exhibit A, including the QIP.
6. Notwithstanding any other provision of this Agreement, a Covenant as referred to in Paragraph 4 of Exhibit C shall be recorded against all Housing Developments listed in Exhibit A, other than the QIP. The Department will release or terminate this Covenant as to each Housing Development containing only market rate units upon receipt of a valid Certificate of Occupancy for such development.
7. The requirements of Paragraph 8 of Exhibit C for evidence of compliance with, or the inapplicability of, Article 34 of the California Constitution shall not apply to Housing Developments containing only market rate units.
8. Items required to be submitted to the Department at its request pursuant to Paragraphs 18 through 24 inclusive, of Exhibit C, shall be subject to the

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Rev: 4/20/09  
Prep Date: 9/8/09

## EXHIBIT E

Department's approval only where such items are for the Infrastructure Project or the QIP.

9. The Department's right to request a financial audit prepared by a certified public accountant pursuant to Paragraph 31.C of Exhibit C shall be limited to the financial records for the Infrastructure Project and the QIP.
10. Relationship of Recipient and Infrastructure Sub-Recipient: The Infrastructure Sub-Recipient is the owner and developer of the property on which the Infrastructure Project and the Additional Housing Development will be built. The Recipient has designated the Infrastructure Sub-Recipient as the payee for Program Funds for the Infrastructure Project. In addition, the Infrastructure Sub-Recipient has agreed to indemnify the Recipient for certain claims relating to this Agreement, its exhibits, and other contracts, agreements and documents related to the development of the Infrastructure Project (the "Infrastructure Documents"). The Department agrees to (a) disburse Program Funds for the Infrastructure Project directly to the Infrastructure Sub-Recipient upon receipt of Recipient's designated payee form and (b) provide copies of all correspondence regarding the Infrastructure Documents and/or the Infrastructure Project, including but not limited to requests by the Infrastructure Sub-Recipient for the disbursement of Program Funds for the Infrastructure Project to both the Recipient and the Infrastructure Sub-Recipient.
11. Relationship of Recipient and Housing Sub-Recipient: The Housing Sub-Recipient will become the owner and developer of the property on which the Qualified Infill Project will be built. The Recipient has designated the Housing Sub-Recipient as the payee for Program Funds for the Qualified Infill Project. In addition, the Housing Sub-Recipient has agreed to indemnify the Recipient for certain claims relating to this Agreement, its exhibits, and other contracts, agreements and documents related to the development of the Qualified Infill Project (the "Qualified Infill Documents"). The Department agrees to (a) disburse Program Funds for the Qualified Infill Project directly to the Housing Sub-Recipient upon receipt of Recipient's designated payee form and (b) provide copies of all correspondence regarding the Qualified Infill Documents and/or the Qualified Infill Project, including but not limited to requests by the Housing Sub-Recipient for the disbursement of Program Funds for the Qualified Infill Project to both the Recipient and the Housing Sub-Recipient.

**EXHIBIT B**

**Disbursement Agreement for the Infill Infrastructure Grant Program**

**INFILL INFRASTRUCTURE GRANT PROGRAM  
DISBURSEMENT AGREEMENT**

This DISBURSEMENT AGREEMENT (the "Agreement") is dated for reference purposes only as of March 8, 2010, and is made by and among the City of Sacramento, a municipal corporation (the "Recipient") and the Department of Housing and Community Development, a public agency of the State of California (the "Department").

**Recitals**

A. Recipient has submitted an application (the "Application") to the Department for a grant under the Infill Infrastructure Grant Program ("Program") and in accordance with Part 12 of Division 31 of the Health and Safety Code (commencing with Section 53545.12) and the Infill Infrastructure Grant Program Guidelines, issued by the Department and dated February 28, 2008 (the "Guidelines"), to finance, in part, the construction of the Capital Improvement Project ("Infrastructure Project") described herein pursuant to the Standard Agreement Number 07-IIG-4234, entered into by the Recipient and the Department dated October 20, 2009 (the "Standard Agreement"). The Department has conditionally agreed to provide the grant to the Recipient in an amount not to exceed NINETEEN MILLION AND ONE HUNDRED THOUSAND AND 00/100 Dollars (\$19,100,000.00) (the "Program Funds"). The Standard Agreement, the Application, this Agreement and all amendments, exhibits and attachments thereto (the "Grant Documents"), are incorporated in full by referenced to this Agreement.

B. The Infrastructure Project is integral to or necessary for the development of a residential housing development described in Exhibit "C" attached hereto (the "Housing Development") and described in the Standard Agreement in conjunction with the construction of the Infrastructure Project.

C. The parties hereto wish to enter into an agreement for the disbursement of Program Funds to ensure timely completion of the Infrastructure Project and the Housing Development in accordance with the requirements of the Grant Documents, the Guidelines, the Department and the State of California.

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.

2. Project. The Recipient shall construct the Infrastructure Project and the Housing Development, as generally described in the Standard Agreement, on the real property described in Exhibit A hereto (the "Property") and incorporated herein, in accordance with the Standard Agreement and the Scope of Work as described in Exhibit B attached hereto and incorporated herein.
  
3. Representations and Warranties. Recipient represents and warrants to the Department as follows:
  - a. Organization. Recipient is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own or lease the Property and to own, develop, construct, operate and maintain the Infrastructure Project and the Housing Development. The copies of the documents evidencing the organization of Recipient delivered to the Department are true, complete, and correct copies of the originals, as amended to the date of this Agreement.
  
  - b. Authority of Recipient. Recipient has full power and authority to execute and deliver the Grant Documents and all other instruments, agreements and documents executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.
  
  - c. Authority of Persons Executing Documents. The Grant Documents and all other instruments, agreements and documents executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Recipient. All actions required under Recipient's organizational documents and applicable governing law for the authorization, execution, delivery and performance of the Grant Documents and all other instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.
  
  - d. No Breach of Law or Agreement. None of the execution or delivery of the Grant Documents and other instrument, agreement and document executed and delivered, or to be executed or delivered, pursuant to this Agreement, or the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission, or agency whatsoever binding on the Recipient or any provision of the organizational documents of the Recipient, will conflict with or

constitute a breach of or a default under any agreement to which Recipient is a party, or will result in the creation or imposition of any lien upon the Property of Recipient, other than liens approved by the Department.

- e. Compliance with Laws; Consents and Approvals. The Infrastructure Project and the Housing Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies having jurisdiction over either the Recipient, the Property, the Infrastructure Project or the Housing Development, and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency. All permits, consents, permissions and licenses required by any federal, state or local government or agency to which Recipient, the Property, the Infrastructure Project or the Housing Development is subject, which may be necessary in relation to this Agreement or the acquisition, development, construction or ownership of the Infrastructure Project or the Housing Development, at or prior to the commencement of construction of the Infrastructure Project or the Housing Development respectively, have been, or will be, obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.
- f. Pending Proceedings. The Recipient is not in default under any law or regulations or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Recipient, threatened against or affecting Recipient, the Property, the Infrastructure Project or the Housing Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Recipient, materially affect Recipient's ability to acquire, construct or develop the Infrastructure Project or the Housing Development.
- g. Title to Property. Recipient or its subsidiary will have good and marketable title to the Property, Infrastructure Project and the Housing Development or a leasehold interest therein approved by the Department and there shall exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for (i) funds identified in the Sources and Uses of Funds attached hereto and incorporated herein as Exhibit C, (ii) current real property taxes and assessments not yet due and payable and (iii) other matters of record approved in writing by the Department.

- h. Financial Statements. The financial statements of Recipient and other financial data and information if requested by the Department and furnished by Recipient, fairly represents the financial information contained therein.
  - i. Adequacy of Program Funds. The amount of the Program Funds, together with any funds to be provided by the Recipient or to the Recipient from any other sources, is adequate as construction financing for the Infrastructure Project in accordance with Exhibit C.
  - j. Payment of Taxes. All federal, state, county and municipal taxes required to be paid by the Recipient or on account of the Property due and payable as of the date of this Agreement have been paid in full as of such date.
  - k. Availability of Utilities. All utilities necessary for the development and occupancy of the Housing Development are or will be available at or within the boundaries of the Housing Development and all steps necessary to assure that such utility services will be available upon completion of the Housing Development have been taken.
  - l. Hazardous Materials. Recipient has performed due diligence review of the condition of the Infrastructure Project and the Housing Development including review to disclose the possible existence of asbestos and toxic or hazardous materials. All information regarding the condition of the Infrastructure Project and the Housing Development have been disclosed to the Department in writing including but not limited to all Phase I, soils and hazardous materials reports regarding the condition of the Property, the Infrastructure Project and the Housing Development.
4. Sources and Uses. The Recipient has received, or will receive, funds for the purpose of developing the Infrastructure Project and Housing Development in the amounts and the sources identified in the Sources and Uses of Funds attached hereto and incorporated herein as Exhibit C. All funds shall be used and secured in the manner specified in Exhibit C. Recipient agrees to comply with and satisfy all the terms and conditions imposed on the Recipient in connection with the sources of funding identified in the Sources and Uses of Funds.
5. Use of Funds. Recipient agrees that the Program Funds shall be expended only in accordance with the applicable statutes and Program Guidelines governing the Program, and only for the purposes and activities set forth in this Agreement. The Program Funds shall be used exclusively for the payment of, or reimbursement for, Approved Costs as

shown in the Project Budget, as the same may be amended from time to time with the written approval of the Department, such payment of, or reimbursement for, costs to be made only after the same have been incurred by the Recipient. "Approved Costs" shall mean all hard and soft eligible costs under the Program (and modifications thereto), which were approved, or will be approved by the Department, which are needed for the completion of the Infrastructure Project, in accordance with Scope of Work.

6. Disbursement Schedule. The Disbursement Schedule attached to this Disbursement Agreement as Exhibit D represents a good faith estimate of when the Program Funds will be disbursed to pay costs. The Department and the Recipient shall confer as necessary, to update the Disbursement Schedule throughout the construction period.
7. Displacement and Relocation. If the acquisition, construction or development of the Infrastructure Project or Housing Development will result in the temporary or permanent displacement of occupants, the Recipient shall provide relocation payments and assistance in accordance with the applicable Federal and State requirements.
8. Contractors and Subcontractor. For the performance of all construction work on the Infrastructure Project, Recipient agrees to use a general contractor or contractors ("Contractor") in order to complete the Scope of Work described in Exhibit B. Any successor to or substitute for the Contractor shall be subject to the approval of the Department. The Recipient hereby certifies that the Contractor is in good standing with the California State Contractors' License Board. The Recipient shall only contract with contractors, and shall ensure that the Contractor and any successor thereto shall only contract with subcontractors, which are so licensed.
9. Construction Contract. The Recipient shall enter into a written contract or contracts with the Contractor for the performance of the Scope of Work as set forth in Paragraph 2 above (the "Construction Contract"). Recipient shall not terminate or substantially amend the Construction Contract with respect to the Infrastructure Project without the prior written approval of the Department. Recipient shall monitor and enforce the terms and conditions of the Construction Contract to ensure completion of the Scope of Work. The Construction Contract shall contain provisions for compliance with State Prevailing Wage Law to the extent required by the Grant Documents and the Guidelines.
10. Construction Responsibilities. Recipient shall be solely responsible for all aspects of Recipient's business and conduct in connection with the Property, the Infrastructure Project and the Housing Development,

including, but not limited to, the quality and suitability of the Scope of Work and the equipment used in the construction of the Infrastructure Project and the Housing Development, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors and subcontractors of any tier, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements.

11. Delay. Recipient shall promptly notify the Department in writing of any event causing delay or interruption of construction work, in excess of (3) three working days, or the timely completion of construction for a period of (5) five working days beyond the scheduled completion date. The notice shall specify the particular work delayed and the cause and period of each delay.
12. Purchase of Materials Under Title Retention Agreement. The Recipient shall not purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the Infrastructure Project under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Infrastructure Project, unless authorized in writing by the Department.
13. Liens and Stop Notices. If a claim of lien is recorded affecting the Property, Infrastructure Project, Housing Development or a bonded stop notice is served upon the Department which affects Program Funds or the Recipient's other funding, Recipient shall, within twenty (20) days of such recording or service or within five (5) days of the Department's demand (whichever last occurs): (i) pay and fully discharge the same; (ii) effect the release thereof by recording or delivering to the Department a surety bond in sufficient form and amount, or otherwise; or (iii) provide the Department with other assurance which the Department deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the Department from the effect of such lien or bonded stop notice. If Recipient has not received actual notice of the claim of lien or bonded stop notice prior to the Department's demand, then the five (5) day period described above shall be extended to twenty (20) days. Recipient shall give the Department prompt written notice of all lien claims affecting the Property, the Infrastructure Project or the Housing Development.
14. General Conditions of Disbursement. Disbursement of Program Funds shall be subject to the following conditions:

- a. Disbursement of Program Funds shall be subject to the procedures and conditions set forth in this Agreement and Exhibit D of the Standard Agreement.
  - b. The Department shall disburse Program Funds to Recipient for reimbursement or payment of Approved Costs incurred by Recipient as provided for herein.
  - c. The aggregate disbursement of all or any portion of Program Funds for hard construction costs under the Construction Contract shall be limited to an amount equal to ninety percent (90%) of such costs with the ten percent (10%) being retained except for the final disbursement of Program Funds applicable thereto. The ten percent retained amount shall be disbursed as part of the final disbursement as set forth in Paragraph 18 hereof.
  - d. There exists no Event of Default, as defined in this Agreement, or the Standard Agreement, or event, omission or failure of condition which would constitute a default or Event of Default after notice or lapse of time, or both that will not be cured concurrently with the funding of the Program Funds.
  - e. Recipient has satisfied all requirements for receipt of the Program Funds in accordance with the applicable statutes and IIG Program Guidelines.
  - f. Right to Condition Disbursements. The Department shall have the right to condition any disbursement upon receipt and approval of such documentation, evidence or information that the Department may request, including, but not limited to, vouchers, invoices, and architect's inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed.
15. Conditions Precedent to Individual Disbursements. The Department shall not be obligated to make any disbursement of Program Funds or take any other actions under this Agreement or the Standard Agreement unless all of the following conditions precedent relating to the Infrastructure Project or the Housing Development, respectively, are satisfied at the time of such actions:
- a. Recipient has and will continue to maintain site control over the Infrastructure Project and Housing Development. Recipient has provided to the Department evidence demonstrating that Recipient has obtained all licenses, easements and right-of-way or other interest required for completion of the Infrastructure Project or Housing Development.

- b. If applicable, Recipient has provided to the Department a relocation plan conforming to the requirements of state law and regulations issued by the Department in California Code of Regulations Title 25, Section 6000 et seq.
- c. Recipient has executed and provided to the Department a Certificate of Identity of Interest.
- d. Recipient has obtained all necessary insurance policies and endorsements as described in Exhibit E of this Agreement.
- e. The Recipient shall provide security to assure completion of the Project by furnishing the Department and other construction lenders with Performance and Payment Bonds, or one or more Letters of Credit, which shall remain in effect during the entire term of construction of the applicable Scope of Work, and which shall be in a form and from an issuer which is acceptable to the construction lenders and Department. The Performance Bonds shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs to provide security for the faithful performance of the Standard Agreement including a warranty period of at least 12 months after completion. The Payment Bonds shall be in an aggregate amount at least equal to one hundred percent (100%) of the approved construction costs to provide security for the payment of all persons performing labor on the Project and furnishing materials in connection with the Project. If one or more Letters of Credit are used, they shall be in an amount equal to at least 20% of the applicable approved construction costs. The Department shall be named as an additional obligee in the Bonds or beneficiary under a Letter of Credit.
- f. Recipient has obtained all required permits and approvals required for the lawful construction of the Infrastructure Project and, when required by the Department, the Housing Development.
- g. Where approval by a local public works department, or its equivalent, is required for the Infrastructure Project, the applicant must submit a statement from that department, or other documentation acceptable to the Department, indicating that the Infrastructure Project has received that approval.
- h. Recipient has received all required public agency entitlements and land use approvals for the Housing Development.

If the Housing Development includes multiple phases or developments, no Program Funds shall be disbursed for the Housing Development until all entitlements and funding commitments for at least the first phase of the Housing Development has been received.

- i. Submission to the Department of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens.
- j. Recipient has obtained all applicable CEQA and NEPA clearances and submitted evidence thereof as required by the Department.
- k. Recipient has provided to the Department a Title Report acceptable to the Department.
- l. Recipient has executed and recorded a written covenant for the development of affordable housing with the Department as required in the Standard Agreement.
- m. Recipient has provided reasonable assurance that adequate construction financing and permanent financing as identified in the Sources and Uses of Funds (or equivalent, alternative financing approved by the Department) will be available to complete the Infrastructure Project and Housing Development and to provide permanent financing therefore.

If the Housing Development includes multiple phases or developments, no Program Funds for the Housing Development shall be disbursed until all binding agreements for construction financing and enforceable commitments for permanent financing for at least the first phase of the Housing Development has been received.

- n. Recipient has provided evidence acceptable to the Department of ongoing compliance with State Prevailing Wage Law as required by the Grant Documents and the Guidelines.
- n. Recipient has completed, executed and submitted to the Department, on a form provided by the Department, a Draw Request indicating Recipient's request for disbursement of Program Funds.
- o. Recipient has completed or complied with all events or conditions in the Disbursement Schedule prior to the submission of the Draw Request.

- p. Recipient has complied with all special conditions contained in the Exhibit F which are conditions precedent to the disbursement of Program Funds.
- q. Recipient has submitted a Draw Request as provided below.

16. Draw Requests.

- a. Application for Payment. Recipient shall request Program Funds by submitting a written itemized statement or draw request in a form that is acceptable to the Department (the "Draw Request"), subject to the conditions set forth below. A Draw Request for payment shall be submitted to the Department not more frequently than once monthly. The Department shall determine whether or not the conditions precedent to its obligation to advance Program Funds have been satisfied or whether or not to waive any conditions precedent to its obligations to advance its Program Funds which the Department determines have not been satisfied.
- b. Contents of Application for Payment. Each Draw Request shall set forth the following: (i) a description of work performed, material supplied and/or costs incurred or due for which the disbursement is requested with respect to any Approved Costs shown as a line item ("Item") in the Sources and Uses of Funds; (ii) the total amount incurred, expended and/or due for each requested Item, less prior disbursement; and (iii) the percentage of completion of the portion of the work to be paid from the Item.
- c. Delivery of Draw Request. Recipient shall deliver each Draw Request to the Department at its address set forth in Paragraph 30 or such other address designated by the Department in writing. Each Draw Request shall be subject to the approval of the Department.
- d. Documentation. Each Draw Request shall be accompanied by the following: (i) copies of paid invoices and unconditional lien releases for construction costs paid with the proceeds of prior Draw Requests (except for the first Draw Request), and conditional (upon receipt of payment) lien releases for construction costs to be paid with the proceeds of the instant Draw Request, which invoices and lien releases shall be considered a part of each Draw Request; (ii) a copy of inspection report or other documentation from localities, municipalities, or other construction lenders indicating the percentage of work completed pertaining to instant Draw Request; (iii) submission of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens; and (iv) any applicable change order(s) that affect or alter the Scope of Work.

17. Approval of Draw Request.

- a. Procedure. The Department shall within thirty (30) business days after receipt of a Draw Request containing all of the items described in Paragraph 15, above, determine the amount of the Draw Request to be approved, notify Recipient of such amount, and disburse the approved amount, by State Warrant, to the Recipient or designated payee approved by the Department.
- b. Disapproval. Any item in a Draw Request which is not specifically approved within thirty (30) business days shall be deemed disapproved. On the basis of the progress of work performed on the Infrastructure Project and the conditions precedent to making disbursements in this Agreement, the Standard Agreement and the applicable statutes and Program Guidelines, the Department may disapprove all or part of a Draw Request. In the event the Department disapproves any portion of the amount requested by Recipient in a Draw Request, the Department shall promptly notify the Recipient in writing of the disapproved amount and the reason therefore.
- c. Concurrent Review of Draw Request. In the event any item shall be disapproved or deemed disapproved, the Recipient and the Department shall meet and in good faith attempt to resolve the matter to their mutual satisfaction.
- d. Disbursement of Undisputed Amounts. In the event of any dispute, the Department shall disburse the amount of the Draw Request not in dispute, and fund any disputed amount promptly upon resolution of the dispute. Disputed amounts shall not be deducted from the Department's Program Funds, but shall be available for disbursement for other approved costs in accordance with the Sources and Uses of Funds. The Department and Recipient shall seek to resolve any disputes promptly and in good faith.

18. Condition Precedent to Final Disbursement. The final disbursement of the of Program Funds for the Infrastructure Project and Housing Development, respectively, including ten percent (10%) retention of hard construction costs referenced in Paragraph 8 above, shall be subject to the following conditions to the extent they relate to the Infrastructure Project or Housing Development, respectively:

- a. All of the conditions set forth in Paragraphs 14, 15 and 16 above have been met.

- b. Submission to the Department of a Notice of Completion duly recorded by Recipient.
- c. Submission to the Department of a Certificate of Occupancy for the Housing Development issued by the local government having jurisdiction over the Housing Development, or any equivalent thereto acceptable to the Department.
- d. Receipt by the Department, if so requested, of a development cost audit for the Infrastructure Project satisfactory to the Department.
- e. Issuance of a certificate or certificates, each in form and substance satisfactory to the Department, executed by Recipient and the Architect, either jointly or severally, each certifying that the Infrastructure Project has been completed in accordance with the Scope of Work.
- f. Completion of the Infrastructure Project in accordance with Exhibit B and acceptance and approval of the Project by the Department and by any person or governmental agency whose approval may be required.
- g. Submission to the Department of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens.
- h. Disposition of mechanic's liens that have been recorded or stop notices that have been delivered to the Department or other construction lenders, so that any such liens shall have been paid, settled, bonded around or otherwise extinguished or discharged, and the Department has been provided satisfactory evidence of such payment, settlement, bond or discharge, including without limitation all statutory waivers.
- i. Review and approval by the Department of evidence submitted by Recipient that the Housing Development meets or exceeds the requirements for access to transit for which Recipient received points under the Program.
- j. Review and approval by the Department of evidence submitted by Recipient that the Housing Development meets or exceeds the requirements for proximity to amenities for which Recipient received points under the Program.

19. Disbursement of Program Funds Received by Recipient. All Program Funds received by Recipient shall be disbursed to pay costs in accordance with the Draw Request approved by the Department and in accordance with this Agreement.
20. Inspection of the Infrastructure Project and the Housing Development. The Department shall have the right to inspect the Infrastructure Project and the Housing Development during construction. Recipient shall deliver to the Department any inspection reports prepared on behalf of the other construction lenders, to the extent available to the Recipient. Inspection of the Infrastructure Project and the Housing Development shall be for the sole purpose of protecting the Department's interest and is not to be construed as a representation by the Department that there has been compliance with plans or that the Infrastructure Project and the Housing Development will be free of faulty materials or workmanship. The Recipient can make or cause to be made such other independent inspections as the Recipient may desire for its own protection.
21. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder following written notice to the Recipient by the Department, specifying (i) the applicable event, (ii) the action required to prevent such event from becoming an Event of Default, and (iii) a date by which such action must be taken, which, (a) in the case of an event that is curable by payment of money, shall be not fewer than fifteen (15) after the date the notice is mailed to Recipient, and (b) in the case of an event that is not curable by the payment of money, shall not be fewer than thirty (30) days after the date the notice is mailed to Recipient, or such longer period of time as is reasonably necessary to effectuate a cure, if such event is not susceptible to cure by the individual or entity effectuating the cure within such thirty (30) day period, so long as the individual or entity effectuating the cure is diligently pursuing such cure:
- a. Monetary. (i) Recipient's failure or inability to secure anticipated financing from parties other than the Department's Program Funds as specified in Exhibit C (or equivalent alternative financing approved by the Department), regardless of fault of the Recipient; (ii) Recipient's failure to use or apply Program Funds in the manner specified by, or consistent with the purposes of this Agreement and as specified in Exhibits B and C; or (iii) the occurrence of an event of default under the terms of the commitment for any of the loans or grants received from other construction funding sources as specified in Exhibit C hereto which results in a termination or cancellation of such commitment(s) in respect of which no replacement commitment is provided within one hundred twenty (120) days after such cancellation or termination.

- b. Construction; Use. (i) Recipient's failure to remedy any material deviation in the work of construction from the Scope of Work that occurred without the Department's approval or defective workmanship or materials in constructing the Infrastructure Project or Housing Development, in each case to the Department's satisfaction, within ten (10) days of the Department's written demand to do so; (ii) the cessation of construction of the Infrastructure Project and Housing Development prior to completion for a continuous period of more than fifteen (15) days (unless caused by war, rebellion, insurrection, strike, lockout, boycott or act of God, or other event beyond the Recipient's control as determined in the sole discretion of the Department); (iii) the prohibition, enjoining or delay (in any manner) of the construction of, or the prohibition or enjoining (in any manner) of the leasing or sale of any unit in the Housing Development in accordance with the Grant Documents for a continuous period of more than thirty (30) days; or (iv) the curtailment in availability to the Infrastructure Project or Housing Development for a continuous period of more than thirty (30) days of utilities or other public services necessary for construction or the full occupancy or utilization of the Infrastructure Project or Housing Development.
- c. Performance of Obligations. Recipient's unwaived default and failure to cure such default in a timely manner under any other Grant Documents or this Agreement or other construction lender loan documents in respect of which no replacement construction loan shall be provided within one hundred twenty (120) days after the expiration of the applicable cure period, Recipient's default under any ground lease or sale of the Housing Development resulting in a termination of such ground lease or reversion of title to the seller, unless the applicable ground lessor or seller or their respective successors and assigns expressly undertakes pursuant to a signed writing to perform the obligations of the ground lessee or purchaser with respect to the Housing Development.
- d. Representations and Warranties. (i) Any of Recipient's representations or warranties in any of the Grant Documents or any statements, certificates or schedules furnished by Recipient to the Department, shall prove to have been untrue in any material respect when made or the Recipient shall have concealed any material fact from the Department, (ii) any of the Recipient's representations or warranties in any of the Grant Documents or any statement, certificates or schedules furnished by Recipient to the Department, other than representations, warranties, statements and certificates as to the financial condition of Recipient or any other person, shall cease to be true and shall remain untrue for

thirty (30) days Program call] after notice of such change to Recipient by the Department, or (iii) any material adverse change in the financial condition of Recipient from the financial condition represented to the Department as of the date of this Agreement which alters or affects the Scope of Work.

- e. Voluntary Bankruptcy; Insolvency; Dissolution. Recipient's or any general partner of Recipient's (i) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition's material allegations regarding the Recipient's insolvency; (iii) making a general assignment for the benefit of creditors; (iv) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Recipient, any general partner of Recipient or any of their respective properties; (v) inability or admission in writing of its inability to pay its debts as they are due; or (vi) death, if an individual; or the filing by Recipient or any general partner of Recipient of a petition seeking the liquidation or dissolution of Recipient or any general partner of Recipient or the commencement of any other procedure to liquidate or dissolve Recipient or any general partner of Recipient.
  
- f. Involuntary Bankruptcy. Recipient's or any general partner of Recipient's failure to effect a full dismissal of any involuntary (i) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) proceeding for the appointment of a receiver, trustee or liquidator for Recipient or any general partner of Recipient or all or a material part of the assets of the Recipient or any general partner of Recipient, or (iii) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against Recipient or any general partner of Recipient or in any way restrains or limits Recipient or any general partner of Recipient or the Department regarding the Program Funds, the Property, the Infrastructure Project or Housing Development, in any event prior to the earlier of the entry of any order granting relief sought in the involuntary petition or proceeding, or sixty (60) days after the date of filing of the petition or beginning of the proceeding.
  
- g. Liens; Attachment; Condemnation; Encroachments. (i) The filing of any claim of lien against the Property, Housing Development or the Infrastructure Project, or any part thereof, or service on the Department of any bonded stop notice relating to the Property, Housing Development or the Infrastructure Project and the

continuance of the claim for lien or bonded stop notice for twenty (20) days after Recipient receives actual notice thereof without discharge, satisfaction or provision for payment being made as provided for in Paragraph 12 hereof; (ii) the condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material portion of the Property, Housing Development or the Infrastructure Project, such materiality to be determined by the Department in its sole and absolute discretion; (iii) the sequestration or attachment of, assignment by Recipient for the benefit of its creditors of, or any levy or execution upon, the Property, Housing Development, the Infrastructure Project, other collateral provided by Recipient under any of the Grant Documents, monies in any account as may be required under any Grant Documents for the deposit of operating income, or substantial portion of the other assets of Recipient, which is not released, expunged or dismissed prior to the earlier of sixty (60) days after sequestration, attachment or execution or the sale of the assets affected thereby; or (iv) any survey provided to the Department upon a request for a disbursement of Program Funds shows encroachments which occurred without the written approval of the Department which, in its sole discretion, the Department requires to be removed or corrected, and the failure to remove or correct any such encroachments within thirty (30) days after receipt of the survey.

- h. General. Recipient's breach of any condition, covenant, warranty, promise or representation contained in this Agreement not otherwise resulting in an Event of Default hereunder and the continuance of such breach for a period of thirty (30) days after written notice thereof to Recipient.

22. Remedies upon an Event of Default. Upon the happening of an Event of Default, the Department's obligation to disburse Program Funds may at the Department's election by delivery by the Department of written notice to the Recipient, terminate and the Department shall have the right to withhold any further disbursement of Program Funds until the default has been cured. Upon the occurrence of an Event of Default, the Department may also, in addition to all other rights and remedies available to the Department hereunder or under the Grant Documents or applicable law, at its option, upon delivery by the Department of written notice to the Recipient, proceed with any or all remedies set forth herein:

- a. Terminate this Agreement.
- b. Call all sums paid or advanced under the Program due and payable, all without notice of default, presentment or demand for

payment, protest or notice of nonpayment or dishonor, or other notice or demand of any kind or character, provided that such call is made prior to final disbursement of the Program Funds pursuant to the provision of Section 18 hereof.

- c. Completion of Project. The Department shall have the right to enter into possession of the Property, the Infrastructure Project or the Housing Development, to take over and complete the Infrastructure Project or Housing Development in accordance with the Scope of Work, to discharge and replace the Contractor and to employ personnel to protect the Property, the Infrastructure Project or the Housing Development and, for those purposes, to make disbursements of Program Funds. All such disbursements shall be deemed to have been paid to the Recipient by the Department. Any funds so paid or advanced shall be reimbursed to the Department by Recipient on demand, together with interest thereon at the rate of ten (10%) percent per annum from the date of expenditure. Any contracts entered into or indebtedness incurred upon the exercise of such right may be in the name of the Recipient, and for such purposes and the other purposes of this Paragraph 22 the Department is hereby authorized and irrevocably appointed attorney-in-fact (said appointment being coupled with an interest) to enter into said contracts or agreements or contracts or agreements theretofore made by or on behalf of Recipient and to do any and all things necessary or proper to complete the work of construction, including the signing of Recipient's name to such contracts and documents as may be deemed necessary by counsel for the Department.

In addition to the foregoing and not in limitation thereof, the Recipient hereby further empowers the Department as said attorney-in-fact as follows: (i) to use any Program Funds for the purpose of completing the construction of the Infrastructure Project in the manner called for by the Scope of Work; (ii) to make such additions, changes and corrections in the Scope of Work as shall be necessary or desirable to complete the Infrastructure Project in substantially the manner contemplated by the Scope of Work; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (iv) to pay, settle or compromise all existing bills and claims which may be liens against the Property, the Infrastructure Project, or any part thereof, or as may be necessary or desirable for the completion of the construction of the Infrastructure Project, or for clearance of title; (v) to execute all applications and certificates in the name of the Recipient which may be required by the Construction Contract or documents entered into in connection therewith; (vi) to prosecute

and defend all actions and proceedings in connection with the Infrastructure Property or the construction of the Infrastructure Project and to take such action and require such performance necessary; and (vii) to do any and every act which the Recipient might do in its own behalf with regard to completion of the construction of the Infrastructure Project. In no event shall the Department be required to expend its own funds to complete the Infrastructure Project if the remaining Program Funds are insufficient, but the Department may, at its option, advance such funds.

- d. Stoppage of Construction. Upon an Event of Default specified in subparagraph (b)(i), (b)(iv) or (g)(iv) of Paragraph 21, the Department may order immediate stoppage of those portions of the Project that are directly impacted by such Events of Default specified above and demand that the condition be corrected, notwithstanding any right of Recipient under this Agreement to correct or insure against such defects. After issuance of such an order in writing, no further work shall be done on those portions of the Infrastructure Project that are directly impacted by such Events of Default specified above without the prior written consent of the Department and until said condition has been fully corrected.
- e. Curing of Defaults by Disbursement From Program Funds. Upon the happening of any Event of Default that may be cured by payment of money, the Department shall have the right to make such payment from the Program Funds. If the payment of any such sums may, in the Department's good faith determination, result in the reduction in the total amount of remaining Program Funds below that required to complete construction of the Infrastructure Project, the amount which the Department determines in good faith to be necessary to provide for such completion shall be deposited by Recipient with the Department or in such account as the Department may designate, within ten (10) days after written demand therefore by the Department.
- f. Judgment for Specific Performance; Appointment of a Receiver. Upon the occurrence of an Event of Default, the Department may seek an order for specific performance in any court of competent jurisdiction or may apply to any such court for the appointment of a receiver to take over and complete construction of the Infrastructure Project or Housing Development in accordance with the terms of the Grant Documents, or for such other relief as may be appropriate.

23. Right to Advance or Post Program Funds. Where disputes have arisen which, in the good faith opinion of the Department, may endanger timely completion of the Infrastructure Project or fulfillment of any condition precedent or covenant herein or result in lien claims against the Property or the Infrastructure Project, provided that Recipient shall not be contesting such disputes or claims in accordance with the provision of Paragraph 24 below, the Department may agree to advance Program Funds for the account of Recipient without prejudice to Recipient's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form which the Department, in its discretion, deems proper, including, but without limiting the generality of the foregoing, agreements to indemnify a title insurer against possible assertion of lien claims, agreements to pay disputed amounts to the Contractor or any potential lien claimant in the event Recipient is unable or unwilling to pay the same, and the like. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of Recipient, and Recipient agrees to reimburse the Department for any such payments made upon demand therefore with interest at the rate of ten (10%) percent per annum, or such lower rate of interest as may be approved by the Department, from the date of payment until date of reimbursement. Nothing in this or any other paragraph of this Agreement shall be construed to require the Department to advance monies over and above the amount of the Program Funds, though the Department may, at its option, advance such amounts.
24. Right of Contest. Recipient shall have the right to contest in good faith any claim, demand, levy or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Department or the rights of the Department hereunder. Upon demand by the Department, Recipient shall make suitable provision by deposit of funds with the Department or by bond or by title insurance or other assurance satisfactory to the Department for the possibility that the contest will be unsuccessful. Such provision shall be made fifteen (15) days after demand therefore, and, if made by deposit of funds with the Department, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Recipient or the adverse claimant.
25. Rights Cumulative, No Waiver. All the Department's rights and remedies provided in the Grant Documents, granted by law or otherwise, are cumulative and, except as provided herein, may be exercised by the Department at any time. No waiver shall be implied from any failure of the Department to take, or any delay by the Department in taking, action concerning any Event of Default or failure of condition under the Grant Documents, or from any previous waiver of any similar or unrelated Event

of Default or failure of condition. Any waiver or approval under any of the Grant Documents must be in writing and shall be limited to its specific terms.

26. Attorneys' Fees; Enforcement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe or defend any provision of any of the Grant Documents, or as a consequence of any Event of Default not cured hereunder or default under any other Department document, with or without the filing of any legal action or proceeding, Recipient shall pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the State in connection therewith, together with interest thereon from the date of such demand at the rate of ten (10%) percent per annum.
27. Enforcement of the Construction Contract. The parties hereto agree that the Department shall have, and is hereby assigned, the right of the Recipient to enforce the provisions of the Construction Contract and all documents related thereto in the event, as determined by the Department, in its sole discretion, that the Recipient fails, refuses, or is otherwise unable to enforce them. The Department shall notify the Recipient, in writing, of its determination to effect this assignment, specifying the reasons therefor, at least fifteen (15) days prior to the Department's undertaking any such action.
28. Indemnification and Waiver.
  - a. Indemnification. Recipient agrees to indemnify the Department and its agents, employees and officers against, and hold the Department and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the Department may incur as a direct or indirect consequence of: (i) the making of the grant to the Recipient, except for violations of banking laws or regulations by the Department; (ii) Recipient's failure to perform any obligations as and when required by this Agreement or any of the Grant Documents; (iii) any failure at any time of any of Recipient's representations or warranties to be true and correct; (iv) any act or omission by Recipient, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property, the Infrastructure Project or Housing Development; or (v) the presence of hazardous substances on or at the Property, the Infrastructure Project or the Housing Development. Recipient shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per

annum. The duty of the Recipient to indemnify and hold harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Recipient shall indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department or the Recipient or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Recipient's duty to indemnify and hold harmless hereunder shall not extend to liability arising from gross negligence or willful misconduct of the Department. Recipient's duty to indemnify the Department shall survive the term of this Agreement or the cancellation of the Standard Agreement.

- b. Waiver and Release. The Recipient waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
  - c. Waiver. The Recipient expressly waives the protections of Section 1542 of the Civil Code in relation to subparagraphs (a) and (b) above.
29. Further Assurances. At the Department's request and at Recipient's expense, Recipient shall execute, acknowledge and deliver any other instrument and perform any other act necessary, desirable or proper (as determined by the Department) to carry out the purpose of the Grant Documents or to perfect and preserve any liens or covenants created by the Grant Documents.
30. Notices. All written notices and demands under the Grant Documents shall be deemed served upon delivery or, if mailed, upon the date shown on the delivery receipt (or the date on which delivery was refused as shown on the delivery receipt) after deposit in United States Postal Service certified mail, postage prepaid, return receipt requested, or after delivery or attempted delivery by an express delivery service, and addressed to the address of Recipient or to the primary place of business or the mailing address of the Department, as applicable, appearing below. Notice of change of address may be given in the same manner, provided Recipient's address shall be in the State of California or the state where Recipient's principal place of business is located, as represented to the Department in the Grant Documents.

Recipient's Address:

City Manager  
City of Sacramento  
915 I Street, 5<sup>th</sup> Floor  
Sacramento CA 95814

**Department's Address:**

Eugene Lee, Section Chief  
Infill Infrastructure Grant Program  
Division of Financial Assistance  
Department of Housing and Community Development  
P. O. Box 952054 MS-460-2  
Sacramento, California 94252-2054

31. **Amendments and Additional Agreements.** This Agreement shall not be altered or amended except in writing executed by all parties. The Recipient agrees that any other agreements entered into by the Recipient relating to the performance of this Agreement shall be subject to the written approval of the Department.
32. **Books and Records.** Recipient shall maintain complete books of accounts and other records for the Project and for the use of the Program Funds; including, but not limited to, records of preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the Contractor and each subcontractor; and the same shall be available for inspection and copying by the Department upon reasonable notice to Recipient.
33. **No Third Parties Benefited.** No person other than the Department and Recipient and their permitted successors and assigns shall have any right of action under any of the Grant Documents.
34. **Authority to File Notices.** At any time subsequent to the funding of the Program Funds, Recipient irrevocably appoints and authorizes the Department, as Recipient's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's or Recipient's name, any notices, instruments or documents that the Department deems appropriate to protect the Department's interest under any of the Grant Documents.
35. **Actions.** At any time subsequent to the funding of the Program Funds, the Department may commence, appear in or defend any action or proceeding purporting to affect the Property, the Infrastructure Project, the Housing Development or the Grant Documents, or the rights, duties or liabilities of Recipient or the Department under the Grant Documents. In exercising this right, the Department may incur or incur and pay reasonable costs and expenses including, without limit, attorneys' fees and court costs and Recipient agrees to pay all such expenses so incurred and reimburse the Department for any expenses so paid.

36. Relationship of Parties. The relationship of Recipient and the Department under the Grant Documents is, and shall at all times remain, solely that of Recipient as the Grantee and Department as Grantor. The Department neither undertakes nor assumes any responsibility or duty to Recipient or to any third party with respect to the Property, the Infrastructure Project or the Housing Development, except as expressly provided in the Grant Documents.
37. Assignment of Grant Documents. The Recipient shall not assign any interest, or any portion thereof, under the Grant Documents, or in any monies due or to become due thereunder, without the Department's prior written consent. Any such assignment made without the Department's consent shall be void. Recipient recognizes that this is not a commercial loan and that the Department would not make the grant except in reliance on Recipient's expertise and reputation. In this instance, the work to be funded has not been performed at the time of grant approval and the Department is relying on Recipient's expertise and prior experience to construct and develop the Infrastructure Project and Housing Development in accordance with the terms of the Grant Documents.
38. Restrictions on Transfer of the Project and Interest in Recipient. Recipient shall not assign, sell, transfer or convey any interest held by the Recipient in the Infrastructure Project or the Housing Development, including, without limitation, any general partnership interest in the Recipient, except as provided for in this Agreement, without the Department's prior written consent. Recipient shall promptly notify the Department of such transfers and shall provide the Department with any documents respecting such transfer as the Department may reasonably request; provided however that Recipient, if Recipient is a limited partnership, may sell, assign, transfer or convey limited partnership interests without the prior approval of the Department.
39. Integrated Agreement. This Agreement is made for sole benefit and protection of the parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend any Department Grant Documents.
40. Termination of this Disbursement Agreement. This Agreement shall terminate four years after all of the Program Funds have been fully disbursed and expended by Recipient.

41. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.
42. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.
43. **Titles and Captions.** Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provisions hereof.
44. **Interpretation.** No provision in this Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.
45. **Waiver, Amendments.** No breach of any provisions hereof may be waived unless in writing. Waiver of any breach of any provisions hereof shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.
46. **Severance.** If any provision of this Agreement is determined by a court of competent jurisdiction, to be illegal, invalid, or unenforceable, such provisions will be deemed to be severed and deleted from the Agreement, as a whole and neither such provisions, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Disbursement Agreement.
47. **Voluntary Agreement.** The parties hereto, and each of them, further represent and declare that the parties carefully read this Agreement and the parties know the contents thereof, and that the parties sign the same freely and voluntarily.
48. **Attorney's Fees.** In the event of any dispute between the parties regarding this Agreement, the prevailing party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.
49. **Non-Discrimination.** In the performance of this Agreement, Recipient shall not discriminate against any provider, or potential provider, on the basis of race, color, religion, ancestry, sex, age, national origin, physical handicap or any other arbitrary factor.

50. Incorporation. The following Exhibits, all attached hereto, are hereby incorporated into this Agreement:

- Exhibit A: Legal Description
- Exhibit B: Scope of Work
- Exhibit C: Sources and Uses of Funds
- Exhibit D: Disbursement Schedule
- Exhibit E: Insurance Requirements
- Exhibit F: Special Conditions

**I IN WITNESS WHEREOF**, the Department and Recipient have executed this Disbursement Agreement as of the date set forth above.

**City of Sacramento**

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

Gus Vina  
Acting City Manager

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**Department:**

**Department of Housing and Community Development,**  
A public agency of the State of California

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

Eugene Lee  
Chief of Infill Infrastructure & Transit-Oriented Development Housing

## **Exhibit "A" to Disbursement Agreement**

### **Legal Description**

THE PROPERTY CONSISTS OF PARCELS 11C, 12C, 3A, 3B AND 4 OF THE TOWNSHIP 9 TENTATIVE MAP APPROVED BY THE CITY OF SACRAMENTO AUGUST 28, 2007 ON PARCELS OF LAND DESIGNATED AS ASSESSOR PARCELS NOS. 001-0020-003, -019, -034, -036, -041, -044, -045, -046, 001-0200-012, -013, AND -034. THE PROPERTY IS LOCATED WITHIN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO AS MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION PROVIDED AS EXHIBIT A-1 ATTACHED, WHICH IS INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

NOTE: UPON RECORDATION OF THE FINAL MASTER PARCEL MAP FOR THE PROJECT, THE PARTIES AGREE THAT EXHIBIT A-1 WILL BE REPLACED BY THE IDENTIFIED PARCELS OF THE SAID MAP, WITHOUT THE NEED FOR AN AMENDMENT OF THIS AGREEMENT.

## **Exhibit "A-1" to Disbursement Agreement**

### **Legal Description**

Real property in the City of SACRAMENTO, County of SACRAMENTO, State of California, described as follows:

#### **PARCEL A:**

PARCEL NO. 11, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M. CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, PAGE 28.

EXCEPTING THEREFROM THE EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM; INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USES OF THE LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING, OR SINKING OF WELLS, SHAFTS OR TUNNELS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS AND SHALL NOT DISTURB THE SURFACE OF SAID LAND OR ANY IMPROVEMENTS THEREON, AS RESERVED IN THE DEED EXECUTED BY SOUTHERN PACIFIC COMPANY, A DELAWARE CORPORATION, RECORDED JANUARY 6, 1959, IN BOOK 3972, PAGE 893, OFFICIAL RECORDS.

APN: 001-0200-013

#### **PARCEL B:**

PARCEL NO. 13, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

APN: 001-0020-045 AND 001-0020-003

#### **PARCEL C:**

ALL OF PARCEL NO. 10, AND A PORTION OF THOSE LANDS DESIGNATED "SOUTHERN PACIFIC COMPANY" AS BOTH ARE SHOWN ON THAT RECORD OF SURVEY FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY IN BOOK 26 OF SURVEYS, AT PAGE 28, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL NO. 10; THENCE, FROM SAID POINT OF BEGINNING, ALONG THE BOUNDARY OF SAID PARCEL NO. 10, NORTH 71°44'05" WEST 300.00 FEET, AND NORTH 18°29'45" EAST 1686.64 FEET

IIG Grant

28

NOFA 2/28/08

Prep. Date: 3/08/10

TO THE MOST NORTHERLY CORNER OF SAID PARCEL NO. 10; THENCE, LEAVING THE BOUNDARY OF SAID PARCEL NO. 10, NORTH 18°29'45" EAST 18.66 FEET; THENCE, SOUTH 83°27'58" EAST 173.72 FEET TO A POINT IN THE WESTERLY BOUNDARY OF PARCEL NO. 13 AS SHOWN ON SAID RECORD OF SURVEY AND IN THE EASTERLY LINE OF SAID LANDS; THENCE, ALONG THE WESTERLY BOUNDARY OF SAID PARCEL NO. 13, AND THE EASTERLY LINE OF SAID LANDS, THE FOLLOWING SEVEN COURSES.

(1) SOUTH 66°05'14" WEST 39.03 FEET, (2) ALONG THE ARC OF A 291.00 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 49°27'53" EAST 52.02 FEET TO A POINT OF COMPOUND CURVATURE, (3) ALONG THE ARC OF A 749.44 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 41°15'58" EAST 80.28 FEET TO A POINT OF COMPOUND CURVE, (4) ALONG THE CHORD WHICH BEARS SOUTH 20°49'47" EAST 155.02 FEET, (5) ALONG A NON-TANGENT LINE, SOUTH 18°29'45" WEST 1471.54 FEET, (6) SOUTH 71°30'15" EAST 15.00 FEET, AND (7) SOUTH 18°29'45" WEST 62.08 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 13 AND TO THE NORTHERLY LINE OF RICHARDS BOULEVARD, AN 80.00 FOOT PUBLIC ROAD GRANTED TO THE COUNTY OF SACRAMENTO BY DEED RECORDED IN BOOK 1178 OFFICIAL RECORDS AT PAGE 312; THENCE, ALONG THE NORTHERLY LINE OF SAID RICHARDS BOULEVARD, NORTH 71°44'05" WEST 66.95 FEET TO THE MOST SOUTHERLY CORNER OF PARCEL NO. 11 AS SHOWN ON SAID RECORD OF SURVEY; THENCE, LEAVING THE NORTHERLY LINE OF SAID RICHARDS BOULEVARD, AND ALONG THE BOUNDARY OF SAID PARCEL NO. 11, NORTH 18°29'45" EAST 475.00 FEET, AND NORTH 71°44'05" WEST 5.00 FEET TO A POINT IN THE EASTERLY LINE OF SAID PARCEL NO. 10; THENCE, ALONG THE BOUNDARY COMMON TO SAID PARCEL NO. 10 AND SAID PARCEL NO. 11, SOUTH 18°29'45" WEST 475.00 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 1989 IN BOOK 890215 PAGE 916, OFFICIAL RECORDS.

EXCEPTING FROM THAT PORTION DESIGNATED "SOUTHERN PACIFIC COMPANY", ALL MINERALS AND MINERAL RIGHTS, INTERESTS, AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER GRANTOR OR ITS SUCCESSORS AND ASSIGNS, SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH, AS RESERVED IN THE DEED EXECUTED BY SOUTHERN PACIFIC TRANSPORTATION COMPANY, A DELAWARE CORPORATION, RECORDED JUNE 30, 1989 IN BOOK 890630 PAGE 5102, OFFICIAL RECORDS.

APN: 001-0200-012 AND 001-0200-

034 PARCEL D:

ALL THAT PORTION OF PARCEL NO. 15 AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 26 OF SURVEYS, PAGE 28, OFFICIAL RECORDS OF SACRAMENTO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 15; THENCE, FROM SAID POINT OF BEGINNING, ALONG THE WESTERLY, NORTHERLY AND EASTERLY LINE

IIG Grant

29

NOFA 2/28/08

Prep. Date: 3/08/10

OF SAID PARCEL NO. 15, THE FOLLOWING FIVE COURSES:

(1) NORTH 18°29'45" EAST 554.06 FEET; (2) SOUTH 77°26'30" EAST 264.77 FEET; (3) ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 276.84 FEET, SUBTENDED BY A CHORD BEARING SOUTH 29°28'30" EAST 411.25 FEET; (4) NORTH 71°30'15" WEST 3.50 FEET; AND (5) SOUTH 18°29'45" WEST 304.96 FEET; THENCE, LEAVING SAID EASTERLY LINE OF SAID PARCEL NO. 15, NORTH 71°37'15" WEST 565.33 FEET TO THE POINT OF BEGINNING.

ALSO BEING DESCRIBED IN PROPOSED PARCEL NO. 1 IN CERTIFICATE OF COMPLIANCE RECORDED AUGUST 26, 1988 IN BOOK 880826 PAGE 1522, OFFICIAL RECORDS.

APN: 001-0020-046

PARCEL E:

ALL THAT PORTION OF SWAMP LAND SURVEY NO. 949, SACRAMENTO COUNTY SURVEYS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY EXTENSION OF THE CENTERLINE OF 7TH STREET OF THE CITY OF SACRAMENTO, ACCORDING TO THE OFFICIAL MAP OF SAID CITY, LOCATED NORTH 19°07' EAST 2351.48 FEET FROM THE INTERSECTION OF SAID CENTERLINE WITH THE CENTERLINE OF NORTH "B" STREET OF SAID CITY OF SACRAMENTO; THENCE FROM SAID POINT OF BEGINNING, NORTH 70°53' WEST 40.00 FEET TO THE WEST LINE OF SAID 7TH STREET; THENCE CONTINUING ALONG SAME COURSE NORTH 70°53' WEST 30.00 FEET; THENCE NORTH 19°07' EAST ALONG A LINE PARALLEL WITH SAID NORTHERLY EXTENSION OF THE CENTERLINE OF SAID 7TH STREET; THENCE CONTINUING ALONG SAME COURSE SOUTH 70°53' EAST 40.00 FEET TO SAID CENTERLINE OF SAID 7TH STREET; THENCE SOUTH 19°07' WEST 40.00 FEET ALONG SAID NORTHERLY EXTENSION OF THE CENTERLINE OF SAID 7TH STREET TO THE POINT OF BEGINNING.

APN: 001-0020-019

PARCEL F:

PARCEL NO. 9, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THE DEED EXECUTED BY J.M. HENDERSON, JR., AS TRUSTEE OF THE TRUST CREATED BY THE WILL OF ELIZABETH C.A. ENGLISH, DECEASED, RECORDED SEPTEMBER 25, 1917, IN BOOK 462 OF DEEDS, PAGE 263.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED FEBRUARY 11, 1880, IN BOOK 3 OF PATENTS, PAGE 445.

ALSO EXCEPTING THEREFROM ALL THAT MINERAL ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OF THAT MAY BE PRODUCED THEREFROM INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS, DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSOR AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USE OF THE SAID LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING OR SINKING OF WELLS, SHAFTS OR TUNNELS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY SAID RIGHTS, AS CONTAINED IN INDENTURE, EXECUTED BY AND BETWEEN SOUTHERN PACIFIC COMPANY, A CORPORATION OF THE STATE OF DELAWARE, GRANTOR AND BERGUT-RICHARDS PARKING COMPANY, A CORPORATION, GRANTEE, RECORDED SEPTEMBER 14, 1959, IN BOOK 3879, PAGE 344, OFFICIAL RECORDS.

APN: 001-0020-034; 001-0020-041, AND 001-0020-

044 PARCEL G:

PARCEL NO. 12, AS SHOWN ON RECORD OF SURVEY "PORTION OF SECTIONS 25, 26 AND 35 T.9N., R.4E., M.D.M., CITY OF SACRAMENTO, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, OCTOBER 30, 1968, IN BOOK 26 OF SURVEYS, MAP NO. 28.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THE DEED EXECUTED BY J.M. HENDERSON, JR., AS TRUSTEE OF THE TRUST CREATED BY THE WILL OF ELIZABETH C.A. ENGLISH, DECEASED, RECORDED SEPTEMBER 25, 1917, IN BOOK 462 OF DEEDS, PAGE 263.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED FEBRUARY 11, 1880, IN BOOK 3 OF PATENTS, PAGE 445.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF WHICH LIES NORTHERLY OF THE NORTH LINE OF THAT CERTAIN REAL PROPERTY CONVEYED IN THAT CERTAIN PATENT ISSUED BY THE STATE OF CALIFORNIA, TO ELIZABETH C.A. ENGLISH, RECORDED IN BOOK 5 OF PATENTS, PAGE 609.

APN: 001-0020-036

APN: 001-0200-012 and 001-0020-045

## **Exhibit "B" to Disbursement Agreement**

### **Scope of Work**

**Transit improvements** including demolition of existing improvements; site preparation; underground utilities including sewer, water and storm drain and dry utilities; hardscape surface improvements; landscaping; station structures; signage and monumentation.

Improvements to **Richards Boulevard** including demolition of existing improvements; site preparation; underground utilities including sewer, water and storm drain and dry utilities; hardscape surface improvements; landscaping; station structures; signage and monumentation.

Improvements to **North Seventh Street Parkway** including demolition of existing improvements, site preparation, installation of underground utilities including sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signalization, signage, striping, landscaping, site furniture, and water features.

Residential Parking Structure containing 180 parking spaces on Parcel 11C supporting the QIP.

**Initial improvements to Residential Streets "D", "E", and "F"**, as shown on the approved tentative map as necessary to support development of the QIP including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.

Demolition, rough grading, excavation and soil import associated with Riverfront Drive and Riverfront Park.

## Exhibit "C" to Disbursement Agreement

### Sources and Uses of Funds

CAPITAL IMPROVEMENT PROJECT DEVELOPMENT BUDGET									
QIA DEVELOPMENT NAME:	TOWNSHIP 9								
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS					BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE				
COST CATEGORY	DEVELOPMENT COSTS				FUNDING SOURCES				
	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	IIG Round 1	IIG Round 2	Sacramento City Grant	Sacramento City Stimulus	Developer
<b>SITE PREPARATION</b>									
Clearing and Grubbing				0					
Demolition				1,351,852	1,351,852				
Excavation				0					
Grading (excluding grading for housing and mixed use structural improvements)				1,526,159	1,526,159				
Soil Stabilization (Lime, etc.)				0					
Erosion/Weed Control				0					
Dewatering				0					
Other: Gen Cond, Staking, SWPPP				889,850	390,832	325,572		42,215	131,231
Other: Contingency				506,609					506,609
<b>Total Site Preparation Costs</b>				<b>4,274,470</b>	<b>3,268,842</b>	<b>325,572</b>	<b>0</b>	<b>42,215</b>	<b>637,840</b>
<b>UTILITIES</b>									
Sanitary Sewer				615,689	403,529	212,160			
Potable Water				1,058,386	761,906	296,480			
Non-Potable Water				0					
Storm Drain				837,590	818,085	19,505			
Detention Basin/Culverts				0					
Joint Trench:				707,500		691,738		15,762	
Other: Contingency				370,255				215,174	155,081
<b>Total Site Utilities Costs</b>				<b>3,589,420</b>	<b>1,983,520</b>	<b>1,219,883</b>	<b>0</b>	<b>230,936</b>	<b>155,081</b>
<b>SURFACE IMPROVEMENTS</b>									
Aggregate Base				0					
Asphalt Pavement				4,165,839	2,235,982	730,560	1,199,297		
Curb, Gutter, Sidewalk				2,184,459		1,183,756	1,000,703		
Street Lights				739,735		739,735			
Striping/Signage/Barricades				68,000		68,000			
Traffic Mitigation				250,000		250,000			
Other: Contingency				1,076,076		135,194		678,349	262,533
<b>Total Surface Improvements Costs</b>				<b>8,484,109</b>	<b>2,235,982</b>	<b>3,107,245</b>	<b>2,200,000</b>	<b>678,349</b>	<b>262,533</b>
<b>LANDSCAPE AND AMENITIES</b>									
<b>Parks:</b>									
Irrigation				0					
Concrete Work				0					
Landscaping				6,487,649	738,259	5,434,996		60,804	253,593
Other:				0					
<b>Total Landscape and Amenities Costs</b>				<b>6,487,649</b>	<b>738,259</b>	<b>5,434,996</b>	<b>0</b>	<b>60,804</b>	<b>253,593</b>
<b>RESIDENTIAL PARKING</b>									
Residential Parking Structures	180	spaces	40,000	7,200,000	7,200,000				
Grading				0					
Foundation Work				0					
Site Work				0					
<b>Total Residential Parking Costs</b>				<b>7,200,000</b>	<b>7,200,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TRANSIT</b>									
<b>Transit Facilities:</b>									
Access Plazas				0					
Pathways				0					
Bus Shelters				0					
Transit Shelters				2,124,000	2,124,000				
Pedestrian Facilities				0					
Bicycle Facilities				0					
<b>Total Transit Costs</b>				<b>2,124,000</b>	<b>2,124,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>SOFT COSTS RELATED TO ELIGIBLE COSTS</b>									
Engineering				711,641	711,641				
Design				954,513	837,758	116,755			
Overhead									
Contractor Fee									
Other: Plan Check, Inspection, Utility Fees				951,668		695,549		87,696	188,423
<b>Total Soft Costs</b>				<b>2,617,822</b>	<b>1,549,399</b>	<b>812,304</b>	<b>0</b>	<b>87,696</b>	<b>188,423</b>
<b>Total Other Asset Costs</b>				<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL PROJECT COSTS</b>				<b>34,777,470</b>	<b>19,100,000</b>	<b>10,900,000</b>	<b>2,200,000</b>	<b>1,100,000</b>	<b>1,477,470</b>

## Exhibit "C-1" to Disbursement Agreement

### Sources and Uses of Funds

QUALIFYING INFILL PROJECT DEVELOPMENT BUDGET								
	Sources and Uses							
	Total Development Costs	IIG Round 1	Permanent Loan	SHRA	Tax Credit Equity	Developer Equity	Deferred Developer Fee	SOURCES TOTAL
<b>ACQUISITION</b>								
Lesser of Land Cost or Value	1		1					1
<b>Total Acquisition</b>	<b>1</b>		<b>1</b>					<b>1</b>
<b>NEW CONSTRUCTION</b>								
Site Work (hard costs)								
Structures (hard costs)	24,648,000	7,200,000	7,981,502	1,759,019	7,707,479			24,648,000
General Requirements	862,680		394,629	86,971	381,080			862,680
Contractor Overhead	1,232,400		583,755	124,244	544,400			1,232,400
<b>Total New Construction</b>	<b>26,743,080</b>	<b>7,200,000</b>	<b>8,939,886</b>	<b>1,970,234</b>	<b>8,632,960</b>			<b>26,743,080</b>
<b>ARCHITECTURAL</b>								
Design	555,135		253,944	55,966	245,225			555,135
Supervision								
<b>Total Architectural Costs</b>	<b>555,135</b>		<b>253,944</b>	<b>55,966</b>	<b>245,225</b>			<b>555,135</b>
<b>SURVEY &amp; ENGINEERING</b>								
Engineering								
ALTA Land Survey	10,000		4,574	1,008	4,417			10,000
<b>Total Survey &amp; Engineering</b>	<b>10,000</b>		<b>4,574</b>	<b>1,008</b>	<b>4,417</b>			<b>10,000</b>
<b>CONTINGENCY COSTS</b>								
Hard Cost Contingency	1,232,400		221,077	48,723	213,487	749,113		1,232,400
Soft Cost Contingency	50,000		22,872	5,041	22,087			50,000
<b>Total Contingency Costs</b>	<b>1,282,400</b>		<b>243,950</b>	<b>53,763</b>	<b>235,574</b>	<b>749,113</b>		<b>1,282,400</b>
<b>CONSTRUCTION PERIOD EXPENSES</b>								
Construction Loan Interest	1,749,109		800,121	176,336	772,651			1,749,109
Origination Fee	176,650		80,808	17,809	78,033			176,650
Credit Enhancement & App. Fee	130,825		59,845	13,189	57,791			130,825
Owner Paid Bonds/Insurance								
Lender Inspection Fees								
Taxes During Construction	15,000		6,862	1,512	6,626			15,000
Prevailing Wage Monitor								
Insurance During Construction	415,032		189,854	41,841	183,336			415,032
Title and Recording Fees	25,000		11,436	2,520	11,043			25,000
<b>Total Construction Expenses</b>	<b>2,511,616</b>		<b>1,148,926</b>	<b>253,208</b>	<b>1,109,481</b>			<b>2,511,616</b>
<b>PERMANENT FINANCING EXPENSES</b>								
Loan Origination Fee(s)	65,550		29,986	6,606	28,958			65,550
<b>Total Permanent Financing</b>	<b>65,550</b>		<b>29,986</b>	<b>6,606</b>	<b>28,958</b>			<b>65,550</b>
<b>LEGAL FEES</b>								
Construction Lender Legal Expenses								
Permanent Lender Legal Fees								
Sponsor Legal Fees	75,000		34,308	7,561	33,130			75,000
<b>Total Legal Fees</b>	<b>75,000</b>		<b>34,308</b>	<b>7,561</b>	<b>33,130</b>			<b>75,000</b>
<b>CAPITALIZED RESERVES</b>								
Operating Reserve	388,227		177,593	39,139	171,495			388,227
<b>Total Capitalized Reserves</b>	<b>388,227</b>		<b>177,593</b>	<b>39,139</b>	<b>171,495</b>			<b>388,227</b>
<b>REPORTS &amp; STUDIES</b>								
Environmental Studies								
Misc 3rd Party Reports/Inspections	139,600		63,859	14,074	61,667			139,600
<b>Total Reports &amp; Studies</b>	<b>139,600</b>		<b>63,859</b>	<b>14,074</b>	<b>61,667</b>			<b>139,600</b>
<b>OTHER</b>								
TCAC App./Alloc./Monitor Fees	106,487		48,712	10,735	47,040			106,487
CDLAC Fees								
Local Permit Fees	3,094,200			3,094,200				3,094,200
Local Development Impact Fees								
Other Costs of Bond Issuance								
Syndicator / Investor Fees & Expenses								
Furnishings	80,000		36,596	8,065	35,339			80,000
Final Cost Audit Expense								
Marketing	50,000		22,872	5,041	22,087			50,000
Financial Consulting								
<b>Total Other Costs</b>	<b>3,330,687</b>		<b>108,180</b>	<b>3,118,041</b>	<b>104,466</b>			<b>3,330,687</b>
<b>SUBTOTAL</b>	<b>35,101,296</b>	<b>7,200,000</b>	<b>11,005,206</b>	<b>5,519,604</b>	<b>10,627,373</b>	<b>749,113</b>		<b>35,101,296</b>
<b>DEVELOPER COSTS</b>								
Developer Fee/Overhead/Profit	2,500,000		364,795	80,396	352,270		1,702,539	2,500,000
<b>Total Developer Costs</b>	<b>2,500,000</b>		<b>364,795</b>	<b>80,396</b>	<b>352,270</b>		<b>1,702,539</b>	<b>2,500,000</b>
<b>TOTAL DEVELOPMENT COST</b>	<b>37,601,296</b>	<b>7,200,000</b>	<b>11,370,001</b>	<b>5,600,000</b>	<b>10,979,643</b>	<b>749,113</b>	<b>1,702,539</b>	<b>37,601,296</b>

**Exhibit "D" to Disbursement Agreement**

**Disbursement Schedule**

<b>ROUND 1</b>		<b>Q1-10</b>	<b>Q2-10</b>	<b>Q3-10</b>	<b>Q4-10</b>	<b>Q1-11</b>	<b>Q2-11</b>
Site Preparation	\$3,268,843	\$1,089,614	\$1,089,614	\$1,089,614			
Utilities	\$1,983,520			\$1,153,089	\$830,432		
Surface Improvements	\$2,235,982			\$2,018,407	\$217,576		
Landscape and Amenities	\$738,256			\$738,256	\$0	\$0	
Residential Parking Structure	\$7,200,000					\$3,600,000	\$3,600,000
Transit Improvements	\$2,124,000	\$708,000	\$708,000	\$708,000			
Soft Costs	\$1,549,399	\$516,466	\$516,466	\$516,466			
<b>Total</b>	<b>\$19,100,000</b>	<b>\$2,314,081</b>	<b>\$2,314,081</b>	<b>\$6,223,832</b>	<b>\$1,048,007</b>	<b>\$3,600,000</b>	<b>\$3,600,000</b>

<b>ROUND 2</b>		<b>Q1-10</b>	<b>Q2-10</b>	<b>Q3-10</b>	<b>Q4-10</b>	<b>Q1-11</b>	<b>Q2-11</b>
Site Preparation	\$325,572				\$325,572		
Utilities	\$1,219,883				\$897,226	\$322,657	
Surface Improvements	\$3,107,245				\$1,306,414	\$1,800,831	
Landscape and Amenities	\$5,434,996				\$1,979,242	\$1,979,242	\$1,476,512
Residential Parking Structure	\$0						
Transit Improvements	\$0						
Soft Costs	\$812,304		\$270,768	\$270,768	\$270,768		
<b>Total</b>	<b>\$10,900,000</b>	<b>\$0</b>	<b>\$270,768</b>	<b>\$270,768</b>	<b>\$4,779,222</b>	<b>\$4,102,730</b>	<b>\$1,476,512</b>

<b>TOTAL</b>		<b>Q1-10</b>	<b>Q2-10</b>	<b>Q3-10</b>	<b>Q4-10</b>	<b>Q1-11</b>	<b>Q2-11</b>
Site Preparation	\$3,594,415	\$1,089,614	\$1,089,614	\$1,089,614	\$325,572	\$0	\$0
Utilities	\$3,203,403	\$0	\$0	\$1,153,089	\$1,727,658	\$322,657	\$0
Surface Improvements	\$5,343,227	\$0	\$0	\$2,018,407	\$1,523,990	\$1,800,831	\$0
Landscape and Amenities	\$6,173,252	\$0	\$0	\$738,256	\$1,979,242	\$1,979,242	\$1,476,512
Residential Parking Structure	\$7,200,000	\$0	\$0	\$0	\$0	\$3,600,000	\$3,600,000
Transit Improvements	\$2,124,000	\$708,000	\$708,000	\$708,000	\$0	\$0	\$0
Soft Costs	\$2,361,703	\$516,466	\$787,234	\$787,234	\$270,768	\$0	\$0
<b>Total</b>	<b>\$30,000,000</b>	<b>\$2,314,081</b>	<b>\$2,584,849</b>	<b>\$6,494,600</b>	<b>\$5,827,229</b>	<b>\$7,702,730</b>	<b>\$5,076,512</b>

## **Exhibit "E" to Disbursement Agreement**

### **Insurance Requirements**

**These insurance requirements govern insurance coverage on Projects improved using infrastructure grant funding from the Department's Infill Infrastructure Grant Program. The Department reserves the right to revise and vary these requirements based on, among other items, the availability of coverage, current insurance industry standards and concerns specific to the insured property.**

**Recipients of Department infrastructure grants are responsible for carrying the minimum required insurance coverage according to this Disbursement Agreement. Insurance coverage meeting the following requirements will be deemed by the Department to be in compliance with this Disbursement Agreement.**

**Submit a certificate of insurance (or other evidence) that acknowledges the Department's security interest and has appropriate coverage in force for property and liability exposures as follows:**

#### **1. GENERAL REQUIREMENTS:**

- (a) Copy of its commercial general liability policy and its excess policy or binder until such time as a policy is available, including the declarations page, applicable endorsements, riders, and other modifications in effect at the time of contract execution. Standard ISO form No. CG 0001 or similar exclusions are allowed if not inconsistent with Section 2, "Indemnification and Insurance." Allowance of additional exclusions is at the discretion of the Department.**
- (b) Certificate of insurance showing all other required coverages. Certificates of insurance, as evidence of required insurance for the auto liability and any other required policy, shall set forth deductible amounts applicable to each policy and all exclusions that are added by endorsement to each policy. The evidence of insurance shall provide that no cancellation, lapse, or reduction of coverage will occur without 10 days prior written notice to the Department.**
- (c) A declaration under the penalty of perjury by a certified public accountant certifying the accountant has applied Generally Accepted Accounting Principles (GAAP) guidelines confirming the Recipient has sufficient funds and resources to cover any self-insured retentions if the self-insured retention is \$50,000 or higher.**
- (d) If the Recipient uses any form of self-insurance for workers compensation in lieu of an insurance policy, it shall submit a certificate of consent to self-insure in accordance with the provisions of Section 3700 of the Labor Code.**

**2. INDEMNIFICATION AND INSURANCE:**

The Contractor's obligations regarding indemnification of the State of California and the requirements for insurance shall conform to the provisions in Section 2(a), "Indemnification," and Section 2(b), "Insurance," of Section 2.

**(a) INDEMNIFICATION:**

- (1) The Contractor shall defend, indemnify, and save harmless the State, including its officers, employees, and agents (excluding agents who are design professionals) from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out of or in connection with the Contractor's performance of this contract for:
- (2) Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of the Contractor, the State, or any other contractor; and
- (3) Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Contractor or anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable.
- (4) Except as otherwise provided by law, these requirements apply regardless of the existence or degree of fault of the State. The Contractor is not obligated to indemnify the State for Claims arising from conduct delineated in Civil Code Section 2782 and to Claims arising from any defective or substandard condition of the highway that existed at or before the start of work, unless this condition has been changed by the work or the scope of the work requires the Contractor to maintain existing highway facilities and the Claim arises from the Contractor's failure to maintain. The Contractor's defense and indemnity obligation shall extend to Claims arising after the work is completed and accepted if the Claims are directly related to alleged acts or omissions by the Contractor that occurred during the course of the work. State inspection is not a waiver of full compliance with these requirements.
- (5) The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determine that the Contractor is not liable. The Contractor shall respond within 30 days to the tender of any Claim for defense and indemnity by the State, unless this time has been extended by

the State. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, the Department may withhold such funds the State reasonably considers necessary for its defense and indemnity until disposition has been made of the Claim or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

- (6) With respect to third-party claims against the Contractor, the Contractor waives all rights of any type to express or implied indemnity against the State, its officers, employees, or agents (excluding agents who are design professionals).
- (7) Nothing in the Contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these indemnification specifications.

**(b) INSURANCE**

- (1) Nothing in the contract is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third-party beneficiary for any of these insurance specifications.

**(c) CASUALTY INSURANCE**

- (1) The Contractor shall procure and maintain insurance on all of its operations with companies acceptable to the State as follows:
  - (A) The Contractor shall keep all insurance in full force and effect from the beginning of the work through contract acceptance.
  - (B) All insurance shall be with an insurance company with a rating from A.M. Best Financial Strength Rating of A- or better and a Financial Size Category of VII or better.
  - (C) The Contractor shall maintain completed operations coverage with a carrier acceptable to the State through the expiration of the patent deficiency in construction statute of repose set forth in Code of Civil Procedure Section 337.1.

**(d) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE**

- (1) In accordance with Labor Code Section 1860, the Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.

- (2) In accordance with Labor Code Section 1861, the Contractor shall submit to the Department the following certification before performing the work:
  - (A) I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.
- (3) Contract execution constitutes certification submittal.
- (4) The Contractor shall provide Employer's Liability Insurance in amounts not less than:
  - (A) \$1,000,000 for each accident for bodily injury by accident
  - (B) \$1,000,000 policy limit for bodily injury by disease
  - (C) \$1,000,000 for each employee for bodily injury by disease
- (5) If there is an exposure of injury to the Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

**(e) GENERAL LIABILITY INSURANCE**

- (1) The Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Contractor providing insurance for bodily injury liability and property damage liability for the following limits and including coverage for:
  - (A) Premises, operations, and mobile equipment
  - (B) Products and completed operations
  - (C) Broad form property damage (including completed operations)
  - (D) Explosion, collapse, and underground hazards
  - (E) Personal injury
  - (F) Contractual liability
- (2) The Contractor shall not require certified Small Business subcontractors to carry Liability Insurance that exceeds the limits in Section 2(f)(1), "Liability Limits/Additional Insureds," of these specifications. The maximum required Liability Insurance limits in Section 2(f)(1), "Liability Limits/Additional Insureds," of these specifications shall apply to certified Small Business subcontractors for work performed on the project, regardless of tier. The provisions of Section 2(f)(1), "Liability Limits/Additional Insureds," shall be included in all subcontracts for all tiers.

**(f) LIABILITY LIMITS/ADDITIONAL INSURED**

- (1) The limits of liability shall be at least the amounts shown in the following table:

Construction Contract Amount <sup>4</sup>	For Each Occurrence <sup>1</sup>	Aggregate for Products/ Completed Operation	General Aggregate <sup>2</sup>	Umbrella or Excess Liability <sup>3</sup>
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
>\$1,000,000 ≤\$5,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$5,000,000 ≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

1. Combined single limit for bodily injury and property damage.  
 2. This limit shall apply separately to the Contractor's work under this contract.  
 3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.  
 4. "Construction Contract Amount" is the total amount of the construction contract all or a portion of which is funded with IIG funds.

- (2) The State, including its officers, directors, agents (excluding agents who are design professionals), and employees, shall be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of the Contractor under this contract. Coverage for such additional insureds does not extend to liability:
- (A) Arising from any defective or substandard condition of the roadway which existed at or before the time the Contractor started work, unless such condition has been changed by the work or the scope of the work requires the Contractor to maintain existing roadway facilities and the claim arises from the Contractor's failure to maintain;
  - (B) For claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Contractor that occurred during the course of the work; or

(C) To the extent prohibited by Insurance Code Section 11580.04

(3) Additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO), or other form designated by the Department.

(g) **CONTRACTOR'S INSURANCE POLICY IS PRIMARY**

The policy shall stipulate that the insurance afforded the additional insureds applies as primary insurance. Any other insurance or self-insurance maintained by the State is excess only and shall not be called upon to contribute with this insurance.

(h) **AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall carry automobile liability insurance, including coverage for all owned, hired, and nonowned automobiles. The primary limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required under Section 2 (f)(1) also applies to automobile liability.

(i) **POLICY FORMS, ENDORSEMENTS, AND CERTIFICATES**

The Contractor shall provide its General Liability Insurance under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.

(j) **DEDUCTIBLES**

The State may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to the interests of the State. Regardless of the allowance of exclusions or deductions by the State, the Contractor is responsible for any deductible amount and shall warrant that the coverage provided to the State is in accordance with Section 2(b), "Insurance."

(k) **ENFORCEMENT**

(1) The Department may assure the Contractor's compliance with its insurance obligations. Ten days before an insurance policy lapses or is canceled during the contract period, the Contractor shall submit to the Department evidence of renewal or replacement of the policy.

- (2) If the Contractor fails to maintain any required insurance coverage, the Department may maintain this coverage and withhold or charge the expense to the Contractor or terminate the Contractor's control of the work.
- (3) The Contractor is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless the State, its officers, agents, and employees by the Department's acceptance of insurance policies and certificates.
- (4) Minimum insurance coverage amounts do not relieve the Contractor for liability in excess of such coverage, nor do they preclude the State from taking other actions available to it, including the withholding of funds under this contract.

## **Exhibit "F" to Disbursement Agreement**

### **Special Conditions**

1. Any and all rights and obligations of Recipient under this Agreement may be exercised and/or performed, fulfilled or satisfied by , through or as a result of, actions taken by any "Sub-Recipient" as such term is used in Exhibit E to the Standard Agreement, or any lender (or successor-in-interest to such lender) who, in good faith, for value, encumbers all of any portion of the Property and who is identified in a notice delivered by Recipient or any Sub-Recipient to the Department that sets forth the address for delivery of notices to such lender; provided, however, that no Sub-Recipient or lender (or successor-in-interest to such lender) shall have or incur any obligation or liability under the Disbursement Agreement unless, until and only to the extent such Sub-Recipient or lender (or successor-in-interest to such lender ) shall expressly assume the Recipient's obligations under the Agreement pursuant to a signed written agreement or undertaking.
2. Recipient shall have the right to request that copies of all notices to be delivered to Recipient pursuant to the terms of this Disbursement Agreement also be concurrently delivered to such additional Person(s) as shall be specified from time to time in notice(s) from Recipient to the Department (collectively, the "Notice Parties"), which notice(s) from Recipient to the Department shall set forth the respective address(es) of such Notice Parties. Provided, however, that any failure by the Department to deliver notices to the Notice Parties shall in no way i) affect the validity or effectiveness of the notice or ii) create any liability or obligation in any way to any Notice Party or to any other party, entity or person not a party to this Disbursement Agreement. With the approval of the Department, Notice Parties shall have right to cure any default, Event of Default or other violation of this Disbursement Agreement to the extent such rights are granted to the Recipient herein.

**Exhibit 1**

March 17, 2010

Steven L. Eggert  
Township 9 Apartments L.P.  
c/o St. Anton Partners, LLC  
1801 I Street, Ste 202  
Sacramento California 95811

RE: Conditional Loan Commitment; Township 9 Affordable Housing Project

Dear Mr. Eggert:

On behalf of the City of Sacramento ("City"), I am pleased to advise Township 9 Sacramento L.P., a California limited partnership, ("Borrower") of the City's commitment of Seven Million Two Hundred Thousand Dollars (\$7,200,000) (the "Loan") for the purpose of financing the construction of 180 parking stalls within a parking garage serving the 180-unit housing development (the "Project"), which will be located at the Township 9 master planned development. The Project will provide 179 apartment units affordable to extremely low, very low, and low income households.

The City has also committed Three Million Dollars (\$3,000,000) in Housing Trust Funds for the Project, which will be administered under the terms of a separate agreement between the Sacramento Housing and Redevelopment Agency ("SHRA") and Borrower. In addition to the foregoing funding commitments, it is anticipated that SHRA and the Redevelopment Agency of the City of Sacramento ("Agency") may commit additional funding for the Project.

As set out herein, the City shall assign this Loan Commitment, related documentation, and its entitlement to the funding sources for the Loan to SHRA. Upon such assignment, SHRA shall make the Loan to the Borrower on the same terms and conditions as set forth in this Loan Commitment. If SHRA does not accept the assignment of this Loan Commitment, then the City shall make the Loan to the Borrower on the terms and conditions contained in this Loan Commitment. Such an assignment shall allow SHRA to provide oversight and administration of the Project construction, Loan funding, and compliance with the regulatory agreements and covenants, which require that the rents for the affordable housing units remain at the specified levels for at least 55 years from the date of the certificate of occupancy.

**Background**

The Township 9 master planned development is located between North 5<sup>th</sup> and North 7<sup>th</sup> Streets along Richards Boulevard in the River District. The Project is to be constructed on that certain real property referred to as parcels 11A and 11C on the Township 9 tentative map ("Property"). The City's decision to make the Loan is based on the pro-forma and sources and uses of funds provided by the Township 9 master developer, Capitol Station 65, LLC ("Master Developer"), which is based in part on the representations and information supplied by Borrower.

The Master Developer has informed the City that it has entered into an agreement with Borrower to convey the Property at a nominal cost. In addition, the Master Developer will construct the off-site street and utility improvements required for development of the Project on the Property. The

Master Developer has consented to the City's decision to make the Loan to the Borrower to the extent such approval may be required under the agreement between the Master Developer and Borrower.

### **Loan Commitment Conditions**

The City's obligation to make the Loan is subject to satisfaction of all the following terms and conditions and Borrower's execution of documentation that is in a form and in substance satisfactory to the City and to SHRA.

The Loan shall be made on standard SHRA loan document forms (the "Loan Documents") which the Borrower has been a party to in the past for other projects. No terms not in this Loan Commitment or in the standard SHRA loan document forms shall be included in the final Loan Documents without governing board approval and possibly additional environmental review. In the event of any discrepancies between terms stated in this Loan Commitment and the standard SHRA loan document forms, the terms stated in this Loan Commitment shall prevail.

Unless otherwise agreed in writing by the City in exercise of its absolute discretion, the following shall be considered conditions to City's approval of a binding financing commitment to make the Loan.

1. **LOAN COMMITMENT TERM:** This Loan Commitment will expire on March 31, 2011 if the Loan Documents have not been executed by the Borrower by that date.
2. **PROJECT DESCRIPTION:** The Project is a 180 unit apartment building and parking garage structure. The Project is to include 3 units at 30% AMI, 33 units at 50% AMI, and 143 units at 60% AMI (the "Affordable Housing Units"). The total Project cost is estimated at \$37,500,000.
3. **BORROWER:** The name of the Borrower for the Loan is Township 9 Sacramento L.P., or its affiliate which is formed for the sole purpose of development of the Project.
4. **PURPOSE OF LOAN:** The Loan is to be used by Borrower solely for the pro-rated design, development and construction costs of 180 spaces within the parking garage which is to be an integral part of the Project. The construction work to build the garage and the apartment building on the Property is referred to herein as the "Improvements."
5. **PRINCIPAL AMOUNT:** The combined principal amount of the Loan will be the lesser of (a) Seven Million Two Hundred Thousand Dollars (\$7,200,000), or (b) the actual pro-rated cost to design, develop and construct 180 spaces within the parking garage of the Project; whichever amount is less.
6. **SOURCE OF LOAN FUNDS:** The City is making the Loan from a funding program which allows for Loan disbursements based on actual costs incurred for the Improvements and subject to certain requirements which will be included in the Loan Documents. These requirements have been conveyed to Borrower and Borrower acknowledges and agrees to such requirements. Borrower also acknowledges and agrees that the City's obligation to make the Loan payments is contingent on the City's receipt of such funding and City does not guarantee the Borrower will be paid the full amount of the Loan.
7. **TERM OF LOAN:** No payments will be due and payable during the term of the Loan. The unpaid balance of the Loan will be due and payable on the Loan maturity date. The

Loan shall be assignable and shall not become due and payable in the event of a transfer of the Project to an affiliate of Borrower.

8. INTEREST RATE: The Loan will not bear any interest.

9. **RENTAL RESTRICTION: Borrower acknowledges that, as a condition of the City making of the Loan, the Property will be subject to restrictions on future sales and rental rates which may result in less income to Borrower than could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.**

\_\_\_\_\_ (Borrower's Initial)

10. **PREVAILING WAGES: Borrower also acknowledges that any project containing a "subsidy" may be subject to state prevailing wages, which are the responsibility of the Borrower and Borrower's contractor.**

\_\_\_\_\_ (Borrower's Initial)

11. **ACCELERATION: City shall have the right to accelerate repayment of the Loan in the event of a default as specified in the Loan Documents or upon sale, transfer or alienation of the Property, except as specifically provided for in the Loan Documents.**

\_\_\_\_\_ (Borrower's Initial)

12. SECURITY: The Loan shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the Borrower's fee interest in the Property and Improvements, which shall be a lien upon the Property and Improvements subject only to senior liens and such other items as the City may approve in writing. The City may subordinate said deeds of trust in order to accommodate construction of the Project.

13. LEASE AND RENTAL SCHEDULE: The form of lease to be used for the Property and Improvements shall be subject to City's approval prior to execution. Borrower shall not deviate from the rental schedule consistent with the specified Affordable Housing Units household income levels as set out by SHRA and in Borrower's application for the Loan, without City's prior written approval.

14. PROOF OF EQUITY: Borrower shall provide proof of ownership of the Property which is free and clear of any mortgages or liens at the time Borrower submits the Loan application.

15. OTHER FINANCING: Borrower, as a precondition to the City's execution of the Loan Documents, shall procure and deliver to the City evidence satisfactory to City that Borrower has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior to City's liens, and which shall be otherwise on terms and conditions acceptable to City:

A. Construction Loan - Financing from an institutional source or other approved sources in amounts sufficient to complete construction of the Improvements on the Property according to a scope of work as approved by City and made for a term not less than that specified in the Schedule of Performances in the Loan

Documents for completion of construction, and in any event not less than the time necessary to fulfill all conditions precedent to funding of the permanent financing.

- B. Permanent Loan - Financing from institutional sources or other approved sources, sufficient to repay the Construction Loan.

Such commitments for financing shall not require modification of the City's Loan Documents, or any term of this Loan Commitment. Such commitments shall not be based upon sources and uses of the Loan funds that are different from those approved by the City, Agency and SHRA for the Project.

16. **EVIDENCE OF FUNDS:** Prior to the first disbursement of the Loan, Borrower must demonstrate evidence of adequate and assured funding to complete the development of the Project and all Improvements in accordance with the Loan Documents. Borrower's evidence of available funds must include one or more of the following: (a) Borrower equity, (b) firm and binding commitments for financing the Project from financial institution(s) or from other lender(s) approved by City in its absolute discretion, and (c) Agency and SHRA loans; provided, however, that neither SHRA nor Agency is obligated by this Loan Commitment letter to make any financial contribution to the Project.
17. **SOILS AND TOXIC REPORTS:** Borrower must submit to City a soils report prepared by a licensed soils engineer and a hazardous substances report made in accordance with the American Society for Testing and Materials "Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process" (Designation E1527-93) prepared by a licensed or registered environmental engineer or other qualified party prior to Loan closing. Borrower must, as a condition of disbursement of Loan funds, give assurances satisfactory to the City that hazardous materials are not present on the Property or that any hazardous materials on the Property have been remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation.
18. **LOAN IN BALANCE:** Borrower will be required to maintain the Loan "in balance." The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other Project lenders are sufficient, in the sole judgment of the City, to pay for the remainder of the construction in order to complete the Project as required by written agreement with the City. Should the City determine that the Loan is not "in balance," the City may declare the Loan to be in default.
19. **PLANS AND SPECIFICATION:** Final plans and specifications for the Project must be in accordance with this Loan Commitment letter and submitted and approved as part of the Loan application process. Final plans and specifications will be subject to City's final approval prior to execution of the Loan Documents and the disbursal of the Loan funds. Borrower must obtain City's prior written consent to any change in the approved Project plans and specifications or any material deviation in construction of the Project and the Improvements.
20. **ARCHITECTURAL AGREEMENT:** The architectural agreement for the preparation of the plans and specifications and other services such as construction support shall be subject to City's approval. The City may require an assignment of Borrower's interest in and to the architectural agreement as security for the Loan.

21. **CONSTRUCTION CONTRACT:** The construction contract and any change orders issued thereunder, and the contractor to be retained by Borrower to construct the Improvements shall be duly licensed and subject to City's approval. City may require an assignment of Borrower's interest in and to the construction contract as security for the Loan. Borrower shall require the general contractor, to: (a) provide performance and payment bonds based on 100% of the Loan amount and the insurance coverages specified below, naming the City, State and SHRA as obliges and as additional insureds, and (b) indemnify and hold harmless the City, State and SHRA from any claims for injury or damages which may arise or be related to the construction work for the Improvements.
22. **RETENTION AMOUNT:** The City shall retain 10% of the Loan amount as retention from each disbursement, not to exceed a total of Seven Hundred and Twenty Thousand Dollars (\$720,000) of the total amount of the Loan.
23. **COST BREAKDOWN AND CONTRACTS:** Borrower shall deliver to City for its approval prior to commencement of the Project construction work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Improvements, which breakdown conforms to the approved Project plans and specification and the budget submitted with the Loan application. Borrower shall also deliver a list of all contractors and subcontractors to be employed in connection with the construction of the Improvements for City's prior approval. Borrower shall also submit copies of all bids received for each item of work to be performed, as well as copies of executed contracts and subcontracts with the selected bidders.

All contracts, subcontracts, contractors, and subcontractors shall be subject to City's approval prior to close of the Loan.

24. **DISBURSEMENTS:** City shall make disbursements of the Loan based on a cost breakdown that lists line items in cost categories and Borrower's submittal of documentation supporting all requests for disbursement of Loan funds. All Loan draw requests submitted by Borrower shall include proof of the construction work completed, the actual cost for such work and evidence that payment has been made to the contractor and/or subcontractor. City shall have the right to conduct inspections of the Property to assure that the Project work was properly performed under the terms of the Loan Documents before making each disbursement of the Loan. **However, notwithstanding any provision herein to the contrary, the City shall not be obligated to make any Loan disbursement if such disbursement is not approved by the City or if a disbursement request is filed after December 31, 2011.**

\_\_\_\_\_ (Borrower's Initial)

25. **COST SAVINGS.** At completion of construction of the Project, Borrower shall submit to City a cost certification prepared by a qualified, independent auditor acceptable to City, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original budget approved by the City, the City shall be entitled to withhold from the amount of retention then held by the City, and the Loan balance shall be reduced by the amount so withheld. The City, in its sole discretion, shall determine any reduction of the Loan based upon this cost certification and the original approved budget for the Project.

26. **START OF CONSTRUCTION:** Borrower shall commence construction of the Improvements at the earliest possible date subject to the conditions set out in this Loan Commitment, the Loan Documents and the requirements of other involved lenders, but no later than March 31, 2011.
27. **COMPLETION OF CONSTRUCTION:** Borrower shall complete the construction of the Improvements no later than the date set out in the construction schedule in the Loan Documents, and subject to any time extensions approved by City.
28. **LIABILITY INSURANCE.** Borrower shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain insurance from the following claims which may result from construction of the Project: (a) workers' compensation claims; (b) bodily injury claims; (c) claims for damage; (d) motor vehicle related claims; and (e) claims for contractual liability arising from the Borrower's obligations under the Loan. Such insurance shall have limits of liability which are not less than \$1,000,000, each occurrence and \$1,000,000 aggregate, with a deductible of not more than \$50,000. Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended).
29. **PROPERTY INSURANCE.** For the duration of Loan term, Borrower shall obtain and maintain building and personal property coverage, to the full insurable value of the Property and Improvements with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Project), and with such other endorsements and in such amounts as the City may reasonably require to protect the Project. In the event of damage to the Improvements and subject to the requirements of a senior lender, Borrower shall use the proceeds of such insurance to reconstruct the Project and any related public improvements.
30. **INSURANCE PROVISIONS.** Each policy of insurance required hereunder shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating of B++ VII , which rating has been substantially the same or increasing for the last five (5) years, or such other equivalent rating, as may reasonably be approved by City. Each policy shall contain endorsements naming City, State and SHRA as additional insureds.
31. **TITLE INSURANCE:** Borrower must procure and deliver to City a 2006 ALTA LP-10 Lender's Policy of Title Insurance, together with such endorsements as City may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring City in an amount equal to the principal amount of the Loan, that City's Deed of Trust constitutes a lien or charge upon the Property and Improvements subject only to such items as shall have been approved by City. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by City.
32. **ORGANIZATIONAL AGREEMENTS:** Borrower must submit to City certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related

- filings or recorded documents and such related documents as City may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.
33. **PURCHASE OF PROPERTY:** Borrower shall provide City with copies of all documents relating to Borrower's purchase of the Property.
  34. **FINANCIAL INFORMATION:** During the term of the Loan, Borrower shall deliver to City within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower. Before close of the Loan and during its term, Borrower must deliver to City such additional financial information as may be requested by City. City reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower must deliver to City a monthly rent-roll including household composition information and operating statements with respect to the Property and Improvements, as City may request.
  35. **MANAGEMENT AGREEMENT:** Prior to execution of the Loan Documents, Borrower must submit to City any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to City's approval.
  36. **LOW INCOME HOUSING TAX CREDITS ("LIHTC"):** Borrower represents that as a condition of closing this Loan it is applying for an allocation of LIHTCs and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocation if granted.
  37. **OTHER FUNDS.** Borrower shall apply for and diligently pursue funds from every source listed in the Loan application as a source of funding for the Project and in not less than the amount of funds so listed.
  38. **DOCUMENTATION:** This Loan Commitment letter is not intended to describe all of the requirements, terms, conditions and documents for the Loan, which shall also include customary provisions and documents for a City transaction of this type. All documents to be delivered to or approved by City must be satisfactory to City in all respects. Borrower must promptly deliver to City any further documentation that may be required by City.
  39. **CONSISTENCY OF DOCUMENTS:** As a material obligation under this Loan Commitment, Borrower shall assure that the all other loan documents for the Project are consistent with those lenders' commitments and that such loan documents comply, in all respects, with the term of this Loan Commitment letter.
  40. **CHANGES OR AMENDMENTS:** No documents or contracts which are to be delivered to City or are subject to City's review or approval shall be modified or terminated without the prior written approval of City.
  41. **ACCEPTANCE OF THIS COMMITMENT:** Borrower's acceptance of this Loan Commitment shall be evidenced by signing and delivering to City the enclosed copy of this letter. Until receipt of Borrower's acceptance of the terms set out herein, City shall have no obligation to make the Loan. In addition, City may withdraw this Loan Commitment at any time prior to receipt of Borrower's written acceptance.

Sincerely,

Gus Vina  
Acting City Manager

The undersigned acknowledges and accepts the foregoing Loan Commitment and its terms and conditions.

Dated:

**BORROWER:**

Township 9 Sacramento L.P.,  
a California limited partnership

By: Anton Township LLC,  
a California limited liability company,  
its Co-General Partner

By: St. Anton Capital, LLC,  
a California limited liability company,  
its Sole Member and Manager

By: \_\_\_\_\_  
Steven L. Eggert,  
Authorized Member