



City of Sacramento City Council

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4

Meeting Date: 9/6/2011

Report Type: Consent

Title: Supplemental Agreement: Township 9 Project

Report ID: 2011-00737

Location: District 1

Recommendation: Adopt a Resolution approving Supplemental No. 1 to City Agreement 2010-0210 for the Proposition 1C Infill Infrastructure Grants for the Township 9 Project with Capitol Station 65, LLC.

Contact: Joana Domino Day, Senior Staff Assistant (916) 808-2677, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Downtown Development

Dept ID: 18001021

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Exhibit 1

City Attorney Review

Approved as to Form
Sheryl N. Patterson
8/30/2011 9:53:25 AM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
8/24/2011 11:01:55 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 8/25/2011 12:55:08 PM



Description/Analysis

Issue: In 2008 and 2009, the City was awarded a total of \$30 million in Proposition 1C Infill Infrastructure Grants from the State Department of Housing and Community Development (HCD) for the Township 9 project under two separate grants. Part of the HCD grants provides funds for project infrastructure and part is in support of the affordable housing project. See Background, Attachment 1, for a listing of project infrastructure to be funded with the grant funds.

The first Proposition 1C grant was for a total of \$19.1 million. On March 16, 2010 the City Council approved an Assignment Agreement (Agreement 2010-0210) assigning its rights and obligations under the first Proposition 1C grant to the Capitol Station 65, LLC (“Master Developer”) in the amount of \$11.9 million. The Master Developer will dedicate a site to an affordable housing developer for development of the 180 unit affordable housing project and undertake the off-site improvements needed for development of these parcels with the initial Proposition 1C grant. Also on March 16, 2010, City Council approved a Loan Commitment, conveying the City’s grant interest in the remaining \$7.2 million of Proposition 1C funds to the Affordable Housing Developer to fund the costs of the Parking Garage. The Loan Commitment was not executed and the Affordable Housing Developer for the project has since changed.

The initial grant allocated \$7.2 million of the overall grant to the affordable housing parking garage. The initial budget for the parking garage was based on estimates for construction at the time of application. The budget has been refined, based on current cost estimates, and the amount needed to construct the parking garage is currently estimated to be \$6.2 million. HCD has approved reducing the parking garage portion to \$6.2 million and increasing the grant allocation to other infrastructure projects in the overall T9 budget.

The proposed action is to assign the second Proposition 1C grant in the amount of \$10.9 million to Capitol Station 65, LLC and to increase the amount assigned under the first grant by \$ 1 million, to reflect the change in the cost of the parking garage. A Loan Commitment for the revised amount for the parking garage with the new Affordable Housing Developer will be brought to City Council as part of the overall affordable housing project financing in the fall of 2011.

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: 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: 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: N/A

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 fund a portion of the infrastructure needed for the housing development, the future light rail station on Richards Boulevard, Riverfront Park, the North 7th Street Parkway and the parking garage for the affordable housing project.

Financial Considerations: On March 16, 2010 the Township 9 Infill Infrastructure Project (B18219000) was established as a new Capital Improvement Project. A \$30 million revenue and expenditure budget for the Township 9 Infill Infrastructure Project (B18219000), funded with the Proposition 1C grant funds (Fund 3704), was established.

The Amendment to the Assignment Agreement and the Loan Commitment change the amount of the grant allocated to the parking structure from \$7.2 million to \$6.2 million, and to assign the second grant in the amount of \$10.9 million. HCD has approved moving the \$1 million to other areas in the budget that were underfunded so the overall grant remains at \$30 million. There is no impact to B182190, Fund 3704, or the General Fund.

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

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 (\$19.1 million) Scope of Work:

1. North 7th 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 5th Street and North 7th 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 7th Street/Parkway - Reconstruction and expansion of North 7th 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 5th Street and North 7th Street, including site preparation and grading.

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

6. North 7th Street Light Rail Station – Completion of transit station improvement.
7. Internal Streets “A”, “D”, “E”, “F” and Signature Street - Completion of residential streets D, E and F and additional streets A and Signature, including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.

8. North 7th Street/Parkway – Completion of park median improvement.
9. 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.
10. 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 (\$6.2 million) 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.

Previous Council Action

In August 28, 2007, the City Council approved the entitlements for the Township 9 project. The Township 9 project is a catalyst, transit-oriented, mixed-use development project located in the River District along Richards Boulevard between North 5th Street and North 7th 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.

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 a \$30 million 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.

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.

On March 16, 2010, the City Council approved assignment of \$11.9 million of the first grant to Capitol Station 65 LLC (City Agreement No. 2010-0210). The proposed action is to assign to the Township 9 developer the second \$10.9 million grant to complete the infrastructure improvements as set out in the grant applications, and to increase the amount assigned under the first grant by \$1 million in consideration of the reduction in

the cost of the parking garage for the affordable housing project.

Also on March 16, 2010 (Resolution No. 2010-142), the City Council approved a loan commitment with a portion of the first grant to the prior affordable housing developer, Township 9 Apartments, L.P., in the amount of \$7.2 million for the cost to construct the parking garage. Staff will return to Council to rescind this offer and provide for a loan commitment of \$6.2 million to the new affordable housing developer, T9 Affordable Housing Associates, LLC for the parking garage, in the fall of 2011 as part of the overall affordable housing financing. With the development of the 180 unit affordable housing project, the City will have met its obligations to HCD under the two grants.



RESOLUTION NO. 2011-

Adopted by the Sacramento City Council

APPROVING THE FIRST AMENDMENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT FOR PROPOSITION 1C INFILL GRANTS WITH CAPITOL STATION 65, LLC FOR TOWNSHIP 9 PROJECT

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 5th Street and North 7th 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. In 2008 and 2009, the City was awarded a total of \$30 million in Proposition 1C Infill Infrastructure grants from the State Department of Housing and Community Development (HCD) for the Township 9 project. These funds were approved for construction of the Township 9 streets, utilities, parks, and the transit station and the parking garage for the required affordable housing project.
- C. The original grant allocated \$7.2 million of the overall grant to the affordable housing parking garage. The initial budget for the parking garage was based on estimates for construction at the time of application. The budget has been refined, based on current cost estimates, and the amount needed to construct the parking garage is actually \$6.2 million. HCD has approved reducing the parking garage portion to \$6.2 million and increasing other areas of the overall T9 budget.
- D. On March 16, 2010 the City Council approved an Assignment Agreement (Agreement 2010-0210) assigning its rights and obligations under the first Proposition 1C grant in the amount of \$11.9 million to the Capitol Station 65, LLC ("Master Developer"). The proposed action is to assign the second HCD grant to the Master Developer in the amount of \$10.9 million and to increase the amount assigned under the first grant by \$1 million.

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

- Section 1. The First Amendment to the Township 9 Infill Grant Assignment and Assumption Agreement with Capitol Station 65 LLC, whereby the second

HCD grant in the amount of \$10.9 million is assigned for the improvements as specified in the HCD grant agreement and amount of grant funds assigned under the first HCD grant is increased by \$1 million, is hereby approved. The City Manager, or his designee, is authorized to execute the First Amendment to the Assignment and Assumption Agreement, which is attached as Exhibit 1.

Table of Contents:

Exhibit 1 – First Amendment to Assignment and Assumption Agreement



**FIRST AMENDMENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT
PROPOSITION 1C INFILL INFRASTRUCTURE PROGRAM GRANTS
FOR TOWNSHIP 9 PROJECT**

This FIRST AMENDMENT ("First Amendment") Is made and entered into as of this _____ day of _____, 2011 ("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

This First Amendment is entered into upon the basis of the following facts, understandings, and intentions of the CITY and DEVELOPER:

A. **Project Site.** The Township 9 project is located on 65 acres of land which lie north of Richards Boulevard between North 5th and North 7th 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).

F. **Proposition 1C Grants.** CITY has been awarded two grants 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 first grant was approved in June, 2008 for \$19.1 million and the CITY has executed the two agreements for that grant on October 6, 2009 (the "Standard Agreement") and on March 8, 2010 (the "Disbursement Agreement"), which collectively are referred to herein as the "First Grant." CITY assigned a portion of the First Grant to DEVELOPER (\$11.9 million) under that certain Assignment and Assumption Agreement dated March 17, 2010, City Agreement No. 2010-0210 (the "Principal Agreement").

In July of 2009, HCD notified CITY that it was awarded a second Proposition 1C Grant for \$10.9 million to fund additional improvements which are part of the Development Project, some of which are the same infrastructure projects which received partial funding under the First Grant and are defined in the grant agreements as the "Infrastructure Project" and in the Principal Agreement as the Public Improvements. Pursuant to Resolution No. 2009-147, the City Manager was delegated the authority to execute the second Proposition 1C Grant (the "Second Grant"), which is attached to and incorporated in this Amendment as set out below. Pursuant to Resolution No. 2010-142, the City Manager was delegated the authority to amend the Principal Agreement to assign the Second Grant to DEVELOPER and to designate DEVELOPER as the designated payee for receipt of those grant funds.

G. **Affordable Housing Project.** A condition in the Proposition 1C Grants 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 market rate housing units ("Additional Housing Development") at the Project Site on specified parcels. The QIP for the First Grant required 89 affordable units on Parcel 11C and the Second Grant requires 90 affordable units on Parcel 11A, which abuts Parcel 11C. DEVELOPER intends to construct one affordable housing project with a total of 179 restricted units on Parcels 11A and 11C to meet the QIP requirement under both grants. CITY was to allocate a portion of the First Grant to the QIP developer to fund the cost of the parking garage component of the project. The Additional Housing Development under the Second Grant is for development of 174 units on Parcel 10A. Under the terms of the Second Grant, DEVELOPER has recorded the HCD Declaration of Restrictive Covenant for the Development of Market Rate on Parcel 10A and the Declaration of Restrictive Covenant for the Affordable Housing on Parcel 11A (collectively the "HCD Covenants") prior to the execution of this Amendment.

H. Assignment of CITY Grants. DEVELOPER desires to enter into this First Amendment to be entitled to receive funding under the Second Grant for the Public Improvements as specified therein as the Infrastructure Project, so that DEVELOPER can commence and complete construction of the Public Improvements to allow for development of the QIP and the Additional Housing Development in accordance with the specified milestone schedules in both the First Grant and Second Grant, which schedules may be extended with approval from HCD.

In addition, the allocation of the funding under the First Grant for the various components of the Infrastructure Project has changed under the terms of the Second Grant due to refined cost estimates, and due to design changes the cost for the parking garage for the QIP is one million less, from \$7.2 million to \$6.2 million. One of the purposes of this First Amendment is to reallocate the proceeds under the First Grant for the Infrastructure Project in accordance with the changes in the sources and uses as referenced in the Second Grant, and to increase the amount of the First Grant assigned to DEVELOPER for the Infrastructure Project by \$1 million.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual covenants and promises of the Parties contained herein, and intending to be legally bound hereby, the Parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined herein shall have the definitions set out in the Principal Agreement.

2. First Amendment. All of the terms and conditions set out in the Principal Agreement with regard to DEVELOPER's obligations to construct the Infrastructure Project as Public Improvements with the Proposition 1C Grant proceeds and to develop the affordable and market rate housing shall also apply to the Second Grant. The following additions to the Principal Agreement with regard to the assignment of the Second Grant to DEVELOPER shall be effective as of the Effective Date of this First Amendment:
 - 2.1 Assignment and Assumption. CITY hereby assigns and transfers to DEVELOPER any and all of CITY's rights under the Second Grant, as more further defined below, and DEVELOPER hereby accepts and assumes all of the duties and obligations of CITY under the Second Grant references to "Recipient," and DEVELOPER shall comply with all of the terms and conditions set out therein. DEVELOPER's entitlement to the Proposition 1C Grant proceeds under the Second Grant for the Public Improvements set out therein shall be subject to the approval of HCD and DEVELOPER shall have no recourse against CITY for HCD's decisions.

- A. HCD Grant - The "Second Grant" which is assigned to DEVELOPER herein contains the Standard Agreement dated March 30, 2011 and the Disbursement Agreement dated March 30, 2011 between CITY and HCD for receipt of funding in the amount of \$10.9 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 Second Grant to be paid to DEVELOPER, either directly by HCD or through the CITY, under this First Amendment are referred to herein and in the Principal Agreement as the "Proposition 1C Grant Proceeds."
- C. Partial Assignment - Notwithstanding the foregoing assignment by CITY and assumption by DEVELOPER of the Second Grant, the CITY remains as the named grantee and party to that agreement because HCD has not approved this First Amendment and released CITY from its obligations under the Second Grant. 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 Second Grant 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 the Principal Agreement or thereafter during the term of the Second Grant. Any written amendment, modification or waiver of any term or condition of the Second Grant, 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 the Principal Agreement and such written amendment, modification or waiver shall be attached and incorporated into the Principal Agreement by this reference without the need for a formal amendment. CITY shall not unilaterally amend or terminate the Second Grant without DEVELOPER's prior written approval unless DEVELOPER is in default of its obligations under the Principal Agreement and the applicable cure period(s) within which to cure such default 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 Second Grant 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 Second Grant 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 the Principal Agreement, CITY has the right to enforce the covenants and obligations set out in the Second Grant and the HCD Covenants on behalf of HCD, even after the Expiration Date, as provided in the Principal Agreement.

2.2 **Public Improvements.** DEVELOPER shall undertake the design and construction of the "Infrastructure Project" as specified in the Second Grant in accordance with the scope of work and schedule set out therein, and in accordance with the terms and conditions set out in the Principal Agreement. In the event of conflicts between the allocation of the Proposition 1C Grant Proceeds for the scope of work between the First Grant and the Second Grant, the funding allocation in the Second Grant shall control.

2.3 **Payment of Costs.** CITY will approve DEVELOPER as the direct payee for reimbursement by HCD of DEVELOPER's Public Improvement costs under the Second Grant. CITY will promptly review and if approved, promptly forward DEVELOPER's draw requests to HCD for payment. The total compensation to be requested by DEVELOPER and paid by HCD for the costs of the Public Improvements under the Second Grant shall not exceed TEN MILLION NINE HUNDRED THOUSAND DOLLARS (\$10.9 million). The total compensation to be requested by DEVELOPER and paid by HCD for the costs of the Public Improvements under the First Grant is hereby revised to an amount not to exceed TWELVE MILLION NINE HUNDRED THOUSAND DOLLARS (\$12.9 million). The amount of compensation allocated between the Public Improvements, as set out for the Infrastructure Project and the QIP Parking Garage in the First and Second Grants, shall be adjusted to conform to any changes in the sources and uses of funds as approved by HCD and CITY and set forth in amendments or revisions to the First Grant and the Second Grant without the need for an amendment to this Assignment and Assumption Agreement.

DEVELOPER's draw requests shall comply with the requirements set out in the Second Grant. 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 First Grant and Second Grant in regards to payment of the Public Improvement costs.

Except for payments to be provided to DEVELOPER under the First Grant and the Second Grant and any other agreements between CITY and DEVELOPER, CITY shall have no further liability to DEVELOPER for the costs of the Public Improvements under the Principal Agreement as amended herein.

2.4 Housing Development. DEVELOPER acknowledges and agrees in regards to the obligation to development of affordable and market rate housing under the terms of the Second Grant as follows:

- A. HCD Covenants - DEVELOPER has permitted HCD to record the HCD Covenants against the specified portions of the Property as set out in the First Grant and the Second Grant. CITY and DEVELOPER understand that HCD will release this covenant against that portion of the Property which is not the subject of the First Grant and the Second Grant 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 10A and the "Covenant Regarding Development of Affordable Housing" will thereafter only remain on Parcel 11A and 11C.
- B. QIP Covenant - The HCD "Covenant Regarding Development of Affordable Housing" will require DEVELOPER to insure that the 179 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 First Grant and the Second Grant.
- 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 Parcel 10A in accordance with the terms and schedule set out in the Second Grant. 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 Second Grant and the Principal 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 Second Grant.
- D. HCD Covenants Enforcement - CITY is relying on the HCD Covenants as security for DEVELOPER's compliance with the provisions in the Second Grant regarding (i) meeting its obligations in regards to facilitating development of the QIP (i.e., transfer of Parcel 11A 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 the Principal Agreement expires. DEVELOPER acknowledges and agrees that under the terms of the Principal Agreement as amended herein, 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, the QIP and the Additional Housing Development under the Second Grant. The covenant under this Section 2.4 shall survive the termination of the Principal Agreement, as amended, and shall extend until the HCD Covenants are released or terminated by HCD from each parcel of land comprising the Property or portions thereof as described in the Second Grant.

- 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 Second Grant, 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 QIP or 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 10A and 11A 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.

3. Effect of Amendment. Except as expressly modified by this First Amendment, the Principal Agreement shall continue in full force and effect according to its terms and conditions, and CITY and DEVELOPER hereby ratify and affirm all of their respective rights and obligations under the Principal Agreement. In the event of any conflict between this First Amendment and the Principal Agreement, this First Amendment shall control.

4. Entire Agreement. This First Amendment 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 Second Grant.

5. Survivorship. The DEVELOPER's obligations arising under this First Amendment pertaining to indemnity and repayment obligations as set out herein and in the Principal

Agreement shall survive the expiration, termination or cancellation of the Principal Agreement, as amended.

6. **Covenants Binding on Successors.** The burdens of this First Amendment shall be binding upon, and the benefits of this First Amendment shall inure to, all successors in interest to the Parties and to all successors in interest in ownership of the Property. CITY may record a memorandum summarizing the terms of Principal Agreement as amended herein against the Property subject to DEVELOPER's approval of the memorandum content, which approval shall not be unreasonably withheld.

7. **Construction.** CITY and DEVELOPER have both been represented by counsel in the preparation of this First Amendment and no presumption or rule that ambiguity shall be construed against the drafter shall apply to the interpretation or enforcement hereof.

8. **Authority.** The persons signing below represent that they have the authority to bind their respective Party and that all necessary approvals have been obtained.

9. **Counterparts.** This First Amendment may be executed in one or more counterparts, and all of the counterparts shall constitute one and the same agreement, notwithstanding that all Parties hereto are not a signatory to the same or original counterpart.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Effective Date.

CITY OF SACRAMENTO,
a municipal corporation

By: _____
John Dangberg
Assistant City Manager

Approved as to Legal Form:

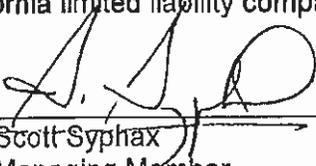
By: _____
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

CAPITOL STATION 65 LLC,
a California limited liability company

By: _____

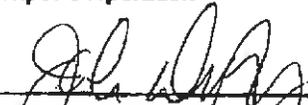


Scott Syphax
Managing Member

EXHIBIT A

Standard Agreement for the Infill Infrastructure Grant Program

CITY OF SACRAMENTO
A Municipal Corporation

By: 

Date Signed: _____

John Dangberg, Assistant City Manager
For: Gustavo F. Vina, City Manager, March 21, 2011

For: Gus Vina, Interim City Manager

APPROVED TO AS FORM:

By: 
City Attorney

Date Signed: 3-14-11

ATTEST:

By: 
City Clerk

Date Signed: 3-7-11

Address:
915 I Street, 3rd Floor
Sacramento, CA 95811

ant

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 January 30, 2009 ("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 January 30, 2009. 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:

- 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

EXHIBIT A

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:

Completion of improvements to Residential Streets "D", "E", "F", as shown on the approved Tentative Map including site preparation, sewer, water, storm drain, and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.

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.

Completion of improvements to North Seventh Street Parkway including demolition of existing improvements, site preparation, and 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.

Riverfront Park improvements including site preparation, grading excavation and soil import, and the installation of underground utilities including sewer,

EXHIBIT A

water, and storm drain, curb, gutter, sidewalk, paving, signage, striping, landscaping, site furniture, water features and dry utilities.

Initial improvements to Street A and Signature Street as shown on the approved Tentative Map as necessary to support the Housing Development including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.

- 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:

Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County		Qualifying Infill Project	
		Township 9 Parcel 11A	
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	9	9	50
2	36	36	60
2	9	9	50
_____	_____	_____	_____
Total	90	90	_____
Net Density (see Guidelines sec. 302(c))		123.9 (For all 284 Units)	

EXHIBIT A

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:

Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County	Qualifying Infill Project		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	IIG Restricted	Income Limit (% of AMI)
0	37	0	N/A
1	72	0	N/A
2	52	0	N/A
3	13	0	N/A
Total	174	0	
Net Density (see Guidelines sec. 302(o))		123.9 (For all 264 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 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 is necessary for the development of the QIA. The Recipient is responsible for and shall ensure the completion of the Infrastructure Project and the completion and occupancy of

EXHIBIT A

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 310(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 310(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.

Amenity Type	Number of amenities in the QIA or within ½ mile of its boundary
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

EXHIBIT A

- 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 310(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.

List of Transit Stations or Major Transit Stops	Name of housing development In proximity to Transit Station/Major Transit Stop	Number of units within ½ mile of Transit Station/Major Transit Stop
1. Downtown-Natomas-Airport (DNA) project, Phase I, aka MOS-1.	Parcel 11A	90
2. Same as 1	Parcel 10A	174

- 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.

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:

EXHIBIT A

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

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:	Sheri Smith
Address:	915 I Street, 3 rd Floor Sacramento, CA 95811
Phone No.:	(916)808-7204

EXHIBIT A

**PERFORMANCE MILESTONES
 PERFORMANCE MILESTONES INFRASTRUCTURE
 TOWNSHIP 9**

Performance Milestones Infrastructure				
	Phase 1	Phase 2	Phase 3	Phase 4
Completion of all necessary environmental clearances, including those required under CEQA and NEPA.	Completed, August 2007			
Obtaining all necessary and discretionary public land use approvals.	Completed, August 2007			
Obtaining all enforceable funding commitments for all construction period financing.	Completed, May 2010			
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 Project.	Completed, May 2010			
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	September 2011			
Construction complete and the filing of the Notice of Completion.	February 2013			
Anticipated date Program funds fully disbursed.	February 2013			

IIG Grant - QIA
 NOFA 1/30/09
 Rev: 03/03/10
 Prep Date: 02/17/11

EXHIBIT A

**PERFORMANCE MILESTONES HOUSING
Township 9**

Performance Milestones Housing Projects	Phase 1	Phase 2	Phase 3	Phase 4
Executed binding agreement between the Recipient and developer of the proposed Housing Development detailing the terms and conditions of the Project development.	January 2011	January 2013		
Site Control of Housing Development site(s) by proposed housing developer.	January 2011	January 2013		
Completion of all necessary environmental clearances, including those required under CEQA and NEPA.	Completed, August 2007	June 2013		
Obtaining all necessary and discretionary public land use approvals.	April 2011	June 2013		
Obtaining all enforceable funding commitments for at least the first phase of the Housing Development supported by the Infrastructure Project.	July 2011	December 2013		
Obtaining all enforceable funding commitments for all construction period financing.	July 2011	December 2013		
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 Project.	July 2011	December 2013		
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	July 2011	December 2013		
Commencement of construction.	August 2011	December 2013		
Construction complete and the filing of the Notice of Completion.	December 2013	June 2015		
Anticipated date Program funds fully disbursed.	February 2013	February 2013		
Occupancy of Affordable Units in the Housing Development by eligible households.	December 2013	N/A		

IIG Grant - QIA
NOFA 1/30/09
Rev: 03/03/10
Prep Date: 02/17/11

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

Infill Infrastructure Grant Program – Qualifying Infill Area

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

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

EXHIBIT B

- B. Pursuant to Sections 309(a)(3)(D) and 310(a)(3)(D) of the Guidelines, the Department requires the Recipient to provide an Estoppel Letter acceptable to the Department evidencing that the amount of owner equity or developer funds proposed by the Recipient at application stage and relied upon by the Department in reviewing the financial feasibility of the project continues to be committed to the project.

4. Completion Dates

- A. Pursuant to Section 306(c) of the Infill Infrastructure Grant Program Guidelines, dated January 30, 2009, all Program funds must be disbursed no later than February 1, 2013. All un-disbursed funds remaining as of February 1, 2013, will no longer be available for this Project. All invoices for payment must be submitted to the Department no later than December 1, 2012.
- B. This Agreement shall expire on June 30, 2017.

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.
- C. The Department shall not authorize payment(s) for pre-development and/or soft costs until the Department has received from the Recipient:
- 1) An executed construction contract; and
 - 2) Evidence, acceptable to the Department, demonstrating that construction period funding sources have been secured or has or will be converted to permanent funding sources.
- D. The Recipient may designate an alternate payee to receive Program funds under the terms of this Standard Agreement. The designated payee shall remain under the control of the Recipient and the payee shall only use the

EXHIBIT B

Program funds subject to the terms and conditions set forth in this Standard Agreement and IIG Guidelines.

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 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
Budget

EXHIBIT B INFRASTRUCTURE DEVELOPMENT BUDGET

DEVELOPMENT NAME:

Township 9

ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS

DEVELOPMENT COSTS BY FUNDING SOURCE

COSTS CATEGORY	DEVELOPMENT COSTS	FUNDING SOURCES						Total
		IG Program Round 1	IG Program Round 2	City CIP Grant	City Stimulus	Developer		
PROJECT ACTIVITY (Hard Cost)								
Site Preparation, Utilities, Surface Improvements, Landscape and Amenities, Residential Parking, and Transit	\$ 32,159,648	\$17,550,601	\$10,087,696	\$2,200,000	\$1,012,304	\$1,309,047	\$32,159,648	
SOFT COST AND OTHER PROJECT RELATED COSTS								
Engineering, Design, Plan Check, Inspection, and Utility Fees	\$ 2,617,822	\$1,549,398	\$812,304	\$ -	\$87,696	\$168,423	\$2,617,822	
TOTAL PROJECTED CIP COSTS	\$ 34,777,470	\$19,100,000	\$10,900,000	\$2,200,000	\$1,100,000	\$1,477,470	\$34,777,470	

IG Grant - QIA
 NOFA 1/30/09
 Rev: 03/03/10
 Prep Date: 2/4/11

EXHIBIT C

HCD GENERAL TERMS AND CONDITIONS

Infill Infrastructure Grant Program - Qualifying Infill Area

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 47 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 Department, and including such other parties as the Department may reasonably

EXHIBIT C

require, which shall require the development and construction of the Housing Development 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 the Housing Development is to be located and shall be binding on all successors, transferees, and assignees acquiring an interest in the Housing Development as follows:

- A. For rental housing developments, the Covenant shall require the continuation of the affordability of the Housing Development for a period of not less than fifty-five (55) years from the date of the filing of a Notice of Completion for the Housing Development.
- B. For homeownership housing developments, the Covenant shall require the continuation of the affordability for a period of not less than thirty (30) years from the date of the filing of a Notice of Completion for the 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 Development 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 Development 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 Development, and provide evidence of such instruments prior to the first disbursement of Program funds.

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 Housing Development, prepared in a form, and by a qualified appraiser, acceptable to the Department.

EXHIBIT C

7. Relocation Plan

If there is or will be any residential or commercial displacement directly or indirectly caused by the Infrastructure Project or the Housing Development, or both, 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 to the Department satisfactory evidence that the requirements of Article XXXIV of the California Constitution are inapplicable or have been satisfied as to the Housing Development.

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 Development, in conformance with American Society for Testing and Materials (ASTM) Standard Practice E 1527, evaluating whether the Infrastructure Project is affected by any recognized environmental conditions.
- B. Documentation and/or a certification satisfactory to the Department that all 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.

EXHIBIT C

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 Development, the Recipient, its Contractors or Subcontractors, and any grant activity.

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 designated 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.

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 the

EXHIBIT C

Infrastructure Project or Housing Development is 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 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 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 Scope of 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 subject to the review and approval of the Department to the extent necessary to ensure compliance with Program requirements and this Agreement.

18. Loan Agreement Between Co-Recipients

In the event of a joint application where the co-Recipient Locality, public housing authority, or redevelopment agency and the co-Recipient developer have agreed in writing that the Locality, public housing authority, or redevelopment agency shall receive the Program funds as the primary Recipient in order to make a loan to the

EXHIBIT C

developer for tax credit purposes, the loan terms shall provide for, at a minimum, the following:

- A. A zero (0) percent, deferred payment loan, with a term of at least 30 years for home ownership developments, or a term of at least 55 years for rental developments.
- B. No periodic payments shall be required under the loan.
- C. The co-Recipients shall be responsible for all aspects of establishing, documenting and servicing the loan.
- D. The provisions governing the loan shall be entirely consistent with the IIG Guidelines and all documents required by the Department with respect to the use and disbursement of Program funds.
- E. All documents governing the loan between the public agency lender and the developer borrower shall be subject to the review and approval of the Department prior to making the loan.
- F. Any additional terms the Department may require to ensure compliance with the IIG Guidelines, this Standard Agreement, Disbursement Agreement and any other Department grant documents.

DESIGN

19. 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 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 35 of this Exhibit C. At the request of the Department, Recipient shall submit any and all contracts for these services to the Department for its review and approval.

EXHIBIT C

20. 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 Housing Development to the Department for its review and approval. The Infrastructure Project and 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.

21. 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 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.

22. Adaptability and Accessibility

The Infrastructure Project and Housing 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.

23. Acoustics Report

Upon request, the Recipient shall provide the Department with an acoustics report for the Housing Development in a form acceptable to the Department.

24. 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.

EXHIBIT C

CONSTRUCTION

25. Construction Contract

Except for work performed by its own employees, the Recipient 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 the 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.

26. Contractor's Assurance of Completion

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 at least equal to one hundred percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the faithful performance of the Construction Contract(s) including a warranty period of at least twelve (12) months after completion. The Payment Bond shall be in an amount at least 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 Housing Development and furnishing materials in connection with the Construction Contract. 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. The Department shall be named as an additional obligee in the Bonds or an additional beneficiary under the Letter of Credit.

27. 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

EXHIBIT C

funding of a Housing Development unless such funding is otherwise considered public funding under the State Prevailing Wage Law. It is not the intent of the Department to subject Housing Developments 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 Housing Development subject to 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.

28. Construction Phase Information

If requested by the Department, 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. 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 by the Housing Development architect and other consultants, and information relative to the Housing Development income, expenses, occupancy, relocation benefits and expenses, contracts, operations and conditions of the 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

EXHIBIT C

authorize or approve any change orders rejected by the Department where the Department's approval is required.

29. Signage

Recipient shall place signs on the construction site for the Infrastructure Project and Housing Development stating that the Department is providing financing through the Infill Infrastructure Grant Program in an appropriate location(s), typeface and size containing the following message:

TOWNSHIP 9
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 Manager.

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

INSPECTION OF GRANT ACTIVITIES

30. Site Inspection

The Department reserves the right, upon reasonable notice, to inspect the Infrastructure Project site and any structures or other improvements thereon to determine whether the Infrastructure Project site meets the requirements of Program and this Agreement. If the Department reasonably determines that the site is not acceptable for the proposed Infrastructure Project in accordance with the Guidelines,

EXHIBIT C

the Department reserves the right to cancel its funding commitment and this Agreement.

31. 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 the 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 Housing Development.

EXHIBIT C

32. 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 the 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, 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 the 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 the 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.**

EXHIBIT C

COMPLETION OF CONSTRUCTION

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

34. Architect Certification

Where required by the Department, the Recipient shall cause the Infrastructure Project and Housing Development 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.

35. Cost Certification

At the request of the Department, the Recipient shall submit an Infrastructure Project and Housing Development cost certification 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.

36. Recorded Notice of Completion

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

37. "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 Housing Development acceptable to the Department.

38. Intentionally left blank

EXHIBIT C

HOUSING DEVELOPMENT REQUIREMENTS

39. 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 Housing Development. Alternatively, if the Housing Development 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 Housing Development have been received. The housing units to be developed in the Housing Development must be completed, as evidenced by receipt of a certificate of occupancy, within the time period established in this Agreement.

40. Proximity to Amenities

To ensure the Recipient's 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(e) of the Guidelines, as applicable, when the Housing Development is completed.

41. Access to Transit

To ensure the Recipient's Housing Development 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. The evidence shall substantiate completion of the transit stations identified in the application by April 4, 2013.

REPORTING REQUIREMENTS

42. 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

43. Reports on Housing Development

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 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.

44. 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 Housing Development and the conditions described above.

45. 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 Program's satisfaction by the deadlines set by the Department.

REPAYMENT OF GRANT FUNDS

46. 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 Housing Development cannot proceed in a timely fashion in accordance with the Performance Milestones in Exhibit A of this Agreement;
 - 4) Funding or disbursement conditions have not been or cannot be fulfilled within required time periods.

47. 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 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.

EXHIBIT D

STATE OF CALIFORNIA

GENERAL TERMS AND CONDITIONS – GTC 610

1. Approval

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Recipient may not commence performance until such approval has been obtained.

2. Amendment

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. 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. Audit

Recipient agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Recipient agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. 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

EXHIBIT D

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 Recipient in the performance of this Agreement.

6. Disputes

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

7. 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. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Recipient under this Agreement and the balance, if any, shall be paid to the Recipient upon demand.

8. Independent Contractor

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.

9. Recycling Certification

The Recipient shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. Non-Discrimination Clause

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 (e.g., cancer), age (over 40), marital status, and denial of family care leave. Recipient and subcontractors shall insure that the evaluation and

EXHIBIT D

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 (Gov. Code §12890 (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 12890 (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.

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

11. Certification Clauses

The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto <http://www.documents.dgs.ca.gov/ols/CCC-307.doc>.

12. Timeliness

Time is of the essence in this Agreement.

13. Compensation

The consideration to be paid Recipient, as provided herein, shall be in compensation for all of Recipient's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. Governing Law

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

15. Antitrust Claims

The Recipient by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Recipient shall comply with the requirements of the Government Codes Sections set out below.

EXHIBIT D

- A. The Government Code Chapter on Antitrust claims contains the following definitions:**
- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.**
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.**
- B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.**
- C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.**
- D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.**

EXHIBIT D

16. Child Support Compliance Act

For any Agreement in excess of one hundred thousand dollars (\$100,000), the recipient acknowledges in accordance with Public Contract Code 7110, that:

- A. The 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. The 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.

17. Unenforceable Provision

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.

18. Priority Hiring Considerations

If this Contract includes services in excess of two hundred thousand dollars (\$200,000), the Recipient shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. Small Business Participation And DVBE Participation Reporting Requirements

- A. If for this Contract Recipient made a commitment to achieve small business participation, then Recipient must within sixty (60) days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- B. If for this Contract Recipient made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Recipient must within sixty

EXHIBIT D

(60) days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Recipient received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Recipient; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. Loss Leader

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT E

SPECIAL TERMS AND CONDITIONS

Infill Infrastructure Grant Program - Qualifying Infill Area

The following Special Terms and Conditions are applicable to this Agreement:

1. 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."
2. 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.
3. 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.
4. 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.
5. 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.
6. 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 Department's approval only where such items are for the Infrastructure Project or the QIP.

EXHIBIT E

7. 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.
8. **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.
9. **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.
10. 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.

EXHIBIT E

11. 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.

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 30, 2011, 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 09-IIG-6021, entered into by the Recipient and the Department dated March 30, 2011 (the "Standard Agreement"). The Department has conditionally agreed to provide the grant to the Recipient in an amount not to exceed TEN MILLION NINE HUNDRED THOUSAND AND 00/100 Dollars (\$10,900,000.00) (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 reference to this Agreement.

- B. The Infrastructure Project is integral to or necessary for the development of a residential housing development (the "Housing Development") 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, 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 current real property taxes and assessments not yet due and payable and 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 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 as 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 B 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. 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 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 a Letter of Credit, which shall remain in effect during the entire term of construction of the 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 Bond 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 Bond shall be in an 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 a Letter of Credit is used, it shall be in an amount equal to at least 20% of the 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 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 evidence of binding agreements for construction financing and enforceable commitments for permanent financing as identified in the Sources and Uses of Funds (or equivalent, alternative financing approved by the Department) demonstrating adequate funding 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 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.
- o. 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.
- p. Recipient has completed or complied with all events or conditions in the Disbursement Schedule prior to the submission of the Draw Request.
- q. Recipient has complied with all special conditions contained in the Exhibit F which are conditions precedent to the disbursement of Program Funds.
- r. 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 present 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 present 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, including ten percent (10%) retention of hard construction costs, shall be subject to the following conditions:
- 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 Property 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 Property 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 Property 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, which shall be not

fewer than fifteen (15) after the date the notice is mailed to Recipient, by which such action must be taken:

- a. Monetary. (i) Recipient's failure or inability to secure anticipated permanent 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).

- 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 default and failure to cure such default in a timely manner under any other Grant Documents or other construction lender loan documents, Recipient's default under any ground lease or sale of the Housing Development, or Recipient's failure to perform its obligations under this Agreement.

- 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 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 13 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 shall 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, 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.
 - 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 construction 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 the Infrastructure Project 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, 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 five (5) 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 therefore, 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, 5th Fl.
Sacramento, CA 95814

Department's Address:

Eugene Lee, Section Chief, IIG 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 (abbreviated)
 - Exhibit A-1: Legal Description (full)
 - Exhibit B: Scope of Work
 - Exhibit C: Sources and Uses of Funds (CIP)
 - Exhibit D: Disbursement Schedule
 - Exhibit E: Insurance Requirements
 - Exhibit F: Special Conditions

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

RECIPIENT:

City of Sacramento
A Municipal Corporation

By: 

John Dangberg, Assistant City Manager
For: William H. Edgar, Interim City Manager, June 6, 2011
For: ~~William H. Edgar, Interim City Manager, May 13, 2011~~

For: City Manager

APPROVED TO AS FORM:

By: 
City Attorney

ATTEST:

By: 
City Clerk *6-14-11*

Address:
915 I Street, 5th Fl.
Sacramento, CA 95811

Department:

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

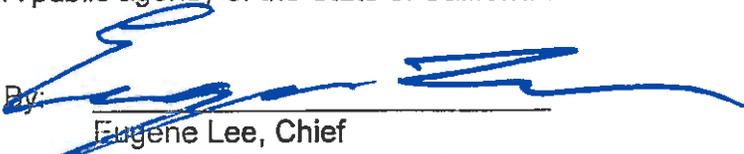
By: 
Eugene Lee, Chief
Infill Infrastructure Grant Program

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

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 use 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

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 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 Recorder 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 48°27'53" East 52 02 feet to a point of compound curve, (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 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, R4E , 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 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 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 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 Bercut-Richards Packing Company, a corporation, grantee, recorded September 14, 1959, in Book 3879, Page 344, Official Records

Apn. 001-0020-034, 041, and 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 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 and 003

Parcel H:

All that portion of those lands designated as "Southern Pacific Company" as shown on that certain Record of Survey filed in Book 26 of Surveys, Page 28, Official Records of Sacramento County, together with all that portion of Projected Township 9 North, Range 4 East, Mount Diablo Meridian, described as follows:

Beginning at the most Northerly corner of Parcel No 10 as shown on said Record of Survey, said corner being identified with the most Easterly corner of that portion of 5th Street vacated and abandoned by the City of Sacramento Ordinance No 12880 filed in Book 660830, Page 563, Official Records of Sacramento County, thence from said point of beginning, along the boundary of that certain parcel described as "Legal Description of APN 001-0200-008 After Adjustment" as shown and described within that certain Certificate of Compliance filed in Book 890215, Page 916, Official Records of Sacramento County, and along the boundary of said Southern Pacific Company property the following eleven (11) courses. (1) South 18°29'45" East 82.87 feet, (2) North 71°30'15" West 30.00 feet, (3) North 18°29'45" West 83.13 feet; (4) along the arc of a curve to the left, concave Southwesterly, having a radius of 312.72 feet, subtended by a chord bearing North 75°02'01" West 13.96 feet; (5) North 76°18'45" West 36.19 feet, (6) South 18°29'45" West 6.92 feet, (7) North 84°29'55" West (cited as North 84°29'55" East on said Record of Survey) 27.88 feet, (8) along the arc of a curve to the left, concave Southerly, having a radius of 842.18 feet, subtended by a chord bearing North 87°22'35" West (cited as North 87°22'35" East on said Record of Survey) 84.62 feet; (9) South 89°44'45" West 75.00 feet, (10) South 85°16'26" West 64.14 feet and (11) along the arc of a curve to the left, concave Southerly, having a radius of 276.84 feet, subtended by a chord bearing South 79°53'05" West 17.81 feet to the most Easterly corner of Parcel D as shown on that certain

Parcel Map filed in Book 18 of Parcel Maps, Page 35, Official Records of Sacramento County, thence along the Easterly line of said Parcel D North 12°07'11" West 50 00 feet to a point in the Northerly line of said Southern Pacific Company property as shown on said Record of Survey, thence along said Northerly and Easterly lines the following thirteen (13) courses: (1) North 89°48'45" East 161 31 feet, (2) along the arc of a curve to the right, concave Southerly, having a radius of 1009 75 feet, subtended by a chord bearing South 87°18'35" East 101 39 feet, (3) South 84°25'25" East 300 33 feet, (4) North 85°54'35" East 172 83 feet, (5) South 83°22'58" East 14 19 feet; (6) South 18°29'45" West 1 64 feet; (7) along the arc of a curve to the right, concave Southerly, having a radius of 392 25 feet, subtended by a chord bearing South 87°07'31" East 48 64 feet, (8) South 83°34'15" East 33 38 feet; (9) along the arc of a curve to the right, concave Southerly, having a radius of 5739.60 feet, subtended by a chord bearing South 80°30'22" East 613 70 feet (10) South 77°26'30" East 317 35 feet, (11) along the arc of a curve to the right, concave Southwesterly, having a radius of 296 84 feet, subtended by a chord bearing South 29°28'30" East 440 96 feet, (12) South 71°30'15" East 16 50 feet and (13) South 18°29'45" West 304 88 feet; thence leaving said Easterly line North 71°37'15" West 40 00 feet to the Northeast corner of Parcel 2 as shown on that certain Parcel Map filed in Book 152 of Parcel Maps, Page 8, Official Records of Sacramento County, said point also being a point in the Westerly line of said Southern Pacific Company property, thence along the Westerly and Southerly boundary of said property the following twelve (12) courses. (1) North 18°29'45" East 304 96 feet (2) South 71°30'15" East 3 50 feet, (3) along the arc of a curve to the left, concave Southwesterly, having a radius of 276 84 feet, subtended by a chord bearing North 29°28'30" West 411.25 feet (4) North 77°28'30" West 317 35 feet, (5) along the arc of a curve to the left, concave Southerly, having a radius of 5719.60 feet, subtended by a chord bearing North 80°30'22" West 611 56 feet; (6) North 83°34'15" West 33 38 feet (7) along the arc of a curve to the left, concave Northerly, having a radius of 372 25 feet, subtended by a chord bearing North 87°39'45" West 53.12 feet; (8) South 18°29'45" West 49 73 feet; (9) along the arc of a curve to the right, concave Northerly, having a radius of 1465 01 feet, subtended by a chord bearing North 83°47'39" West 39 08 feet; (10) along the arc of a curve to the left, concave Southerly, having a radius of 583 14 feet, subtended by a chord bearing North 83°31'01" West 21 20 feet; (11) North 82°28'31" West 68 67 feet and (12) along the arc of a curve to the right, concave Northerly, having a radius of 481 15 feet, subtended by a chord bearing North 78°49'56" West 61 15 feet to a point in the Southerly line of that certain Exhibit A entitled "Legal Description of APN 001-0200-008 After Adjustment" as shown and described within that certain Certificate of Compliance for Lot Line Adjustment filed in Book 890215, Page 916, Official Records of Sacramento County; thence along said line the following two (2) courses: (1) North 83°27'59" West 173.72 feet and (2) South 18°29'45" West 18 66 feet to the point of beginning

Excepting therefrom all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable, but without entering upon or using the surface of the property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof

Apn. 001-0020-052

Exhibit "B" to Disbursement Agreement

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:

Completion of improvements to Residential Streets "D", "E", "F", as shown on the approved Tentative Map including site preparation, sewer, water, storm drain, and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.

Completion of 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.

Riverfront Park improvements 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.

Initial improvements to Street A and Signature Street as shown on the approved Tentative Map as necessary to support the Housing Development including site preparation, sewer, water, storm drain and dry utilities, curb, gutter, sidewalk, paving, signage, striping, and landscaping.

Completion of Transit Improvements including hardscape surface improvements, landscaping, station structures, signage, monumentation, and related improvements.

Exhibit "C" to Disbursement Agreement

**Sources and Uses of Funds
Capital Improvement Project Budget**

QIA NAME:		SCOPE OF WORK: PROJECT SUMMARY									
TOWNSHIP 9		CAPITAL IMPROVEMENT PROJECT DEVELOPMENT BUDGET									
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS		BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE									
COST CATEGORY		DEV COSTS					FUNDING SOURCES				
		TOTAL	IIG Round 1	IIG Round 2	City CIP Grant	Stimulus (CDBG-R)	HCD Cabalyst	CFCFA Grant	SMUD Grant	Developer	
SITE PREPARATION											
Construction Staking		150,500	68,000	81,000	0	0	0	0	0	1,500	
Testing & Inspections		137,000	117,000	20,000	0	0	0	0	0	0	
SWPPP		87,500	0	65,500	0	0	0	0	0	2,000	
Temp Fencing		36,736	22,920	0	13,816	0	0	0	0	0	
Demolition/Clearing		2,122,821	2,122,821	0	0	0	0	0	0	0	
Demolition/Rough Grading		427,482	147,587	0	279,895	0	0	0	0	0	
Clear/Grub/Erosion Control		274,900	169,000	45,900	60,000	0	0	0	0	0	
Remediation		1,531,765	1,182,025	0	0	0	0	349,740	0	0	
Earthwork		958,737	758,913	61,261	0	0	0	0	0	140,563	
Erosion/Weed Control		0	0	0	0	0	0	0	0	0	
Construction Management		136,490	95,698	15,045	21,223	0	0	0	0	4,524	
Site Preparation Contingency		230,233	91,042	56,814	0	0	0	50,000	0	32,377	
Total Site Preparation Costs		6,074,164	4,773,006	345,520	374,934	0	0	399,740	0	180,964	
UTILITIES											
Sewer		558,275	425,500	132,775	0	0	0	0	0	0	
Storm Drain		1,093,441	369,724	531,150	192,567	0	0	0	0	0	
Water		714,677	508,154	206,523	0	0	0	0	0	0	
Joint Trench		721,714	292,503	250,625	0	0	0	0	0	178,596	
Dry Utility Facilities		974,599	489,239	263,191	0	0	0	0	0	222,169	

Construction Management	240,720	147,040	82,126	11,554	0	0	0	0	0	0
Site Preparation Contingency	266,919	124,555	142,364	0	0	0	0	0	0	0
Total Site Utilities Costs	4,570,345	2,356,715	1,606,754	204,121	0	0	0	0	400,755	0
SURFACE IMPROVEMENTS										
Concrete CGSW	1,167,746	220,126	524,822	409,081	0	0	0	0	0	13,719
Street Paving & Striping	561,842	206,364	258,518	96,960	0	0	0	0	0	0
Special Paving	814,291	128,992	119,878	542,636	0	0	0	0	0	22,785
Signage & Striping	180,004	117,081	7,750	55,173	0	0	0	0	0	0
Signalization	244,670	186,046	0	58,624	0	0	0	0	0	0
Streetlights & Electrical	1,031,669	130,669	680,300	186,900	0	0	0	0	0	33,800
Construction Management	308,179	59,356	93,893	149,128	0	0	0	0	0	6,002
Surface Improvements Contingency	412,175	100,740	134,301	0	0	148,501	0	0	0	28,633
Total Surface Improvements Costs	4,720,579	1,149,374	1,819,262	1,498,502	0	148,501	0	0	0	104,940
LANDSCAPE AND AMENITIES										
Planting & Irrigation	1,189,891	239,145	873,337	40,208	0	0	0	0	0	37,201
Landscape Concrete	1,461,800	0	1,397,000	0	0	0	0	0	0	64,800
Artwork	151,800	0	151,800	0	0	0	0	0	0	0
Site Furnishings	422,820	0	387,140	0	0	0	0	0	0	35,480
Water Features	1,757,859	0	1,548,287	0	0	0	0	0	0	211,572
Special Features	639,100	0	0	0	0	639,100	0	0	0	0
Fencing	86,000	86,000	0	0	0	0	0	0	0	0
Construction Management	501,677	20,337	264,825	1,685	0	197,479	0	0	0	17,451
Landscape & Amenities Contingency	712,933	21,352	290,011	0	0	364,920	0	0	0	36,650
Total Landscape and Amenities Costs	6,923,680	366,834	4,910,400	41,793	0	1,201,499	0	0	0	403,154
RESIDENTIAL PARKING										
Hard Costs - Direct	6,200,000	6,200,000	0	0	0	0	0	0	0	0
Hard Costs - Allocated	0	0	0	0	0	0	0	0	0	0
Soft Costs - Direct	0	0	0	0	0	0	0	0	0	0
Soft Costs - Allocated	0	0	0	0	0	0	0	0	0	0
Construction Management	0	0	0	0	0	0	0	0	0	0
Contingency	0	0	0	0	0	0	0	0	0	0
Total Residential Parking Costs	6,200,000	6,200,000	0	0	0	0	0	0	0	0

TRANSIT										
Relocation of facilities	265,000	265,000	0	0	0	0	0	0	0	0
Station Construction	2,680,000	745,456	1,510,544	0	0	0	0	0	0	424,000
Construction Management	162,284	162,284	0	0	0	0	0	0	0	0
Contingency	200,000	200,000	0	0	0	0	0	0	0	0
Total Transit Costs	3,307,264	1,372,720	1,510,544	0	0	0	0	0	0	424,000
SOFT COSTS RELATED TO ELIGIBLE COSTS										
Agency/Utility Fees	2,046,366	788,272	200,049	80,650	635,780	0	0	55,000	0	286,615
Civil Engineer	1,104,064	449,147	71,820	0	199,760	0	0	0	0	407,357
Landscape Architect	943,489	218,700	346,158	0	166,406	0	0	0	0	212,225
Surveyor	57,366	57,366	0	0	0	0	0	0	0	0
Architect & Subdesign	600,914	564,688	0	0	0	0	0	0	0	36,246
Geotechnical Engineer	30,000	21,080	0	0	0	0	0	0	0	8,920
Environmental Engineer (Haz Mat)	175,378	7,772	1,900	0	600	0	150,260	0	0	14,846
Dry Utility Consultant	208,444	136,362	21,527	0	46,510	0	0	0	0	4,045
Environmental Consultants (MMP)	95,650	14,549	0	0	29,635	0	0	0	0	51,466
3rd Party Construction Consultants	253,620	253,620	0	0	0	0	0	0	0	0
Misc - Blueprints, Printing, etc.	158,357	148,037	4,560	0	5,760	0	0	0	0	0
Insurance	214,591	162,885	42,772	0	0	0	0	0	0	8,934
Soft Cost Contingency	91,176	58,893	16,734	0	15,550	0	0	0	0	0
Total Soft Costs	5,979,436	2,881,351	705,520	80,650	1,100,000	0	150,260	55,000	0	1,030,655
TOTAL PROJECT COSTS	37,799,468	19,100,000	10,900,000	2,200,000	1,100,000	1,350,000	550,000	455,755	2,143,713	

Exhibit "C" to Disbursement Agreement

**Sources and Uses of Funds
Capital Improvement Project Budget**

CAPITAL IMPROVEMENT PROJECT DEVELOPMENT BUDGET									
QIA NAME:	TOWNSHIP 9	SCOPE OF WORK: TRANSIT							
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS		BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE							
COST CATEGORY	DEV COSTS	FUNDING SOURCES						SMUD Grant	Developer
		IIG Round 1	IIG Round 2	City CIP Grant	Stimulus (CDBG-R)	HCD Catalyst	CFCFA Grant		
TOTAL									
SITE PREPARATION									
Construction Staking	10,000	10,000							0
Testing & Inspections	27,000	27,000							0
Temp Fencing	4,400	4,400							0
Total Site Preparation Costs	177,983	41,400	0	0	0	0	0	0	136,583
UTILITIES									
Storm Drain	13602	13602							0
Total Site Utilities Costs	13,602	13,602	0	0	0	0	0	0	0
TRANSIT									
Relocation of facilities	265,000	265,000							0
Station Construction	2,680,000	745,456	1,510,644						424,000
Construction Management	162,264	162,264							0
Contingency	200,000	200,000							0
Total Transit Costs	3,307,264	1,372,720	1,510,644	0	0	0	0	0	0
SOFT COSTS RELATED TO ELIGIBLE COSTS									
Agency/Utility Fees	95,979	79,067							16,912
Landscape Architect	38,823	38,823							0
Architect & Subdesign	588,914	564,668							24,246
Environmental Consultants (MMP)	9,387	9,387							0
Misc - Blueprints, Printing, etc.	5,306	5,306							0

Exhibit "C" to Disbursement Agreement

**Sources and Uses of Funds
Capital Improvement Project Budget**

CAPITAL IMPROVEMENT PROJECT DEVELOPMENT BUDGET										
QIA NAME:		SCOPE OF WORK: STREETS D, E AND F								
TOWNSHIP 9										
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS										
COST CATEGORY	DEV COSTS	FUNDING SOURCES								
		IIG Round 1	IIG Round 2	City CJP Grant	Stimulus (CDBG-R)	HCD Catalyst	CFCFA Grant	SMUD Grant	Developer	
SITE PREPARATION										
Construction Staking	15,000		15,000							0
Testing & Inspections	10,000		10,000							0
SWPPP	22,500		22,500							0
Construction Management	2,850		2,850							0
Site Preparation Contingency	14,123		14,123							0
Total Site Preparation Costs	64,473	0	64,473	0	0	0	0	0	0	0
UTILITIES										
Sewer	59,475		59,475							0
Storm Drain	399,200		399,200							0
Water	46,373		46,373							0
Joint Trench	80,125		80,125							0
Dry Utility Facilities	263,191		263,191							0
Construction Management	49,972		49,972							0
Site Preparation Contingency	89,078		89,078							0
Total Site Utilities Costs	879,999	0	987,414	0	0	0	0	0	0	0
SURFACE IMPROVEMENTS										
Concrete CGSW	131,733		131,733							0
Street Paving & Striping	106,768		106,768							0

Exhibit "C" to Disbursement Agreement

**Sources and Uses of Funds
Capital Improvement Project Budget**

CAPITAL IMPROVEMENT PROJECT DEVELOPMENT BUDGET										
QIA NAME:		SCOPE OF WORK: SIGNATURE AND A STREETS								
TOWNSHIP 9		BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE								
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS		FUNDING SOURCES								
COST CATEGORY	DEV COSTS	IIG Round 1	IIG Round 2	City CIP Grant	Stimulus (CDBG-R)	HCD Catalyst	CFCFA Grant	SMUD Grant	Developer	
SITE PREPARATION										
Construction Staking	10,000		10,000							0
Testing & Inspections	10,000		10,000							0
SWPPP	15,000		15,000							0
Construction Management	2,100		2,100							0
Site Preparation Contingency	6,720		6,720							0
Total Site Preparation Costs	43,820	0	43,820	0	0	0	0	0	0	0
UTILITIES										
Sewer	73,300		73,300							0
Storm Drain	131,950		131,950							0
Water	103,325		103,325							0
Joint Trench	170,500		170,500							0
Construction Management	28,745		28,745							0
Site Preparation Contingency	50,303		50,303							0
Total Site Utilities Costs	556,123	0	556,123	0	0	0	0	0	0	0
SURFACE IMPROVEMENTS										
Concrete CGSW	158,015		158,015							0
Street Paving & Striping	124,250		124,250							0
Signage & Striping	4,450		4,450							0

Exhibit "C" to Disbursement Agreement

**Sources and Uses of Funds
Capital Improvement Project Budget**

CAPITAL IMPROVEMENT PROJECT DEVELOPMENT BUDGET										
QIA NAME:		SCOPE OF WORK: NORTH 7TH STREET PARKWAY								
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS		BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE								
COST CATEGORY	DEV COSTS	FUNDING SOURCES							SMUD Grant	Developer
		IIG Rnd 1	IIG Rnd 2	City CIP Grant	Stimulus (CDBG-R)	HCD Catalyst	CFCFA Grant			
TOTAL										
SITE PREPARATION										
Construction Staking	7,500		8,000							1,500
SWPPP	10,000		8,000							2,000
Earthwork	20,000		16,000							4,000
Construction Management	2,250		425							1,825
Site Preparation Contingency	19,163		15,330							3,833
Total Site Preparation Costs	58,913	0	48,755	0	0	0	0	0	0	13,158
SURFACE IMPROVEMENTS										
Concrete CGSW	68,590		54,872							13,718
Special Paving	113,932		91,146							22,786
Streelights & Electrical	169,000		135,200							33,800
Construction Management	21,091		15,090							6,001
Surface Improvements Contingency	36,910		29,528							7,382
Total Surface Improvements Costs	409,523	0	325,836	0	0	0	0	0	0	83,687
LANDSCAPE AND AMENITIES										
Planting & Irrigation	185,999		148,799							37,200
Landscape Concrete	324,000		259,200							64,800
Site Furnishings	177,400		141,920							35,480

Water Features	1,057,859	846,287					211,572
Construction Management	104,715	87,263					17,452
Landscape & Amenities Contingency	183,252	146,602					36,650
Total Landscape and Amenities Costs	2,033,226	1,630,071	0	0	0	0	403,155
SOFT COSTS RELATED TO ELIGIBLE COSTS							
	0						
Landscape Architect	60,000	60,000					0
Total Soft Costs	60,000	60,000	0	0	0	0	0
TOTAL PROJECT COSTS							
	2,561,661	2,061,662	0	0	0	0	499,999

Exhibit "C" to Disbursement Agreement

**Sources and Uses of Funds
Capital Improvement Project Budget**

CAPITAL IMPROVEMENT PROJECT DEVELOPMENT BUDGET										
QIA NAME:		SCOPE OF WORK: RIVERFRONT PARK								
TOWNSHIP 9		ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS								
COST CATEGORY	DEV COSTS	FUNDING SOURCES								
		IIG Round 1	IIG Round 2	City CIP Grant	Stimulus (CDBG-R)	HCD Catalyst	CFCFA Grant	SMUD Grant	Developer	
TOTAL										
SITE PREPARATION										
Construction Staking	50,000		50,000							0
SWPPP	20,000		20,000							0
Clear/Grub/Erosion Control	45,900		45,900							0
Earthwork	45,261		45,261							0
Construction Management	9,670		9,670							0
Site Preparation Contingency	20,641		20,641							0
Total Site Preparation Costs	191,472	0	191,472	0	0	0	0	0	0	0
UTILITIES										
Water	56,825		56,825							0
Construction Management	3,410		3,409							0
Site Preparation Contingency	2,983		2,983							0
Total Site Utilities Costs	63,218	0	63,217	0	0	0	0	0	0	0
SURFACE IMPROVEMENTS										
Concrete CGSW	180,202		180,202							0
Street Paving & Striping	27,500		27,500							0
Special Paving	28,732		28,732							0
Streetlights & Electrical	388,000		388,000							0
Construction Management	37,466		37,466							0

Exhibit "D" to Disbursement Agreement

Disbursement Schedule

	To Date	Q2-11	Q3-11	Q4-11	Q1-12	Q2-12	Q3-12
ROUND 1							
Site Preparation	4,773,006	968,431	968,431				
Utilities	2,356,715	785,572	785,572	785,572			
Surface Improvements	1,149,374	383,125	383,125	383,125			
Landscape and Amenities	366,834	183,417	183,417	183,417			
Residential Parking Structure	6,200,000					3,100,000	3,100,000
Transit Improvements	1,372,720	206,125	206,125	206,125			
Soft Costs	2,881,351	653,140	653,140	653,140			
Total	19,100,000	2,996,392	3,179,809	2,211,379	0	3,100,000	
ROUND 2							
Site Preparation	345,520	172,760	172,760	172,760			
Utilities	1,608,754	536,251	536,251	536,251	536,251		
Surface Improvements	1,819,262	606,421	606,421	606,421	606,421		
Landscape and Amenities	4,910,400	1,536,800	1,536,800	1,536,800	1,536,800	1,636,800	
Transit Improvements	1,510,544	503,515	503,515	503,515	503,515		
Soft Costs	705,520	176,380	176,380	176,380	176,380		
Total	10,900,000	176,380	1,995,327	3,632,127	3,459,367	1,636,800	
TOTAL							
Site Preparation	2,836,145	968,431	1,141,191	172,760	0	0	0
Utilities	0	785,572	1,321,823	1,321,823	536,251	0	0
Surface Improvements	0	383,125	989,545	989,545	606,421	0	0
Landscape and Amenities	5,277,234	0	183,417	1,820,217	1,636,800	1,636,800	0
Residential Parking Structure	6,200,000	0	0	0	0	3,100,000	3,100,000
Transit Improvements	2,883,264	206,125	709,640	709,640	503,515	0	0
Soft Costs	3,586,871	829,620	829,620	829,620	176,380	0	0
Total	30,000,000	1,926,983	3,016,364	3,296,423	6,579,088	5,316,602	5,316,602

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 INSUREDS

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

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

RESOLUTION NO. 2009-147

Adopted by the Sacramento City Council

March 10, 2009

HEREBY AUTHORIZES THE SUBMITTAL OF AN APPLICATION TO THE CALIFORNIA STATE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE INFILL INFRASTRUCTURE GRANT PROGRAM; THE EXECUTION OF A STANDARD AGREEMENT IF SELECTED FOR SUCH FUNDING AND ANY AMENDMENTS THERETO; AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE INFILL INFRASTRUCTURE GRANT PROGRAM.

BACKGROUND

- A. The City of Sacramento, a municipal corporation, wishes to apply for and receive an allocation of funds through the Infill Infrastructure Grant Program; and
- B. The California Department of Housing and Community Development (hereinafter referred to as "HCD") has issued a Notice of Funding Availability ("NOFA") for the Infill Infrastructure Grant Program established under the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C) pursuant to the Infill Infrastructure Grant Program established Part 12 of Division 31 of the Health and Safety Code, commencing with Section 53545.12.
- C. Pursuant to the statute, HCD is authorized to approve funding allocations utilizing monies made available by the State Legislature, subject to the terms and conditions of the statute and the Infill Infrastructure Grant Program Guidelines implemented January 30, 2009; and
- D. The City of Sacramento wishes to submit an application to obtain from HCD an allocation of the Infill Infrastructure Grant Program funds in the amount of \$10.9 million in support of the Township 9 project.

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

- Section 1. The City of Sacramento shall submit to HCD an application to participate in the Infill Infrastructure Grant Program in response to the NOFA issued on January 30, 2009 which will request a funding allocation in the amount of \$10.9 million for the following activities for the Township 9 infill development project, which is a Qualified Infill Area and is located in the River District, north of Richards Boulevard and south of the American River: