**Meeting Date**: **3/26/2013**

**Report Type:** Consent

**Report ID:** 2013-00262

City of SACRAMENTO

**City Council Report**
**915 I Street, 1st Floor**
**www.CityofSacramento.org**

**Title: Agreements: Curtis Park Village Proposition 1C Grant**

**Location:** District 5

**Issue:** State Proposition 1C Grant funds require the City, as recipient of the funds on behalf of the Curtis Park Village developer, to review and approve grant draw requests before funds are released. The State Department of Housing and Community Development (HCD) Grant agreements allow the City to provide the funds to the developer as the grant sub-recipient completes infrastructure work.

**Recommendation:** Pass a Resolution 1) approving the Standard Agreement and the Disbursement Agreement for the $9,085,000 Transit-Oriented Development (TOD) Housing Program Infrastructure Grant under Proposition 1C with the State Department of Housing and Community Development for the Curtis Park Village Project and authorizing the City Manager to execute the TOD Grant Agreements, 2) approving an Assignment and Assumption Agreement for the TOD Grant for the Curtis Park Village Project with Calvine & Elk Grove Florin, LLC, and authorizing the City Manager or his designee to execute the Assignment Agreement, and 3) establishing the Curtis Park VIllage TOD Capital Improvement Project (B02000100); and 4) establishing a $9 million capital grant (Fund 3704) revenue and expenditure budget in B02000100 to be funded with the Proposition 1C TOD Infrastructure grant funds.

**Contact:** Mark Prestwich, Special Projects Manager, (916) 808-5380, City Manager's Office

**Presenter:** None

**Department:** City Manager

**Division:** Executive Office

**Dept ID:**

**Attachments:**
1-Description/Analysis
2-Background
3-Resolution
4-Exhibit A-Standard Agreement
5-Exhibit B-Assignment and Assumption Agreement
6-Exhibit C-Disbursement Agreement

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**City Attorney Review**
Approved as to Form
Sheryl Patterson
3/20/2013 2:37:06 PM

**City Treasurer Review**
Reviewed for Impact on Cash and Debt
Janelle Gray
3/13/2013 9:17:35 AM

**Approvals/Acknowledgements**

Department Director or Designee: Max Fernandez - 3/19/2013 12:42:59 PM

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## Description/Analysis

**Issue:** On June 30, 2009, the City was awarded a TOD grant by HCD in the amount of $9,085,000 for the Curtis Park Village project. The amount of the grant award was based on the number of affordable housing units and the grant eligibility ranking was based on a number of factors, including the planned bridge to the City College light rail station, and the total housing units.

HCD is now ready to execute the grant agreement, which includes a Standard Agreement and a Disbursement Agreement. The HCD grant agreements allow the City to provide the Proposition 1C grant funds to the Developer as the grant sub-recipient for the infrastructure work, which includes grading, streets and utilities, and the planned neighborhood park. Under the Assignment and Assumption Agreement for the TOD Grant for the Curtis Park Village Project, the Developer would assume all of the City's obligations under the TOD grant in consideration of the City's assignment of the TOD grant proceeds to the Developer.

**Policy Considerations:** The recommendation is consistent with the City Council direction and actions regarding the Proposition 1C grant applications for the Curtis Park Village project on March 31, 2009 (Resolution No. 2009-198). The recommendation is also consistent with the City's Smart Growth Principles, the 2002 Infill Strategy, and the transit-supportive housing policies in the 2030 General Plan.

**Economic Impacts:** Not applicable

**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 Curtis Park Village Project EIR, which was certified on September 28, 2010 (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 Proposition1C 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:** Not applicable

**Rationale for Recommendation:** The Curtis Park Village project is a major infill and transit-oriented development project, with 15% of the housing to be built for very low income households (90 units) per the requirements under the TOD grants and is expected to promote increased transit ridership in Sacramento. The Proposition 1C grant funds will pay for a portion of the infrastructure needed for the housing development.

**Financial Considerations**: The Curtis Park Village Township 9 infrastructure (streets, utilities and park facilities) are estimated to cost substantially more than the $9,085,000 TOD grant. The Developer will fund the remaining infrastructure costs. No General Fund expenditures are involved in this recommendation.

The total cost for the 90-unit affordable housing project is unknown at this time. Bridge Housing has been in contact with the Sacramento Housing and Redevelopment Agency (SHRA) for the submittal if an application for 9% tax credits to assist with the project financing. It is unknown at this time if there will be a need for SHRA assistance with any financing gap, such as federal HOME funds or Housing Trust Funds. Under the Assignment and Assumption Agreement, the Developer is obligated to meet the milestone schedule set out in the TOD grant agreement.

The City is the recipient of the Proposition 1C grants and is responsible for delivery of the infrastructure improvements and the affordable and market rate housing units. HCD recognizes in the grant agreements that the City will delegate its obligations to the Developer, as the master developer, and that Bridge Housing is the currently designated affordable housing developer under the Assignment Agreement; however, the City is ultimately responsible for the performance of its grant sub-recipients. HCD will record a covenant on the property to insure that the grant obligations can be enforced against existing and future property owners. The City's Assignment Agreement includes performance bonds, indemnity obligations, and other remedies in the event of a default by the Developer.

The City will allow HCD to pay the Developer directly for grant draws, which must be reviewed, approved and submitted by the City before HCD will accept them. In order to account for the grant funds for this project, a revenue and expenditure budget in the amount of $9,085,000 (Fund 3704) needs to be established and the Curtis Park Village TOD Infrastructure CIP (B02000100) needs to be created.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased under this report. However, under the Assignment Agreement, the Developer is required to bid the infrastructure work using the City's invitation for bids standard provisions and bidding procedures which require ESBD participation.

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## BACKGROUND

On March 31, 2009, by Resolution No. 2009-198, the City Council authorized the submittal by the City of a grant application for a Proposition 1C Transit-Oriented Development (TOD) Infrastructure grant from the State Department of Housing and Community Development (HCD) for the Curtis Park Village project. The maximum amount for a TOD grant was $17 million. This grant program provides funds for the cost of building public infrastructure (street, utilities and parks) in exchange for the development of affordable (low and very low income) housing within a mixed-income neighborhood that includes market-rate housing.

On September 28, 2010, the City Council certified an Environmental Impact Report (EIR) and approved certain entitlements for the Curtis Park Village project, including development of 527 housing units, of which 189 units will be single family homes and the remaining 338 units will be multi-family units, and 259,000 square feet of commercial/retail/office space and retail, and 7.3 acres of parks and open space. Completion of the soil remediation has occurred and construction of this project, to be built by the Petrovich Development Company under its affiliated entity Calvine & Elk Grove Florin, LLC ("Developer"), is now ready to begin.

The Curtis Park Railyards site was included in the City's Inclusionary Housing Ordinance, which requires that 10% of the residential units to be affordable to very low income households (53 units) and 5% of the residential units be to affordable to low income households (26 units), for a total of 79 units. The Ordinance allows for producing housing at lower affordability levels. Under the TOD grant for the Curtis Park Village project, a total of 90 units (17% of the total housing units) will be affordable to very low income households. The Developer is in negotiations with Bridge Housing to build a 90-unit affordable senior housing complex. The TOD grant also requires development of 131 units of market rate housing adjacent to the affordable housing project.

Under the Proposition 1C TOD program, only public agencies could apply for the grant. To be awarded a TOD grant, there must be frequent transit service within a ¼ mile radius of the affordable housing site. The planned City College Light Rail Station Pedestrian/Bicycle Crossing project will provide that necessary transit connection. The design of this $10 million pedestrian bridge is near completion, foundation work is underway, and construction funding has been allocated to allow for its completion by 2015.

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# RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

## APPROVING THE STANDARD AND DISBURSEMENT TOD GRANT AGREEMENTS WITH HCD FOR THE CURTIS PARK VILLAGE PROJECT, APPROVING THE TOD GRANT ASSIGNMENT AND ASSUMPTION AGREEMENT WITH CALVINE & ELK GROVE FLORIN LLC, AND ESTABLISHING A REVENUE AND EXPENDITURE BUDGET AND A CAPITAL IMPROVEMENT PROJECT FOR THE CURTIS PARK VILLAGE TOD INFRASTRUCTURE PROJECT

## BACKGROUND

A. The Curtis Park Village project is a transit-oriented mixed-use development project located in Curtis Park north of Sutterville Road between the Union Pacific Railroad and 24th Street. The project includes development of 527 housing units, of which 189 units will be single family homes and the remaining 338 units will be multi-family units, and 259,000 square feet of commercial/retail/office space and retail, and 7.3 acres of parks and open space. The Curtis Park Village project will be served by the light rail station with the planned City College Light Rail Station Pedestrian/Bicycle Crossing project. The City Council approved the entitlements for the Curtis Park Village project on September 28, 2010.

B. On March 31, 2009 (Resolution No. 2009-198), the City Council authorized the submittal by the City of an application for a Proposition 1C Transit-Oriented Development (TOD) Infrastructure grant from the State Department of Housing and Community Development (HCD) for the Curtis Park Village project. On June 30, 2009, the City was awarded a TOD grant by HCD in the amount of $9,085,000 (the "TOD Grant") for the Curtis Park Village project. The TOD Grant will fund certain cost for the streets, utilities, and the neighborhood park which are needed for development of the Curtis Park Village project.

C. HCD has issued to the City a TOD Housing Program Infrastructure Grant Standard Agreement and a Disbursement Agreement to implement the award of the TOD Grant. The Standard Agreement identifies Calvine & Elk Grove Florin, LLC, the developer of the Curtis Park Village project, as the grant sub-recipient.

D. Calvine & Elk Grove Florin, LLC ("Developer") has prepared the design and engineering plans for the street and utility infrastructure work and desires to commence construction by June of 2013. The Developer needs the TOD Grant proceeds to fund such construction. The Developer will soon commence work to design the neighborhood park and the drainage basin improvements, a portion of which will also be funded with the TOD Grant proceeds.

E. The City desires to assign its rights and obligations under the Standard Agreement and a Disbursement Agreement to the Developer to allow for the TOD Grant to be available to fund the infrastructure improvements needed to develop the affordable

and market rate housing at Curtis Park Village, and Developer is willing to assume such obligations.

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

Section 1. The Transit-Oriented Development (TOD) Housing Program Infrastructure Grant Standard Agreement and Disbursement Agreement ("TOD Grant Agreements") with the State Department of Housing and Community Development (HCD) for $9,085,000 in Proposition 1C funds for the Curtis Park Village project, in the form attached as Exhibits A and B, is hereby approved. The City Manager, or his designee, is authorized to execute the TOD Grant Agreements.

Section 2. The Assignment and Assumption Agreement for the TOD Housing Program Infrastructure Grant ("Assignment Agreement") with Calvine & Elk Grove Florin, LLC, (Developer), whereby the $9,085,000 in Proposition 1C TOD Grant proceeds is to be provided to the Developer accordance with the terms of the TOD Grant Agreements, as the grant sub-recipient, as set forth in attached Exhibit C, is hereby approved. The City Manager, or his designee, is authorized to execute the Assignment Agreement, the HCD Direct Payee Form, and any other documents that may be required for implementation of the TOD Grant Agreements and the Assignment Agreement.

Section 3. The Curtis Park Village Infrastructure Project (B02000100) is hereby established as a new Capital Improvement Project.

Section 4. A $9,085,000 revenue and expenditure budget for the Curtis Park Village Infrastructure Project (B02000100) to be funded with the Proposition 1C TOD Infrastructure grant funds (Fund 3704) is hereby established.

Table of Contents:

Exhibit A: TOD Housing Program Infrastructure Grant Standard Agreement

Exhibit B: TOD Housing Program Infrastructure Grant Disbursement

Exhibit C: Assignment and Assumption Agreement for the TOD Housing Program Infrastructure Grant

STATE OF CALIFORNIA
**STANDARD AGREEMENT**
STD 213 (Rev 06/03)

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| AGREEMENT NUMBER |
|---|
| **08-TOD-5911** |
| REGISTRATION NUMBER |
| **N/A** |

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

CONTRACTOR'S NAME

2. The term of this Agreement is: Upon HCD approval through 6/30/2026

3. The maximum amount of this Agreement is: **$ 9,085,000.00**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

| | |
|---|---|
| Exhibit A – Authority, Purpose and Scope of Work | 9 page(s) |
| Exhibit B – Budget Detail and Payment Provisions | 4 page(s) |
| Exhibit C – HCD General Terms and Conditions | 16 page(s) |
| Exhibit D – State of California General Terms and Conditions | 6 page(s) |
| Exhibit E – Special Terms and Conditions | 3 page(s) |
| Exhibit F – Additional Provisions | 0 page(s) |
| **TOTAL NUMBER OF PAGES ATTACHED:** | **38 pages** |

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**CONTRACTOR**

CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)*
City of Sacramento

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME
**Department of Housing and Community Development**

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS
**1800 Third Street, Room 350, Sacramento, CA 95811**

***California Department of General Services Use Only***

☒ **Exempt per: SCM 4.04.3 (DGS Memo Dated 6/12/81)**

# AUTHORITY, PURPOSE AND SCOPE OF WORK

## Transit-Oriented Development (TOD) Housing Program

## Infrastructure Grant

### 1. Authority & Purpose

This Standard Agreement, STD 213, (hereinafter "Agreement") is the result of the Recipient's application ("Application") for funding under the TOD Housing Program ( "Program") pursuant to:

A. Part 13 of Division 31 of the Health and Safety Code (commencing with Section 53560);

B. The Program Guidelines dated February 4, 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.

### 2. Definitions:

Capitalized terms herein shall have the meaning of the definitions set forth in the Guidelines, and page 1 of this Exhibit A, in addition:

"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 to this Agreement (Std 213). In the case of joint applicants, "Recipient" shall refer to each applicant or the approved assignee of such applicant. Each joint applicant shall be jointly and severally liable for all obligations of a Recipient as set forth herein.

### 3. Scope of Work

The Scope of Work ("Work") for this Agreement shall consist of the development and construction by or on behalf of Recipient of the following: The capital improvement(s) ("Infrastructure Project") described as follows:

Sewer, Storm Drainage, Water, Dry Utilities, Roadway improvements, and Park

The residential housing development designated in the Application ("Housing Development") that is supported by the Infrastructure Project, and which is to be developed and constructed by the Recipient, or other developer, as provided in the Application shall meet the following criteria:

| **Location of Housing Development: Curtis Park Village, City and County of Sacramento** | **Affordable Senior Housing (a portion of one or more of the following APNs: 013-0010-008; 013-0010-009; 013-0010-021; 013-0010-022; 013-0010-023; 013-0010-024; 013-0010-025; 013-0010-026; 013-0010-027; 013-0010-028)** | | |
|---|---|---|---|
| **Enter the number of units by bedroom size and income level.** | | | |
| **# of Bedrooms** | **# of Units** | **TOD Restricted Units*** | **Income Limit (% of AMI)** |

| | | | |
|---|---|---|---|
| 1 | 83 | 83 | 40% |
| 2 | 7 | 7 | 35% |
| **Total Project Units**** | 90 | 90 | |

| **Location of Housing Development: Curtis Park Village, City and County of Sacramento** | **Market Rate Housing (a portion of one or more of the following APNs: 013-0010-008; 013-0010-009; 013-0010-021; 013-0010-022; 013-0010-023; 013-0010-024; 013-0010-025; 013-0010-026; 013-0010-027; 013-0010-028)** | | |
|---|---|---|---|
| **Enter the number of units by bedroom size and income level.** | | | |
| **# of Bedrooms** | **# of Units** | **TOD Restricted Units*** | **Income Limit (% of AMI)** |
| 1 | 42 | 0 | None (Market Rate) |
| 2 | 82 | 0 | None (Market Rate) |
| 3 | 7 | 0 | None (Market Rate) |
| **Total Project Units**** | 131 | 0 | |

*TOD Restricted Units must equal at least 15% of the total residential units.

**Total Project Units must meet or exceed the number of residential units set out in the application for which points were awarded for the Recipient's application under section 108(k) of the Guidelines (e.g. 200+ units = 30 points) Additionally, upon completion, the Housing Development will meet or exceed the applicable minimum Net Density as set forth in section 103(a)(4) of the Guidelines.

C. The Infrastructure Project is necessary for the development of the Housing Development or to facilitate connections between the Housing Development and the transit station. The Recipient is responsible for and shall ensure the completion of the Infrastructure Project and the completion and occupancy of the 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 be submitted in writing for review and approval by the Department and shall require an amendment to this Agreement.

D. 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. Evidence of Transit-Supportive Land Uses, Walkable Corridor Features and Parking Attributes

A. Transit-Supportive Land Uses – The Recipient's application was evaluated for rating points based on the existing and planned transit-supportive amenities, services and uses located within half-mile of the Qualifying Transit Station, pursuant to Section 108(d) of the Guidelines. Based on the points awarded to its application, Recipient assures the Department of the existence of the following amenities, services, and uses meeting the criteria of Section 108(d):

| List of Transit-Supportive Amenities, Services, and Uses ("ASUs") | Status of ASUs (e.g., completed and in service or in construction stage.) | If not in service, anticipated completion date of ASUs |
|---|---|---|
| Bicycle Shop | Bicycle Business (3077 Freeport Blvd) already existing | N/A |
| Senior Care Facility | Eskaton Monroe Lodge already existing (3225 Freeport Blvd) | N/A |
| Convenience Store | Tinker Market (2300 Sutterville Road) already existing | N/A |
| Pocket Park or Playground | Plaza Cervantes (2115 11th Avenue) already existing; Curtis Park playground existing | N/A |
| Hair Care | Paula V's Salon (3440 24th Street) already existing | N/A |
| Library | Sac City Library existing at Sacramento Community College | N/A |
| Restaurant | Crepe Escape (3445 Freeport Blvd) already in service | N/A |
| Coffee Shop or Internet Café | Espresso Metropolitan (2102 11th Avenue) already in service | N/A |
| Theater | Sac City Theatre (3835 Freeport Blvd) already existing | N/A |
| School | Sacramento Community College across UP tracks from QIP/development project; Bret Harte Elementary (2751 9th Avenue) | N/A |

B. Walkable Corridor Features - The Recipient's application was evaluated for rating points in potentially five (5) different categories based on the existence (at time of application or will be by the completion of the Project) of features within the primary walkable corridor between the Housing Development and the Qualifying Transit Station, pursuant to Section 108(e) of the Guidelines. Based on the points awarded to its application, Recipient shall ensure the following existing or planned Walkable Corridor Features for the Project:

| **List of Walkable Corridor Features ("WCFs")** | **Status of WCFs (e.g., completed and in service or in construction stage.)** | **If not in service, anticipated completion date of WCFs** |
|---|---|---|
| Less than 25% of street blocks in corridor exceed 500 ft. in length | Design documents do not provide for any street blocks in excess of 500 ft in length | Summer 2013 |
| Corridor fully served by continuously paved ADA-compliant sidewalks with minimum width of 4 feet | Design documents provide that all sidewalks in development project will be ADA compliant; pedestrian bridge to be built by City of Sacramento will be ADA compliant | Pedestrian bridge by 2015 |
| Corridor allows for safe pedestrian crossing of any arterials between housing development and transit station, and corridor provides adequate lighting to accommodate pedestrian use after dark | City of Sacramento has approved of and will pay for a pedestrian bridge to allow for pedestrian and bicycle crossing between the CPV development and SCC | 2015 |
| Transit station contains transfer waiting facilities that are lighted and provide overhead shelter from outdoor elements | City College Light Rail Station contains these elements | N/A |
| Transit station has bicycle access and provides secure bike storage facilities or allows bike conveyance on-board transit | City College Light Rail Station allows for bikes onboard and there are also bike lock stations either at the station or the Sacramento Community College | N/A |

A. Parking - The Recipient's application was evaluated for rating points in potentially five (5) different categories based on the extent to which the pricing, supply and management of motor vehicle parking serving the Housing Development promotes economic efficiency and minimizes the development of new parking spaces, pursuant to Section 108(f) of the Guidelines. Based on the points awarded to its application, Recipient shall ensure the following attributes for motor vehicle parking serving the Housing Development:

| **List of Parking Attributes ("Attributes")** | **Status of Attributes (e.g., completed and in service or in construction stage.)** | **If not in service, anticipated completion date of Attributes** |
|---|---|---|
| Separation of QIP housing costs from parking costs | CPV will "unbundle" and charge all market-rate residents the cost of parking their vehicles within the garage. Therefore, residents to pay for parking separate from housing costs | February, 2016 |
| CPV to provide Light Rail passes to each Restricted Affordable Unit resident | Discussions with RT staff on transit passes. NO price has been determined but CPV is committed to a program that charges Restricted Affordable Unit residents no more than 50% of retail RT pass price | February, 2016 |
| Shared parking between QIP and other uses | CPV to provide portion of parking spaces in commercial development to be shared between housing residents and retail; to be handled in OEA/CC&R document | February, 2016 |
| Dedicated parking for shared use vehicles | CPV to provide 2 or more dedicated parking spaces for shared vehicle only parking | November, 2016 |
| Maximum parking spaces of 345 | CPV to have approximately 290 parking spaces | February, 2016 |

At the request of the Department, Recipient shall provide further and additional evidence sufficient to demonstrate the existence and/or completion of the items listed in A-C above for which the Recipient's application received points. Failure to provide such evidence to the reasonable satisfaction of the Department may result in a reevaluation of the application and the reductions or cancellation of the amount of the grant award, require repayments of any disbursed Program funds and the disencumbrance of Program funds awarded.

## 5. 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.

## 6. State Contract Coordinator

The State Contract Coordinator of this Agreement for the Department is the TOD Housing Program Manager, Division of Financial Assistance, or the Manager'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:

Craig Morrow, Program Manager
TOD Housing Program
Division of Financial Assistance
Department of Housing and Community Development
P.O. Box 952054, MS 460-2
Sacramento, California 94252-2054

## 7. Recipient Contact 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 |
| Contact Name: | Mark Prestwich |
| Address: | 915 I Street, 5th Floor<br>Sacramento, CA 95814 |
| Contact Phone No.: | 916-808-5380 |

**PERFORMANCE MILESTONES**
**INFRASTRUCTURE PROJECT**

| Performance Milestones Infrastructure | Anticipated Date |
|---|---|
| Completion of all necessary environmental clearances, including those required under CEQA and NEPA. | Complete |
| Obtaining all necessary and discretionary public land use approvals. | Complete |
| Complete all remediation required for infrastructure project | Complete |
| Obtaining all enforceable funding commitments for all construction period financing. | December 2013 |
| Submission of Infrastructure Permit to the appropriate local permitting authority. | March 2013 |
| Commencement of construction | December 2013 |
| Construction complete and the filing of the Notice of Completion. | April 2014 |

## PERFORMANCE MILESTONES
## HOUSING DEVELOPMENT

| Performance Milestones Housing Development | Phase 1 | Phase 2 |
|---|---|---|
| Executed binding agreement between the Recipient and developer of the proposed Housing Development detailing the terms and conditions of the Project development. | June, 2013 | December, 2013 |
| Site Control of Housing Development site(s) by proposed housing developer. | June, 2013 | December, 2013 |
| Completion of all necessary environmental clearances, including those required under CEQA and NEPA. | December, 2016 | December, 2016 |
| Obtaining all necessary and discretionary public land use approvals. | December, 2016 | December, 2016 |
| Obtaining all enforceable funding commitments for at least the first phase of the Housing Development supported by the infrastructure Project. | December 2016 | December, 2016 |
| Obtaining all enforceable funding commitments for all construction period financing. | December 2016 | December, 2016 |
| 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. | December 2016 | December, 2016 |
| Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority. | December 2016 | December, 2016 |
| Commencement of construction. | December 2016 | December, 2016 |
| Construction complete and the filing of the Notice of Completion. | December 2016 | December, 2016 |
| Occupancy of Affordable Units in the Housing Development by eligible households. | December 2016 | December, 2016 |
| Anticipated date Program funds fully disbursed. | December 2016 | December, 2016 |

# BUDGET DETAIL AND PAYMENT PROVISIONS

## TOD Housing Program

## Infrastructure Grant

### 1. Project Sources and Uses

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

### 2. Contract Amount

A. For the purposes of performing the Work, the Department agrees to provide the amount identified on page 1, number 3 of this Agreement in the form of a grant for the uses identified in the Sources and Uses. 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. The grant must be matched by a cash contribution of funds, including Federal and State funds under local control, allocated by the Recipient equal to 20% of the TOD Program grant.

B. Where the Sources and Uses set forth in this Exhibit identify funds other than Program funds, those funds shall be expended and applied to Project costs as provided therein. Recipient agrees that it will make best efforts to ensure that the other funds specified in the Sources and Uses are available for disbursement as provided in this Exhibit, and approved for the use specified

# HCD GENERAL TERMS AND CONDITIONS

## TOD Housing Program

## Infrastructure Grant

## GENERAL

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

A. 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 neither the construction of the Infrastructure Project nor the Housing Development has commenced as of the deadline for submittal of applications set forth in the Notice of Funding Availability. 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.

B. Pursuant to §105(c) of the Guidelines, construction of the Housing Development must commence within three (3) years of the Program award date and be completed (including completion of all phases identified in the Application and accounting for the total number of units on which the TOD Grant award is based) within five (5) years of the Program award date.

### 2. Sufficiency of Funds and Termination

Notwithstanding any other provision of this Agreement, this Agreement is subject to the following conditions:

A. 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 43 of this Exhibit, or withdrawal of the Department's expenditure authority. 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.

## 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,

## SPECIAL TERMS AND CONDITIONS

## Transit Oriented Development Grant - Infrastructure

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

1. Exhibit A, Paragraph 3 – Affordable Senior Housing.

   Notwithstanding anything in Exhibit A Paragraph 3 to the contrary, in order to allow the developer of the Senior Affordable Housing Development to finance the same using 9% tax credits, the affordability mix of the Affordable Senior Housing can be altered from the levels indicated in table of such Paragraph 3, according to Section 108 (c) (8) of the TOD Guidelines to use the affordability matrix in the California Tax Credit Allocation Committee (TCAC) regulations as long as the maximum score of 52 points in the TCAC system is achieved. Such alterations shall be subject to Department Review to confirm that such alterations shall not change the scoring for the Housing Project such that the Infrastructure Project would not have been awarded funds.

2. Exhibit B, Paragraph 4 A and B – Completion Dates.

   These subparagraph provisions are deleted in their entirety and replaced with the following:

   A. Program funds must be disbursed no later than February 1, 2016. All undisbursed funds remaining as of February 1, 2016, will no longer be available for this Project. All invoices for payment must be submitted to the Department no later than December 1, 2015. Notwithstanding the disbursement deadline set forth in this Paragraph, the Recipient shall comply with all the disbursement extension requirements set forth in the Guidelines.

   B. This Agreement shall expire on June 30, 2025.

3. Exhibit C, Paragraph 2(A) and 2(B) – Sufficiency of Funds and Termination. The following sentences are deleted:

   2.A. This Agreement is valid and enforceable only if sufficient funds are made available by the State for the purposes of this Program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the State Legislature or any statute enacted by the State Legislature

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# ASSIGNMENT AND ASSUMPTION AGREEMENT
# TRANSIT-ORIENTED HOUSING PROGRAM INFRASTRUCTURE GRANT
# FOR THE CURTIS PARK VILLAGE PROJECT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2013 ("Commencement Date") by and between the **CITY OF SACRAMENTO**, a municipal corporation (hereinafter the "CITY"), and **CALVINE & ELK GROVE-FLORIN, LLC,** a California 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 Assignment and Assumption Agreement is entered into upon the basis of the following facts, understandings, and intentions of the CITY and DEVELOPER:

A. **Project Site.** The Curtis Park Village project is located on 71.1 acres of land which lies north of Sutterville Road between the Union Pacific Railroad and 24th Streets in the Curtis Park area of the City of Sacramento (the "Project"). DEVELOPER owns the land encompassing the Project Site, referred to as Assessor Parcel Numbers 013-0010-008, 009, 021 through 028 (the "Property" which is the subject of this Agreement), and Assessor Parcel Numbers 013-0062-001 and 002.

B. **Development Project.** On September 28, 2010, the City Council approved certain entitlements for development of 527 housing units, of which 189 units will be single family homes and the remaining 338 units will be multi-family units, and 259,000 square feet of commercial/retail/office space and retail, and 7.3 acres of parks and open space at the Project Site that was evaluated in the environmental impact report (the "Development Project"). By Resolutions No. 2010-573 and 2010-575 and Ordinance No. 201-027, the City Council approved amending the General Plan and approving the Curtis Park Village 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 September 28, 2010, by Resolution No 201-576, the City Council approved the tentative map to authorize subdivision of the 71.1 acre Project Site into 12 large lot 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. The tentative map was subsequently modified by approval of the City Planning and Design Commission on January 31, 2013.

D. **Environmental Mitigation.** On September 28, 2010, by Resolution No. 2010-572, the City Council certified the environmental impact report ("EIR") for the Development Project. 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. **Inclusionary Housing Plan.** On September 28, 2010, by Resolution No. 2010-574, the City Council approved the Inclusionary Housing Plan for the Curtis Park Village Project, which required 10% of the residential units be to affordable to very low income households (53 units) and 5% of the residential units be to affordable to low income households (26 units), for a total of 79 units (the "Inclusionary Housing Obligation").

F. **LRT Station Pedestrian/Bicycle Crossing.** On January 7, 2010, by Resolution No. 201-009, the City Council approved the City College Light Rail Station Pedestrian/Bicycle Crossing Project to provide access from the Curtis Park Village Project to the existing light rail station at Sacramento City College. The design of this $10 million pedestrian bridge is underway and construction funding has been allocated to allow for its completion by 2015.

G. **Proposition 1C Grant.** CITY has been awarded a grant for the Development Project by the State Department of Housing and Community Development ("HCD") under Proposition 1C, the Housing and Emergency Shelter Act of 2006, authorized by Part 12 of Division 31 of the Health and Safety Code (commencing with Section 53560). The purpose of the Program is to stimulate the production of housing developments located near transit stations that include affordable units, increase public transit ridership and minimize automobile trips. Under the Transit Oriented Infrastructure Grant Program Guidelines, grant funds could be used to fund certain infrastructure improvements. The Proposition 1C grant for the Development Project was approved by HCD on June 30, 2009 for $9,085,000 ("Grant") to fund a portion of the costs of the Development Project, including but not limited to rough grading, streets, utilities, and a park, (collectively the "Infrastructure Project") which are part of the Development Project. On March 26, 2013, the CITY approved the two agreements with HCD for the Grant; a Standard Agreement and a Disbursement Agreement (collectively the "Proposition 1C Grant Agreement"). References herein to the Proposition 1C Grant Agreement include any subsequent amendment entered into between HCD and CITY if approved by DEVELOPER.

F. **Affordable Housing Project.** A condition of the Grant is the development of a specified amount of affordable housing, referred to as the "Qualifying Infill Project" or "QIP," at the Project Site on specified parcels. The Proposition 1C Grant Agreement requires development of 90 units of senior affordable housing units upon the Property with the Development Project. The affordable housing developer shall be any party which HCD may approve from time to time, including but not limited to Bridge Housing Corporation and Domus Development. Bridge Housing Corporation, has entered into negotiations with DEVELOPER for conveyance of a portion of the Property for the

development of the QIP. Under the terms of the Proposition 1C Grant Agreement, DEVELOPER has or will record the HCD Declaration of Restrictive Covenant for the Development of Affordable Housing on the Property to insure that the QIP will be located on the designated parcel. The DEVELOPER plans to meet its Inclusionary Housing Obligation with the QIP.

G. **Market Rate Housing Project.** A condition of the Grant is the development of a specified amount of market rate housing ("Additional Housing Development") at the Project Site on specified parcels. The Additional Housing Development under the Grant is for development of a total of 131 units on parcels adjacent to the affordable housing. Under the terms of the Proposition 1C Grant Agreement, DEVELOPER has or will record the HCD Declaration of Restrictive Covenant for the Development of Market Rate on the Property to insure that the specified amount of market rate housing will be located on those parcels.

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

## AGREEMENT

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

**1. Effective Date; Termination.** This Agreement shall become effective as of the Commencement Date with regard to their respective rights and obligations under the Proposition 1C Grant Agreement, and shall expire on the date ("Expiration Date") that both of the following conditions have been met: recording of DEVELOPER's conveyance and CITY's acceptance of the Infrastructure Project as defined in the Proposition 1C Grant Agreement, and subject to DEVELOPER's compliance with the requirements related thereto; subject to the indemnity, payment and the QIP and Additional Housing Development obligations that survive the termination of this Agreement as set out in Sections 6, 7 and 8. Neither Party may terminate this Agreement for its convenience prior to the Expiration Date; however, either Party may terminate this Agreement for default prior to the Expiration Date subject to the cure provisions set forth in Sections 9 and 10. DEVELOPER's obligations under this Agreement shall apply solely to actions taken on or after the Commencement Date, although DEVELOPER is nonetheless entitled to reimbursements of costs incurred for the Infrastructure Project with the Proposition 1C Grant Proceeds, as defined in Section 2B, below, prior to the Commencement Date under the terms of the Proposition 1C Grant Agreement.

**2. Assignment and Assumption of HCD Grant.** As of the Commencement Date, CITY hereby assigns and transfers to DEVELOPER any and all of CITY's rights under the Proposition 1C Grant Agreement, as defined below, and DEVELOPER hereby accepts and assumes all of the duties and obligations of CITY under the Proposition 1C Grant Agreement and shall comply with all of the terms and conditions set out therein. The Proposition 1C Grant Agreement identifies the owner and developer of the Property on which the Infrastructure Project and the Additional Housing Development will be built as the Infrastructure Sub-Recipient. DEVELOPER's entitlement to the Proposition 1C Grant Proceeds, as defined below, for the Infrastructure Project shall be subject to the approval of HCD and DEVELOPER shall have no recourse against CITY for HCD's decisions.

A. HCD Grant - The "Proposition 1C Grant Agreement" which is assigned to DEVELOPER herein contains the Standard Agreement and the Disbursement Agreement between CITY and the State Department of Housing and Community Development ("HCD") for receipt of funding in the amount of $9,085,000 under the Transit-Oriented Development Infrastructure Grant Program for the Infrastructure Project improvements which are part of the Development Project. The form of the Standard Agreement is attached and incorporated herein as Exhibit A. The form of the Disbursement Agreement is attached and incorporated herein as Exhibit B. Upon receipt from HCD of the executed grant agreements, Exhibits A and B shall be replaced with the fully executed Standard Agreement and Disbursement Agreement.

B. Grant References - The funds under the Proposition 1C Grant Agreement to be paid to DEVELOPER, either directly by HCD or through the CITY, are herein referred to as the "Proposition 1C Grant Proceeds."

C. Partial Assignment - Notwithstanding the foregoing assignment by CITY and assumption by DEVELOPER of the Proposition 1C Grant Agreement, the CITY remains as the named grantee and party to that agreement because HCD has not approved this Assignment and Assumption Agreement and released CITY from its obligations under the Proposition 1C Grant Agreement. However, HCD has acknowledged that DEVELOPER is to serve as the Infrastructure Sub-Recipient to receive the Proposition 1C Grant Proceeds for the Infrastructure Project. HCD has agreed to accept draw requests from DEVELOPER and will pay DEVELOPER the Proposition 1C Grant Proceeds directly based on CITY's execution of HCD's direct payee form in reliance on CITY's approval of each draw request based on its plan reviews and construction inspection reports. DEVELOPER agrees to 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 terms of the Proposition 1C Grant Agreement to change the milestone schedules, to extend the grant term, and/or to extend the time period

for final distribution of the Proposition 1C Grant Proceeds. There may be other amendments which may be desired by either Party, or HCD may propose amendments during the term of this Agreement. Any written amendment, modification or waiver of any term or condition of the Proposition 1C Grant Agreement, which is supported by both CITY and DEVELOPER and which is approved by HCD in the form of a grant amendment or other written acknowledgment, shall become binding under the terms of this Agreement and such written amendment, modification or waiver shall be attached and incorporated into this Agreement by this reference without the need for a formal amendment. CITY shall not unilaterally amend or terminate the Proposition 1C Grant Agreement without DEVELOPER's prior written approval unless DEVELOPER is in default of its obligations under this Agreement and the applicable cure period(s) within which to cure such default set forth in Sections 9 and 10 have expired without a cure having been made, in which case CITY shall provide thirty (30) days advance written notice to DEVELOPER setting forth CITY's intent to unilaterally amend or terminate the Proposition 1C Grant Agreement.

E. Enforcement – CITY and HCD shall each have the right to enforce all of the terms and conditions set out in the Proposition 1C Grant Agreement and DEVELOPER's obligations therein relating to the design and construction of the Infrastructure Project, including, without limitation, requirements for bonds, insurance, prevailing wages, mechanics liens, signage, assignment of contracts, indemnity, audits, and record retention. All of the rights accruing to HCD as set out in the Proposition 1C Grant Agreement with respect to the Infrastructure Project, including, without limitation, assumption and enforcement of the design and construction contracts, shall also accrue to CITY. DEVELOPER acknowledges and agrees that under the terms of this Agreement, CITY has the right to enforce the covenants and obligations set out in the Proposition 1C Grant Agreement on behalf of HCD, even after the Expiration Date, as provided in Section 8, subject to the provisions of Section 9. Notwithstanding anything in this Agreement to the contrary, during the period of time in which HCD undertakes any action against Developer to enforce a particular term or condition set out in the Proposition 1C Grant Agreement, during such period CITY shall take no action against DEVELOPER to enforce the same term or condition (except as set forth in section 8E below).

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

**4. Street Improvements.** To the extent funds made available to DEVELOPER by CITY for the Infrastructure Project under the Proposition 1C Grant Agreement are for roadways and utility improvements within such rights of way for the streets that are depicted on the Tentative Map which will be owned by CITY (collectively the "Street

Improvements"), DEVELOPER shall undertake the design and construction of the Street Improvements in accordance with those terms of the Proposition 1C Grant Agreement which are applicable to the Street Improvements, the applicable CITY permits, and all of the following requirements:

A. CITY Standards - Standard Specifications for Public Construction (2007), Street Design Standards, Pedestrian Friendly Street Standards, Utilities Standards, Street Lighting and Traffic Signal Design Standards, and those other portions of the Design and Procedures Manual and the applicable provisions of the Project Delivery Manual as identified by CITY. Notwithstanding the foregoing, in the event of a conflict between the above-referenced CITY Standards and any tentative, final or other subdivisions maps, discretionary entitlements or building permits which were or may be from time to time approved or issued by CITY in relation to the Property ("Issued Permits"), such Issued Permits shall prevail.

B. Project Entitlements – The PUD Plan and Guidelines, Tentative Map, and CEQA Mitigation.

C. Other Entities - All required permits and approvals from all applicable utility companies and state and local regulatory agencies (other than CITY).

D. Public Works - All applicable state laws pertaining to contracting and construction of public works with public funds, including, without limitation, competitive bidding, obtaining 100% payment and performance bonds, and payment of prevailing wages.

**5. Park Improvements.** DEVELOPER shall undertake the design and construction of that portion of the Infrastructure Project which includes a public park to be located on lot C, (the "Park Improvements") with the Proposition 1C Grant Proceeds in accordance with the terms of the Proposition 1C Grant Agreement and the requirements set out in CITY's standard park credit/reimbursement agreement ("Park Turnkey Agreement"). CITY shall not be obligated to approve payments for the Park Improvements with the Proposition 1C Grant Proceeds in the event of a default under the Park Turnkey Agreement for said park. The design of the Park Improvements shall be in compliance with the PUD Plan and Guidelines, the Tentative Map, and the park master plan which is to be prepared by DEVELOPER and approved by CITY under a separate agreement, except that, in the event of a conflict or inconsistency between the above-referenced instruments and any Issued Permits, such Issued Permits shall prevail.

**6. Indemnity.** DEVELOPER shall indemnify, defend and hold harmless CITY (including its officers, employees and agents) from and against any and liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the

extent arising from any acts or omissions of DEVELOPER (including its officers, employees, contractors, subcontractors, and agents) in connection with the design and construction of the Infrastructure Project under this Agreement, except to the extent arising from the active negligence or willful misconduct of CITY. DEVELOPER hereby waives and releases any and all Claims of whatever sort or nature which may arise against CITY in connection with CITY's review and inspection of the design and construction of the Infrastructure Project, except those resulting from the active negligence or willful misconduct of CITY.

**7. Payment of Costs.** CITY will approve DEVELOPER as the direct payee for reimbursement by HCD of DEVELOPER's Infrastructure Project costs under the Proposition 1C Grant Agreement. 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 Infrastructure Project costs with the Proposition 1C Grant Proceeds shall not exceed NINE MILLION EIGHTY FIVE THOUSAND DOLLARS ($9,085,000).

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

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

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

A. HCD Covenants - DEVELOPER affirms that HCD has recorded or will record a "Declaration of Restrictive Covenant for the Development of Market Rate Housing" and a "Covenant Regarding Development of Affordable Housing" (collectively the "HCD Covenants") against some or all of the Property as set out in the Proposition 1C Grant Agreement. CITY and DEVELOPER understand that HCD will release these covenants against that portion of the Property which is not the subject of the Proposition 1C Grant Agreement when final maps are recorded for each parcel and that the "Declaration of Restrictive Covenant for the Development of Market Rate Housing" will thereafter only remain on those parcels designated to meet that Grant obligation for the 131 units and the "Covenant Regarding Development of Affordable Housing" will thereafter only remain on the QIP parcel.

B. QIP Covenant - The HCD "Covenant Regarding Development of Affordable Housing" requires DEVELOPER, as owner of the Property, to insure that the 90 unit affordable housing project, referred to as the Qualifying Infill Project (QIP), will be constructed and operated by an affordable housing developer, as selected by DEVELOPER and approved by HCD, in accordance with the terms and schedule set out in the Proposition 1C Grant Agreement. HCD has approved Bridge Housing as the QIP Developer and accepted its financing commitments prior to its approval of the Proposition 1C Grant Agreement.

C. Additional Housing Development Covenant - The HCD "Covenant Declaration of Restrictive Covenant for the Development of Market Rate Housing" requires the DEVELOPER, as owner of the Property, to undertake construction of 131 units of Additional Housing Development in accordance with the terms and schedule set out in the Proposition 1C Grant Agreement. Failure of DEVELOPER to comply with this HCD Covenant that is not timely cured within the applicable cure period(s) shall constitute a default under the Proposition 1C Grant Agreement and this Agreement and in such event a proportionate share of the Proposition 1C Grant Proceeds must be repaid by DEVELOPER in accordance with the terms of the Proposition 1C Grant Agreement.

D. HCD Covenants Enforcement - CITY is relying on the HCD Covenants as security for DEVELOPER's compliance with the provisions in the Proposition 1C Grant Agreement regarding: (i) meeting its obligations in regards to facilitating development of the QIP, and (ii) undertaking the Additional Housing Development after the Street Improvements are completed in accordance with the milestone schedules in the Proposition 1C Grant Agreement and as those schedules may be extended by HCD, even if the term of this Agreement expires. DEVELOPER acknowledges and agrees that under the terms of this Agreement, CITY has the right to enforce the HCD Covenants and to demand repayment of the proportionate amount of the Proposition 1C Grant Proceeds upon declaration by HCD of a default by DEVELOPER of its obligations as a Sub-Recipient for the Infrastructure Project, to facilitate development of the QIP, and to undertake or insure construction of the Additional Housing Development under the Proposition 1C Grant Agreement. The terms of this Section 8 shall survive the termination of this Agreement and shall extend until the HCD Covenants are released or terminated by HCD from each parcel of land comprising the Property as described in the Proposition 1C Grant Agreement.

E. Suspension of Permits During Default - If a dispute arises between HCD and DEVELOPER regarding DEVELOPER's obligations to build the Infrastructure Project, facilitate development of the QIP, and undertake or insure construction of the specified Additional Housing Development under the terms of the HCD Covenants and the Proposition 1C Grant Agreement, during the pendency of such dispute where: (i) HCD has issued to CITY a written notice of default, (ii) after expiration of any applicable cure period DEVELOPER (or its lender) has

not cured the default, (iii) DEVELOPER has not obtained a time extension from HCD for construction of the QIP or the Additional Housing Development if the default is based on non-compliance with milestone schedules, 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 or any residential development not in compliance with the Proposition 1C Grant Agreement or the HCD Covenants within that portion of the Development Project covering the Property, notwithstanding any contrary provision of the Tentative Map, PUD Plan and Guidelines, the City Code, the Subdivision Map Act or any other applicable state or local law or regulation. As to any final maps, other discretionary entitlements and building permits which were approved or issued prior to the date City issued the written demand for repayment of the Proposition 1C Grant Proceeds ("Prior Approvals"), (i) the first sentence of this section 8E shall not affect the validity of any such Prior Approvals nor any modifications thereto required, requested or otherwise initiated by City, and (ii) City may grant additional approvals or permits as the City may determine, in its sole and absolute discretion, are needed to be issued for public safety, health or welfare purposes.

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

The Party receiving such default notice shall be afforded a period of thirty (30) days following receipt of the notice within which to effectuate a cure, provided that if such default or breach cannot reasonably be cured within such thirty (30) day period and if curative action is commenced within such thirty (30) day period and is being continuously and diligently pursued by such Party, then such Party shall be given such additional period of time as is reasonably necessary for such Party in the exercise of due diligence to cure such default or breach. During any such period, the Party charged shall not be considered in default or breach for purposes of termination of this Restated Assignment Agreement or institution of legal proceedings. Notwithstanding the foregoing, the cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY in reliance on a written default determination issued by HCD under the terms of the Proposition 1C Grant Agreement. CITY will provide DEVELOPER and Lender with copies of any notice of default CITY receives from HCD.

**10. Lender Rights.** Any bank, mortgage company or other legal entity (together with its successors or assigns, collectively "Lender") that has loaned money to

DEVELOPER, is not an affiliate of DEVELOPER, and has recorded a mortgage or deed of trust against the Property as of the Commencement Date or thereafter shall have the following default notice and cure rights and releases from the obligations under this Agreement:

A. Prior to Lender Possession. No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of the Infrastructure Project, QIP or Additional Housing Development, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of DEVELOPER or DEVELOPER's successors in interest. Except as otherwise expressly provided in this Section 10, nothing in this Section 10 shall be construed to grant to Lender rights of DEVELOPER hereunder, to limit any remedy CITY has hereunder in the event of default by DEVELOPER, including but not limited to, cancellation of this Agreement, or prevent CITY's enforcement of the housing covenants recorded against the Property.

B. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to (i) pay any fees or charges which are obligations of DEVELOPER under this Agreement, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof, (ii) cure any defaults under this Agreement, or (iii) repay the Proposition 1C Grant Proceeds. However, a Lender shall not be eligible to become a successor in interest to this Agreement and receive payments of the Proposition 1C Grant Proceeds unless and until DEVELOPER's defaults under this Agreement have been cured by Lender pursuant to the terms and conditions of Section 10D below.

C. Notice of DEVELOPER's Default. If CITY receives or has received notice from a Lender making a reference to this Agreement requesting a copy of any notice of default given DEVELOPER hereunder or thereunder and specifying the address(es) for service thereof, then CITY shall deliver to such Lender at such address(es) the following: (i) concurrently with service thereon to DEVELOPER, any notice given to DEVELOPER with respect to any claim by CITY that DEVELOPER has committed a default or breach; and (ii) concurrently with service thereon to DEVELOPER, any notice on the part of CITY to cancel this Agreement for default under the terms of Section 9. The foregoing includes CITY providing Lender with copies of any notice of default CITY receives from HCD.

D. Lender's Right to Cure. With respect to any default or breach by DEVELOPER under this Agreement, CITY shall provide written notice (a "Cure Period Expiration Notice") to Lender, promptly upon expiration of the DEVELOPER's cure period set forth in Section 9, specifying the nature of such default or breach and stating that DEVELOPER's period of time within which to cure such

default or breach has expired without a cure having been effectuated. Lender shall have the right to cure such default within thirty (30) days after the date of the Cure Period Expiration Notice; provided, however, if such default is susceptible to cure but cannot reasonably be cured within such thirty (30) day period and if curative action shall be commenced within such thirty (30) day period and is being continuously and diligently pursued by Lender, then Lender shall be given an additional period of time as is reasonably necessary for Lender in the exercise of due diligence to cure such default. Without limiting the foregoing, if it is necessary for Lender to obtain possession of the Property in order to cure such default, Lender shall have such additional period of time as is reasonably necessary for the Lender in the exercise of reasonable diligence to obtain possession of the Property, and such additional time as is reasonably necessary for the Lender in the exercise of reasonable diligence to cure the default. Such action shall not entitle a Lender to any funds to be disbursed pursuant to the Proposition 1C Grant Agreement and this Agreement unless such Lender shall agree in writing to perform all obligations of DEVELOPER hereunder under the terms of an assumption agreement between Lender and CITY. Notwithstanding the foregoing, Lender's cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY to DEVELOPER in reliance on a written default determination issued by HCD under the terms of the Proposition 1C Grant Agreement and the HCD Covenants.

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

**11. Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any litigation concerning this Agreement must be brought and prosecuted in the Sacramento County Superior Court and the prevailing party shall be entitled to reimbursement of its attorneys' fees and litigation costs, including the costs and expenses allocated to any in-house counsel.

**12. Successors and Assigns.** This Agreement may not be assigned by DEVELOPER without the CITY's prior written consent; provided that this Agreement may be assigned by DEVELOPER to a Lender as collateral for Lender's loan and, in the event that such Lender takes possession of the Property or any portion thereof,

pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure if the Lender undertakes efforts to cure DEVELOPER's defaults, and such Lender complies with all of its obligations under Section 10, above, and enters into an assumption agreement with CITY, then such Lender shall succeed to the rights of DEVELOPER under this Agreement. The obligations in this Agreement shall inure to and bind the successors and assigns of each Party and the successors in interest in the Property, and CITY may record a memorandum of this Agreement. Lender shall be an express third party beneficiary of this Agreement.

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

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

A. Notice to the CITY:

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

B. Notice to DEVELOPER:

Calvine & Elk Grove-Florin, LLC
825 K Street, 3rd Floor
Sacramento, CA 95814
(916) 442-4600
ATTN: Paul S. Petrovich

With copies to:
Phil Harvey
825 K Street, 3rd Floor
Sacramento, CA 95814
(916) 442-4600

Ken King
825 K Street, 3rd Floor
Sacramento, CA 95814
(916) 442-4600

**15. Survivorship.** The DEVELOPER's obligations arising under this Agreement pertaining to indemnity and repayment obligations as set out in Sections 6, 7 and 8 shall survive the expiration, termination or cancellation of this Agreement , but shall nonetheless terminate upon the later of (i) the date upon which all certificates of occupancy have been issued for the QIP and the Additional Housing Development and (ii) three (3) years from the date of HCD's final disbursement of the Proposition 1 C Grant Proceeds to DEVELOPER pursuant to the Proposition 1C Grant Agreement.

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

[signature page follows]

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

**CITY OF SACRAMENTO**
a municipal corporation

By: _____

For: John F. Shirey
City Manager

Attest:

By: _____
City Clerk

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

**CALVINE & ELK GROVE-FLORIN, LLC**
a California limited liability company

By: _____
Paul S. Petrovich
Managing Member

# EXHIBIT A

## Standard Agreement for the Infill Infrastructure Grant Program

# EXHIBIT B

## Disbursement Agreement for the Infill Infrastructure Grant Program

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# TRANSIT-ORIENTED DEVELOPMENT HOUSING PROGRAM
# INFRASTRUCTURE GRANT
# DISBURSEMENT AGREEMENT

This DISBURSEMENT AGREEMENT (the "Agreement") is dated for reference purposes only as of March 8, 2013, and is made by and among the City of Sacramento, (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 an infrastructure grant under the Transit-Oriented Development (TOD) Housing Program ("Program") and in accordance with Part 12 of Division 31 of the Health and Safety Code (commencing with Section 53560) and the TOD Housing Program Guidelines, issued by the Department and dated December 3, 2007 (the "Guidelines), to finance, in part, the construction of the capital improvement (the "Infrastructure Project") described herein pursuant to the Standard Agreement Number 08-TOD-5911, entered into by the Recipient and the Department dated [month & date], 2013 (the "Standard Agreement"). The Department has conditionally agreed to provide the grant to the Recipient in an amount not to exceed Nine Million Eighty-Five Thousand AND 00/100 Dollars ($9,085,000.00) (the "Program Funds"). The Standard Agreement, the Application, this Agreement and all amendments, exhibits and attachments thereto (the "Grant Documents"), are incorporated in full by referenced to this Agreement.

B. The Infrastructure Project is integral to or necessary for the development of a residential housing development (the "Housing Development"), or to facilitate connections between the Housing Development and the designated transit station as 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 TOD 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 and the 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 i 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 instant Draw Request, which invoices and lien releases shall be considered a part of each Draw Request; (ii) a copy of inspection report or other documentation from localities, municipalities, or other construction lenders indicating the percentage of work completed pertaining to instant Draw Request; (iii) submission of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens; and (iv) any applicable change order(s) that affect or alter the Scope of Work.

17. Approval of Draw Request.

a. Procedure. The Department shall within thirty (30) business days after receipt of a Draw Request containing all of the items described in Paragraph 15, above, determine the amount of the Draw Request to be approved, notify Recipient of such amount, and disburse the approved amount, by State Warrant, to the Recipient or designated payee approved by the Department.

b. Disapproval. Any item in a Draw Request which is not specifically approved within thirty (30) business days shall be deemed disapproved. On the basis of the progress of work performed on the Infrastructure Project and the conditions precedent to making disbursements in this Agreement, the Standard Agreement and the applicable statutes and Program Guidelines, the Department may disapprove all or part of a Draw Request. In the event the Department disapproves any portion of the amount requested by Recipient in a Draw Request, the Department shall promptly notify the Recipient in writing of the disapproved amount and the reason therefore.

c. Concurrent Review of Draw Request. In the event any item shall be disapproved or deemed disapproved, the Recipient and the Department shall meet and in good faith attempt to resolve the matter to their mutual satisfaction.

d. Disbursement of Undisputed Amounts. In the event of any dispute, the Department shall disburse the amount of the Draw Request not in dispute, and fund any disputed amount promptly upon resolution of the dispute. Disputed amounts shall not be deducted from the Department's Program Funds, but shall be available for disbursement for other approved costs in accordance with the Sources and Uses of Funds. The Department and Recipient shall seek to resolve any disputes promptly and in good faith.

18. Condition Precedent to Final Disbursement. The final disbursement of the of Program Funds, 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. If the Housing Development has multiple phases or developments, then submission to the Department of a Certificate of Occupancy for the first phase of the Housing Development.

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

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

22. Remedies upon an Event of Default. Upon the happening of an Event of Default, the Department's obligation to disburse Program Funds 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 21 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 therefor, at least fifteen (15) days prior to the Department's undertaking any such action.

28. Indemnification and Waiver.

    a. Indemnification. Recipient agrees to indemnify the Department and its agents, employees and officers against, and hold the Department and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the Department may incur as a direct or indirect consequence of: (i) the making of the grant to the Recipient, except for violations of banking laws or regulations by the Department; (ii) Recipient's failure to perform any obligations as and when required by this Agreement or any of the Grant Documents; (iii) any failure at any time of any of Recipient's representations or warranties to be true and correct; (iv) any act or omission by Recipient, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property, the Infrastructure Project or Housing Development; or (v) the presence of hazardous substances on or at the Property, the Infrastructure Project or the Housing Development. Recipient shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per

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

b. Waiver and Release. The Recipient waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.

c. Waiver. The Recipient expressly waives the protections of Section 1542 of the Civil Code in relation to subparagraphs (a) and (b) above.

29. Further Assurances. At the Department's request and at Recipient's expense, Recipient shall execute, acknowledge and deliver any other instrument and perform any other act necessary, desirable or proper (as determined by the Department) to carry out the purpose of the Grant Documents or to perfect and preserve any liens or covenants created by the Grant Documents.

30. Notices. All written notices and demands under the Grant Documents shall be deemed served upon delivery or, if mailed, upon the date shown on the delivery receipt (or the date on which delivery was refused as shown on the delivery receipt) after deposit in United States Postal Service certified mail, postage prepaid, return receipt requested, or after delivery or attempted delivery by an express delivery service, and addressed to the address of Recipient or to the primary place of business or the mailing address of the Department, as applicable, appearing below. Notice of change of address may be given in the same manner, provided Recipient's address shall be in the State of California or the state where Recipient's principal place of business is located, as represented to the Department in the Grant Documents.

Recipient's Address:

Mark Prestwich
Special Projects Manager
Office of the City Manager
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814

Department's Address:

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

31. Amendments and Additional Agreements. This Agreement shall not be altered or amended except in writing executed by all parties. The Recipient agrees that any other agreements entered into by the Recipient relating to the performance of this Agreement shall be subject to the written approval of the Department.

32. Books and Records. Recipient shall maintain complete books of accounts and other records for the Project and for the use of the Program Funds; including, but not limited to, records of preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the Contractor and each subcontractor; and the same shall be available for inspection and copying by the Department upon reasonable notice to Recipient.

33. No Third Parties Benefited. No person other than the Department and Recipient and their permitted successors and assigns shall have any right of action under any of the Grant Documents.

34. Authority to File Notices. At any time subsequent to the funding of the Program Funds, Recipient irrevocably appoints and authorizes the Department, as Recipient's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's or Recipient's name, any notices, instruments or documents that the Department deems appropriate to protect the Department's interest under any of the Grant Documents.

35. Actions. At any time subsequent to the funding of the Program Funds, the Department may commence, appear in or defend any action or proceeding purporting to affect the Property, the Infrastructure Project, the Housing Development or the Grant Documents, or the rights, duties or liabilities of Recipient or the Department under the Grant Documents. In exercising this right, the Department may incur or incur and pay reasonable costs and expenses including, without limit, attorneys' fees and court costs and Recipient agrees to pay all such expenses so incurred and reimburse the Department for any expenses so paid.

36. Relationship of Parties. The relationship of Recipient and the Department under the Grant Documents is, and shall at all times remain, solely that of Recipient as the Grantee and Department as Grantor. The Department neither undertakes nor assumes any responsibility or duty to Recipient or to any third party with respect to the Property, the Infrastructure Project or the Housing Development, except as expressly provided in the Grant Documents.

37. Assignment of Grant Documents. The Recipient shall not assign any interest, or any portion thereof, under the Grant Documents, or in any monies due or to become due thereunder, without the Department's prior written consent. Any such assignment made without the Department's consent shall be void. Recipient recognizes that this is not a commercial loan and that the Department would not make the grant except in reliance on Recipient's expertise and reputation. In this instance, the work to be funded has not been performed at the time of grant approval and the Department is relying on Recipient's expertise and prior experience to construct and develop the Infrastructure Project and Housing Development in accordance with the terms of the Grant Documents.

38. Restrictions on Transfer of the Project and Interest in Recipient. Recipient shall not assign, sell, transfer or convey any interest held by the Recipient in the Infrastructure Project or the Housing Development, including, without limitation, any general partnership interest in the Recipient, except as provided for in this Agreement, without the Department's prior written consent. Recipient shall promptly notify the Department of such transfers and shall provide the Department with any documents respecting such transfer as the Department may reasonably request; provided however that Recipient, if Recipient is a limited partnership, may sell, assign, transfer or convey limited partnership interests without the prior approval of the Department.

39. Integrated Agreement. This Agreement is made for sole benefit and protection of the parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend any Department Grant Documents.

40. Termination of this Disbursement Agreement. This Agreement shall terminate four years after all of the Program Funds have been fully disbursed and expended by Recipient.

41. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

42. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.

43. Titles and Captions. Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provisions hereof.

44. Interpretation. No provision in this Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.

45. Waiver, Amendments. No breach of any provisions hereof may be waived unless in writing. Waiver of any beach of any provisions hereof shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.

46. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction, to be illegal, invalid, or unenforceable, such provisions will be deemed to be severed and deleted from the Agreement, as a whole and neither such provisions, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Disbursement Agreement.

47. Voluntary Agreement. The parties hereto, and each of them, further represent and declare that the parties carefully read this Agreement and the parties know the contents thereof, and that the parties sign the same freely and voluntarily.

48. Attorney's Fees. In the event of any dispute between the parties regarding this Agreement, the prevailing party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.

49. Non-Discrimination. In the performance of this Agreement, Recipient shall not discriminate against any provider, or potential provider, on the basis of race, color, religion, ancestry, sex, age, national origin, physical handicap or any other arbitrary factor.

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

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

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

*Provide Signature Blocks*

## Exhibit “A” to Disbursement Agreement

## Legal Description

APNs:

013-0010-008
013-0010-009
013-0010-021
013-0010-022
013-0010-023
013-0010-024
013-0010-025
013-0010-026
013-0010-027
013-0010-028

## Exhibit “B” to Disbursement Agreement

## Scope of Work

Capital infrastructure improvements consisting of: Clearing and Grubbing, Demolition, Rough Grading, Erosion/Weed Control, Retaining wall 2'-4', Construction Staking, Utilities, Sanitary Sewer, Potable Water, Storm Drain, Detention Basin/Culverts, Joint Trench, Roadway Improvements, Asphalt Pavement, Curb, Gutter, Sidewalk, Street Lights, Striping/Signage/Markers, Soundwall, Traffic Signals, Landscape and Amenities, Retention/Detention Ponds, Neighborhood Park Improvements, Engineering, Inspections/Fees, Performance Bonds.

## Exhibit "C" to Disbursement Agreement

## Sources and Uses of Funds

| TOD INFRASTRUCTURE PROJECT DEVELOPMENT BUDGET ESTIMATE | | | | | |
|---|---|---|---|---|---|
| TOD PROJECT NAME | | Curtis Park Village | | | |
| ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS | | | | | ESTIMATED BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE |
| | | | | | |
| | | ESTIMATED DEVELOPMENT COSTS | | | FUNDING SOURCES |
| COSTS CATEGORY | QTY | UNIT TYPE | UNIT PRICE | TOTAL AMOUNT | TOD |
| Clearing and Grubbing | 1 | LS | 25,000 | 25,000 | 25,000 |
| Demolition | 1 | LS | 645,000 | 645,000 | 645,000 |
| Rough Grading (excluding grading for housing and mixed-use) | 17,010 | CY | 4 | 68,040 | 68,040 |
| Erosion/Weed Control | 1 | LS | 58,000 | 58,000 | 58,000 |
| Construction Staking | 1 | LS | 130,000 | 130,000 | 130,000 |
| **Total Site Preparation Costs** | | | | **926,040** | **926,040** |
| | | | | | |
| Sanitary Sewer | 1 | LS | 753,930 | 753,930 | 753,930 |
| Potable Water | 1 | LS | 755,935 | 755,935 | 755,935 |
| Storm Drain | 1 | LS | 714,900 | 714,900 | 714,900 |
| Detention Basin/Culverts | | | included | included | included |
| Joint Trench | | | 273,066 | 273,066 | 273,066 |
| **Total Site Utilities Costs** | | | | **2,499,831** | **2,499,831** |
| | | | | | |
| Asphalt Pavement | 1 | LS | 2,100,123 | 2,100,123 | 2,100,123 |
| Curb, Gutter, Sidewalk | | | included | included | included |
| Street Lights | 1 | LS | 305,000 | 305,000 | 305,000 |
| Striping/Signage/Markers | 1 | LS | 66,873 | 66,873 | 66,873 |
| Soundwall Sr. Housing | 1 | LS | 120,000 | 120,000 | 120,000 |
| Traffic Signals / Site Electrical | 1 | LS | 1,021,000 | 1,021,000 | 1,021,000 |
| **Total Surface Improvements Costs** | | | **3,612,996** | **3,612,996** | **3,612,996** |
| | | | | | |
| Landscape and Amenities | 1 | LS | 189,000 | 189,000 | 189,000 |
| **Total Landscape and Amenities** | | | **189,000** | **189,000** | **189,000** |
| | | | | | |
| Remediation Soils | 1 | LS | 278,566 | 278,566 | 278,566 |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Total Mitigation/Remediation Costs** | | | | **278,566** | **278,566** | **278,566** |
| | | | | | | |
| Engineering | | | | 801,000 | 801,000 | 801,000 |
| Other: | Management Overhead | | | 424,250 | 424,250 | 424,250 |
| Other: | Inspections/Fees | | | 250,400 | 250,400 | 250,400 |
| Other: | Performance Bond | | | 74,917 | 74,917 | 74,917 |
| **Total Soft Costs** | | | | **1,580,567** | **1,580,567** | **1,580,567** |
| | | | | | | |
| **TOTAL PROJECT COSTS** | | | | **9,085,000** | **9,085,000** | **9,085,000** |

## Exhibit "D" to Disbursement Agreement

## Disbursement Schedule

| COSTS CATEGORY | 04-15-2013 Draw Request #1 | 05-30-2013 Draw Request #2 | 06-30-2013 Draw Request #3 | 07-30-2013 Draw Request #4 | 08-30-2013 Draw Request #5 | 09-30-2013 Draw Request #6 | 10-30-2013 Draw Request #7 | 11-30-2013 Draw Request #8 | 12-30-2013 Draw Request #9 |
|---|---|---|---|---|---|---|---|---|---|
| **Construction Start Date 05-14-2013** | | | | | | | | | |
| Clearing and Grubbing | | 22,500 | | | | | | | 2,500 |
| Demolition /utility relocation | | 185,000 | 280,000 | 50,000 | 38,000 | 27,500 | | | 64,500 |
| Rough Grading (excluding grading for housing and mixed-use) | | 34,000 | 15,000 | 3,000 | 9,236 | | | | 6,804 |
| Erosion/Weed Control | | 15,000 | 15,000 | 10,000 | 12,200 | | | | 5,800 |
| Construction Staking | | 8,000 | 25,000 | 25,000 | 25,000 | 25,000 | 12,000 | 10,000 | |
| **Total Site Preparation Costs** | | | | | | | | | |
| | | | | | | | | | |
| Sanitary Sewer | | 15,000 | 89,000 | 200,000 | 200,000 | 100,000 | 74,537 | | 75,393 |
| Potable Water | | 15,000 | 20,000 | 100,000 | 100,000 | 200,000 | 200,000 | 45,342 | 75,593 |
| Storm Drain | | 15,000 | 110,000 | 250,000 | 250,000 | 18,410 | | | 71,490 |
| Detention Basin/Culverts | | | | | | | | | |
| Joint Trench | | 72,000 | 112,000 | 20,000 | 12,766 | | 28,994 | | 27,306 |
| **Total Site Utilities Costs** | | | | | | | | | |
| | | | | | | | | | |
| Asphalt Pavement | | | 89,000 | 100,000 | 150,000 | 200,000 | 900,000 | 451,111 | 210,012 |
| Curb, Gutter, Sidewalk | | | | | | | | | |
| Street Lights | | 30,000 | 30,000 | 2,000 | 2,000 | 2,000 | 100,000 | 108,500 | 30,500 |
| Striping/Signage/Markers | | | | | | | 30,000 | 30,186 | 6,687 |
| Soundwall Sr Housing | | | | | 30,000 | 30,000 | 48,000 | | 12,000 |
| Traffic Signals / Site Electrical | | 380,000 | 10,000 | 10,000 | | | 300,000 | 218,900 | 102,100 |
| **Total Surface Improvements Costs** | | | | | | | | | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| Landscape and Amenities | | | | | | | | 81,100 | 89,000 | 18,900 |
| **Total Landscape and Amenities** | | | | | | | | | | |
| | | | | | | | | | | |
| Remediation Soils | | | 180,000 | 98,566 | | | | | | |
| **Total Mitigation/Remediation Costs** | | | | | | | | | | |
| | | | | | | | | | | |
| Engineering | | 594,062 | 85,000 | 73,000 | 48,938 | | | | | |
| Other: | Management Overhead | 36,853 | 60,096 | 48,628 | 41,046 | 41,710 | 30,395 | 88,981 | 47,901 | 58,640 |
| Other: | Inspections/Fees | 143,000 | 78,000 | 6,000 | 2,000 | 5,000 | 5,000 | 5,000 | 5,000 | 1,400 |
| Other: | Performance /Payment Bond | | 67,426 | | | | | | | 7,491 |
| **Total Soft Costs** | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| **TOTAL PROJECT COSTS** | | **773,915** | **1,262,022** | **1,021,194** | **861,984** | **875,912** | **638,305** | **1,868,612** | **1,005,940** | **777,116** |

## Exhibit "E" to Disbursement Agreement

## Insurance Requirements

**These insurance requirements govern insurance coverage on Projects improved using infrastructure grant funding from the Department's Transit Oriented Development Housing 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) INDEMNIIFICATION:

(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 ≤$5,000,000 | $1,000,000 | $2,000,000 | $2,000;000 | $10,000,000 |
| >$5,000,000 ≤$25,000,000 | $2,000,000 | $2,000,000 | $4,000,000 | $15,000,000 |
| >$25,000,000 | $2,000,000 | $2,000,000 | $4,000,000 | $25,000,000 |

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

(I) SELF-INSURANCE

(1) Self-insurance programs and self-insured retentions in insurance policies are subject to separate annual review and approval by the State.

(2) If the Contractor uses a self-insurance program or self-insured retention, the Contractor shall provide the State with the same protection from liability and defense of suits as would be afforded by first-dollar insurance. Execution of the contract is the Contractor's acknowledgement that the Contractor will be bound by all laws as if the Contractor were an insurer as defined under Insurance Code Section 23 and that the self-insurance program or self-insured retention shall operate as insurance as defined under Insurance Code Section 22.

## Exhibit "F" to Disbursement Agreement

## Special Conditions

1. Satisfaction by Sub-Recipient. 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 or 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 (a) no Sub-Recipient shall have or incur any liability under the Disbursement Agreement unless, until and only to the extent that such Sub-Recipient shall expressly assume the Recipient's obligations under the Agreement pursuant to a signed written agreement or undertaking, and (b) no lender (or successor-in-interest to such lender) shall have or incur any liability under the Disbursement Agreement.

2. Additional Notice Parties. 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 (a) affect the validity or effectiveness of the notice or (b) create any liability or obligation in any way to any Notice Parties 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 the right to cure any default, Event of Default, or other violation of this Disbursement Agreement to the extent that such rights are granted to the Recipient herein.

3. Department's Approval of Record Matters. Department's execution of the Agreement shall operate as Department's approval of all matters of record attached on the Preliminary Title Report prepared by First American Title Insurance Company for the Property and dated _____, 2013.

5. Section 3(l) – Hazardous Materials. Section 3(l) of the Agreement is deleted in its entirety and replaced with the following:

> Recipient has performed due diligence review of the condition of the Infrastructure Project including review to disclose the possible existence of asbestos and toxic or hazardous materials. Recipient has disclosed to the Department that the Property previously contained hazardous materials and that the same has been remediated sufficient to obtain a clean parcel letter from the Department of Toxic Substances Control, a copy of which clean parcel letter has been or shall be provided to the Department.

5. Section 14(c). The following sentence shall be appended to section 14(c) of the Agreement:

> When deemed commercially reasonable, the Department, at its discretion, may agree to waive the 10% retention of hard construction costs. For purposes of the preceding sentence, the term "commercially reasonable" shall mean (i) no default exists, (ii) no event has occurred and no condition exists that, after notice or lapse of time, or both, would constitute a default, and (iii) the Department reasonably believes that no default is likely to exist.

6. Section 15(a). The following sentence shall be appended to section 15(a) of the Agreement:

> 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.

7. Section 15(e). The following sentence shall be appended to section 15(e) of the Agreement:

> Notwithstanding anything to the contrary contained in this section 15(e), the obligations Recipient set forth herein may be satisfied by any contractor(s) of Recipient.

8. Section 18 – Condition Precedent to Final Disbursement. The first sentence of Section 18 of the Agreement is hereby deleted in its entirety and replaced with the following:

> The final disbursement of the of Program Funds (including ten percent (10%) retention of hard construction costs to the extent not otherwise waived by the Department) shall be subject to the following conditions

9. Section 18(c). Section 18(c) of the Agreement is hereby deleted in its entirety.

10. Section 21(b) -- Construction; Use. Section 21(b) of the Agreement is hereby amended such that all instances of the term "thirty (30) days" are hereby deleted and replaced with instances of the term "ninety (90) days."

11. Section 21(g) -- Liens; Attachment; Condemnation; Encroachments. Section 21(g)(iv) of the Agreement is hereby amended such that the term "encroachments" is hereby deleted and replaced with the term "material encroachments."

12. Section 35 -- Actions. The second sentence of Section 35 of the Agreement is deleted and replaced with the following:

> 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, provided that such actions are necessary to protect the Department's rights hereunder, as determined by the Department.

Exhibit "E" to Disbursement Agreement -- Insurance Requirements. Notwithstanding anything to the contrary in Exhibit "E" to Disbursement Agreement, any revisions or variations of the requirements set forth in Exhibit "E" to Disbursement Agreement shall be commercially reasonable. Additionally, notwithstanding anything to the contrary in Exhibit "E" to Disbursement Agreement or the Disbursement Agreement the obligations of Recipient under Exhibit "E" to Disbursement Agreement may be satisfied by the contractor(s) of Recipient.