

**Meeting Date:** 6/25/2013

**Report Type:** Consent

**Report ID:** 2013-00533

**City Council Report**  
915 I Street, 1<sup>st</sup> Floor  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Title:** Agreements - Downtown Railyards Proposition 1C Round 2 Grant

**Location:** Railyards, District 3

**Issue:** The State Department of Housing and Development (HCD) requires that grant agreements be executed which allow for disbursement of funds to the City of Sacramento as the recipient of Proposition 1C grant funds. The City will review and approve grant draw requests and funds will be disbursed to the developer as the grant sub-recipient as infrastructure work is completed.

**Recommendation:** Adopt a Resolution 1) authorizing the City Manager or his designee to execute the Proposition 1C Transit-Oriented Development (TOD) Round 2 Housing Program Infrastructure Grant Standard Agreement and Disbursement Agreement with the State Housing and Community Development Department (HCD) for \$10.865 million for the Railyards; 2) establishing the Railyards TOD Round 2 Prop 1C Capital Improvement Project (T15136500); and, 3) establishing a \$10.865 million capital grant (Fund 3704) revenue and expenditure budget in T15136500 to be funded with the Proposition 1C TOD Infrastructure grant funds.

**Contact:** Fran Halbakken, Downtown Railyards Project Manager, (916) 808-7194, Office of the City Manager

**Presenter:** None

**Department:** City Manager

**Division:** Executive Office

**Dept ID:** 02001011

**Attachments:**

1-Description/Analysis

2-Background

3-Resolution

4-Exhibit A - Standard Agreement

5-Exhibit B - Disbursement Agreement

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**City Attorney Review**

Approved as to Form

Michael Sparks

6/20/2013 12:12:16 PM

**Approvals/Acknowledgements**

Department Director or Designee: Fran Halbakken - 6/19/2013 1:06:41 PM

## Description/Analysis

**Issue Detail:** On July 1, 2009, the City was awarded a Proposition 1C Transit Oriented Development (TOD) round 2 grant by the State Department of Housing and Community Development (HCD) in the amount of \$10,865,000 for the Railyards project. The HCD grant provides funds for project infrastructure that will serve future nearby affordable housing projects. This action will establish the Capital Improvement Project (CIP) revenue and expenditure budget for the grant funds and authorizes the City Manager to execute the Standard Agreement and the Disbursement Agreement, which are the two agreements needed for the City to formally accept the round 2 grant. The Standard Agreement and Disbursement Agreement recognize that an assignment and assumption agreement will be needed to assign the City's interest in the grant funds to the developers who will complete the infrastructure and housing projects. Approval of the assignment and assumption agreement is not included in the actions of this Council report, but will be scheduled for City Council consideration at a later date.

The City had previously been awarded \$17 million in TOD round 1 funding. The City has executed the grant agreement with HCD for the round 1 award and is in the process of delivering infrastructure on behalf of the property owner. The general terms of the grant agreements for rounds 1 and 2 are similar. However, the number of market-rate and affordable housing units required to be developed and the schedule of delivery differs. At the time the grant applications were approved, the City Council authorized the City Manager to execute the HCD Proposition 1C grant agreements for the Railyards project.

The Proposition 1C grants were awarded for specified infrastructure improvements that are integral portions of the backbone infrastructure needed for the affordable housing projects. The extension of 5<sup>th</sup> Street from H Street to the new Railyards Boulevard was funded with the round 1 grant and a new street that was preliminarily called Camille Boulevard, now C Street, is expected to be funded with the round 2 grant.

**Policy Considerations:** The recommendation is consistent with the City Council direction and actions regarding the Proposition 1C grant applications for the Railyards project on March 10, 2009 (Resolution No. 2009-146). The recommendation is also consistent with the City's transit-supportive housing policies in the 2030 General Plan.

### Environmental Considerations:

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

**Sustainability Considerations:** The improvements to be funded with the Proposition 1C grant funds have been reviewed for consistency with the goals, policies and targets of the City's Sustainability Master Plan and the 2030 General Plan. The entire Railyards project is a transit-oriented development located within close proximity of the future Intermodal Transportation Facilities project, the current light station serving the Depot, and a future light rail station on 7<sup>th</sup> Street north of the railroad tracks.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** The Railyards project is one of the largest urban infill and transit-oriented development projects in the country. The housing obligation is for 15% of the housing to be built for low and very low income households per the requirements of Proposition 1C HCD grants. For the Round 2 TOD program, 251 housing units will be built with 139 affordable units, which is more than the 15% affordable obligation. The Proposition 1C HCD round 2 TOD grants will fund a portion of the infrastructure needed for the housing development, including an extension of C Street.

**Financial Considerations:**

The City is the recipient of the Proposition 1C grants and is responsible for delivery of the infrastructure improvements and the market rate and affordable housing units. Although HCD recognizes in the Standard Agreement and the Disbursement Agreement that the City may delegate its obligations to Chelsea Investment Corporation and one of the Corky McMillin Companies, under a future assignment and assumption agreement, the City will remain 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 and assumption agreement will include performance bonds, indemnity obligations, and other remedies in the event of a default by the developers. Approval of the assignment and assumption agreement is not an action of the City Council under this report. It will be brought to City Council in a few months before round 2 grant funds are disbursed.

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

## Background

The Proposition 1C funding is provided by HCD for specified improvements necessary for development of both the affordable and the market rate housing which are part of the Railyards project. The Proposition 1C TOD grant funds will be used for the extension of C Street from Bercut Drive to 6<sup>th</sup> Street, which is the new east-west oriented street formerly called Camille Lane.

The Railyards project was awarded Prop. 1C funds in round 1 in the amount of \$47 million from both the TOD and the Infill programs. The infrastructure currently being constructed with the round 1 grants includes 5<sup>th</sup> Street extension from H Street to Railyards Boulevard and a new street called Railyards Boulevard from Bercut Drive to 7<sup>th</sup> Street. Prop. 1C round 2 Infill program funds will be used to extend 5<sup>th</sup> Street north to North 5<sup>th</sup> Street and Bercut Drive between C Street and Railyard Boulevard, develop the Market Plaza and provide sanitary sewer utilities. HCD provides grant funds for infrastructure in exchange for the development of affordable (low and very low income restricted) housing within mixed income neighborhoods that also contain market rate housing.

Under the Proposition 1C TOD program, only public agencies could apply for the grant. To be awarded a TOD grant, frequent transit service must be provided within a ¼ mile radius of the affordable housing site. The Railyards project area includes the City of Sacramento's Sacramento Valley Station and the site of the future Intermodal Facilities project. The Railyards is served by the 7<sup>th</sup> busiest train station in the country, light rail service, and regional and local bus service. A second light rail station will be built in a future phase of development along 7<sup>th</sup> Street, north of the railroad tracks.

## **RESOLUTION NO. 2013-**

Adopted by the Sacramento City Council

### **APPROVING THE STANDARD AND DISBURSEMENT TOD GRANT AGREEMENTS WITH HCD FOR THE DOWNTOWN RAILYARDS PROJECT, ESTABLISHING A CAPITAL IMPROVEMENT PROJECT NUMBER (T15136500) AND A REVENUE AND EXPENDITURE BUDGET FOR THE RAILYARDS TOD ROUND 2 PROP. 1C CAPITAL IMPROVEMENT PROJECT**

#### **BACKGROUND**

- A. The Downtown Railyards project is a transit-oriented, mixed-use development project located in downtown Sacramento. The Railyards is planned to include 10,000-12,000 housing units, 2.3 million square feet of office, and 1.8 million of retail space, and 485,000 square feet of cultural uses. The project is served by the first phase of the Downtown-Natomas-Airport light rail line, with a station at the City's Intermodal Facilities project and a future station on 7<sup>th</sup> Street. The City Council approved the entitlements for the Railyards Specific Plan in 2007.
- B. On March 10, 2009 (Resolution No. 2009-146), the City Council approved submittal of an application to the State Department of Housing and Community Development (HCD) for an Transit-Oriented Development (TOD) Grant under the Proposition 1C program on behalf of the Railyards project. In June 2009, HCD awarded the City \$10.865 million in TOD funding for the Railyards 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 Chelsea Investments, the developer of the Railyards housing for round 2 grant funds, as the grant sub-recipient.
- D. The Proposition 1C grants will fund certain streets and utilities needed for development of the Railyards project (collectively "Improvements"). The Round 2 TOD grant will provide for the extension of C Street from Bercut Drive to 6<sup>th</sup> Street, which is the street formerly called Camille Lane.
- E. Chelsea Investments ("Affordable Housing Developer") has entered into an option and development agreement with Inland American Holdings to transfer title to parcels 7a1 and 7a2 for development of the 139 unit affordable housing project. The developer will undertake the off-site improvements needed for development of these parcels with the Proposition 1C grant.

**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 \$10.865 million in Proposition 1C funds for the Railyards 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 Railyards TOD Round 2 Prop. 1C project (T15136500) is hereby established as a new Capital Improvement Project.
- Section 3. A \$10.865 million revenue and expenditure budget for the Railyards TOD Round 2 Prop. 1C project (T15136500) to be funded with the Proposition 1C 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 Agreement

## EXHIBIT A

### 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:

**EXHIBIT A**

A. The capital improvement(s) ("Infrastructure Project") described as follows:

The TOD award will partially finance development of streets and related utilities that will give tenants of the supported Housing Development access to and from area in addition to the construction of a central plaza that will provide a walking path to the Sacramento Valley Station.

and

B. 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 and meeting the following criteria:

<b>Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County</b>	<b>Lot 7a1</b>		
<b>Enter the number of units by bedroom size and income level.</b>			
<b># of Bedrooms</b>	<b># of Units</b>	<b>TOD Restricted Units*</b>	<b>Income Limit (% of AMI)</b>
1	14	14	40%
1	17	17	50%
2	31	31	40%
2	36	36	50%
3	19	19	40%
3	22	22	50%
<b>Total Project Units**</b>	139	139	

**EXHIBIT A**

<b>Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County</b>	<b>Lot 7b1</b>		
<b>Enter the number of units by bedroom size and income level.</b>			
<b># of Bedrooms</b>	<b># of Units</b>	<b>TOD Restricted Units*</b>	<b>Income Limit (% of AMI)</b>
1	40	0	Market
2	72	0	Market
<b>Total Project Units**</b>	112		

\*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.

**EXHIBIT A**

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):

<b>List of Transit- Supportive Amenities, Services, and Uses (“ASUs”)</b>	<b>Status of ASUs (e.g., completed and in service or in construction stage.)</b>	<b>If not in service, anticipated completion date of ASUs</b>
1) Bank facility (Bank of the West)	In-service at application due date	N/A
2) Childcare facility (Kids East, Inc.)	In-service at application due date	N/A
3) Convenience store (The General Store)	In-service at application due date	N/A
4) Hair care facility (Salon 515)	In-service at application due date	N/A
5) Health club facility (CA Family Fitness)	In-service at application due date	N/A
6) Library (Sacramento Main Public Library)	In-service at application due date	N/A
7) Medical/Dental office (Yee Dental Office)	In-service at application due date	N/A
8) Police facility (Sacramento County Sheriff)	In-service at application due date	N/A
9) Shoe repair facility (Express Shoe Fix)	In-service at application due date	N/A
10) Theater (Century Downtown Theatre)	In-service at application due date	N/A
11) Restaurant (Denny’s)	In-service at application due date	N/A
12) Bakery (LaBou Bakery)	In-service at application due date	N/A
13) Coffee Shop (Starbucks)	In-service at application due date	N/A

**EXHIBIT A**

14) Pharmacy (Rite Aid)	In-service at application due date	N/A
15) Place of worship (Churches of Christ Scientist)	In-service at application due date	N/A
16) Playground (Zapata Park)	In-service at application due date	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
1) No more than 25% of the street blocks in the corridor exceed 500 feet in length.	Pre-construction stage	No later than 04/01/2015
2) The corridor is fully served by continuously-paved, ADA-compliant sidewalks with a minimum width of 4 feet.	Pre-construction stage	No later than 04/01/2015
3) The corridor allows for safe pedestrian crossing of any arterials between the Housing Development and the Transit Station and the corridor is adequately lighted to accommodate pedestrian use after dark.	Pre-construction stage	No later than 04/01/2015
4) The Transit Station contains transit waiting facilities that are lighted and provide overhead shelter form outdoor elements.	Pre-construction stage	No later than 04/01/2015
5) The Transit Station has bicycle access and provides secure bicycle storage facilities, or the transit service allows bicycle conveyance on-board.	Pre-construction stage	No later than 04/01/2015

C. 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

**EXHIBIT A**

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:

<b>List of Parking Attributes ("Attributes")</b>	<b>Status of Attributes (e.g., completed and in service or in construction stage.)</b>	<b>If not in service, anticipated completion date of Attributes</b>
1) Parking Pricing	Pre-Construction stage	No later than 06/01/2021
2) Transit Passes	Pre-Construction stage	No later than 06/01/2021
3) Shared Parking	Pre-Construction stage	No later than 06/01/2021
4) Car Sharing	Pre-Construction stage	No later than 06/01/2021
5) Maximum Parking	Pre-Construction stage	No later than 06/01/2021

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:

**EXHIBIT A**

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:	Fran Halbakken, Downtown Railyards Project Managre
Address:	915 I Street, 5 <sup>th</sup> Floor Sacramento, CA 95814
Contact Phone No.:	916-808-7194

**EXHIBIT A**

**PERFORMANCE MILESTONES**

Performance Milestones	Infrastructure Project		Housing Development	
	Single Phase	Multi-Phase	Single Phase	Multi-Phase
Executed binding agreement between the Recipient and developer of the proposed Housing Development detailing the terms and conditions of the Project development.			2/2017	12/2016
Site Control of Housing Development site(s) by proposed housing developer.			3/2017	1/2017
Completion of all necessary environmental clearances, including those required under CEQA and NEPA.	12/2008	N/A	11/2017	1/2018
Obtaining all necessary and discretionary public land use approvals.	12/2008	N/A	12/2017	2/2018
Obtaining all enforceable funding commitments for at least the first phase of the Housing Development supported by the infrastructure Project.			11/2017	1/2018
Obtaining all enforceable funding commitments for all construction period financing.	6/2009*	N/A	11/2017	1/2018
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.	N/A	N/A	11/2017	1/2018
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	3/2014	N/A	8/2018	9/2018
Commencement of construction.	6/2014	N/A	1/2019	6/2019
Construction complete and the filing of the Notice of Completion.	12/2015	N/A	1/2021	6/2021
Program funds fully disbursed.	2/2016	N/A	N/A	N/A

\*Award of the TOD financing

**EXHIBIT B**

**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 in the Sources and Uses, except to the extent the Sources and Uses may be

TOD Grant – Infrastructure Round 2  
NOFA Date: 1/30/09  
Rev. Date: 6/13/13  
Prep. Date:

## EXHIBIT B

updated and modified by the Disbursement Agreement described below. The Recipient shall provide evidence and assurance of the commitment and availability of such other sources of funding identified in the Sources and Uses as provided in the Disbursement Agreement. The terms and conditions of all construction financing to be used in conjunction with the Program funds shall be subject to the Department's review and approval.

### 4. Completion Dates

- A. Program funds must be disbursed no later than June 30, 2013. All undisbursed funds remaining as of June 30, 2013, shall be disencumbered. All invoices for payment must be submitted to the Department no later than February 1, 2013.
- B. This Agreement shall expire on June 30, 2017.

### 5. Method of Payment

- A. Payment shall be made as progress payments as set forth in the Disbursement Agreement. Recipient shall request payment for Work completed on forms provided by the Department and subject to such documentation as the Department may require.
- B. The Department shall not authorize payments unless it determines that the Program funds shall be expended in compliance with the terms and provisions of the Guidelines, the NOFA, this Agreement and the Disbursement Agreement.
- C. For multi-phased Housing Developments, disbursement of funds for improvements in excess of those needed for the first phase of the Housing Development will be subject to the following, as determined by the Department:
  - 1) The need for additional improvements at the time of the disbursement request, and
  - 2) The receipt of evidence acceptable to the Department that the subsequent phases to be supported by the additional fund disbursement are consistent with applicable planning and zoning requirements.

## EXHIBIT B

### 6. Disbursement Agreement

- A. The Recipient, the Department and such other parties as may be reasonably required by the Department, shall enter into a Disbursement Agreement in a form provided by the Department. The Disbursement Agreement shall contain a specific description of the Infrastructure Project and an updated Sources and Uses therefore, including an updated table of Sources and Uses, and the specific terms and conditions for the disbursement of Program funds. In the event of a conflict between this Agreement and the Disbursement Agreement, as determined by the Department, the terms of the Disbursement Agreement, being the later and more specific document, shall govern; provided however, that no resolution of any such conflict shall be contrary to, or result in a waiver or violation of, the Guidelines or the NOFA.
- B. The requirement for a Disbursement Agreement set forth in this paragraph may be waived by the Department where, at its sole discretion, it determines that:
- 1) satisfactory completion of the Work,
  - 2) proper disbursement and use of Program funds,
  - 3) performance of, and compliance with, all the obligations, terms and conditions of this Agreement, and
  - 4) compliance with all applicable statutes, laws and regulations, all have been or will be achieved without the execution of a Disbursement Agreement. The Department may require the submittal by the Recipient of such information, records, documents, certificates and other material as it deems necessary to make this determination.

**EXHIBIT B**

**SOURCES AND USES**

TRANSIT-ORIENTED DEVELOPMENT (TOD) HOUSING PROGRAM INFRASTRUCTURE DEVELOPMENT BUDGET										
TOD PROJECT NAME: The Railyards										
ESTIMATED TOD CAPITAL IMPROVEMENT PROJECT COSTS										
Submit contracts, bids, engineer's estimates or any other back-up evidencing accuracy of eligible TOD CIP costs										
COSTS CATEGORY	QUANTITY	UNIT TYPE	UNIT PRICE	TOTAL AMOUNT	DEVELOPMENT COSTS					
					TOD Grant	Infill Grant Program	TE Funds	Local Funds	Other	Other
BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE										
FUNDING SOURCES (identify all sources)										
<b>SITE ACQUISITION</b>										
TOTAL SITE ACQUISITION COSTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>SITE PREPARATION</b>										
TOTAL SITE PREPARATION COSTS	\$0	\$0	\$0	\$2,200,000	\$2,200,000	\$0	\$0	\$0	\$0	\$0
<b>UTILITIES</b>										
TOTAL UTILITIES COSTS	\$0	\$0	\$0	\$3,200,000	\$3,200,000	\$0	\$0	\$0	\$0	\$0
<b>SURFACE IMPROVEMENTS</b>										
TOTAL SURFACE IMPROVEMENTS COSTS	\$0	\$0	\$0	\$1,800,000	\$1,800,000	\$0	\$0	\$0	\$0	\$0
<b>LANDSCAPE AND AMENITIES</b>										
TOTAL LANDSCAPE AND AMENITIES COSTS	\$0	\$0	\$0	\$900,000	\$900,000	\$0	\$0	\$0	\$0	\$0
<b>CONSTRUCTION MANAGEMENT</b>										
TOTAL CONSTRUCTION MANAGEMENT COSTS	\$0	\$0	\$0	\$865,000	\$865,000	\$0	\$0	\$0	\$0	\$0
<b>ENVIRONMENTAL MITIGATION/REMEDIATION</b>										
TOTAL ENVIRONMENTAL COSTS	\$0	\$0	\$0	\$100,000	\$100,000	\$0	\$0	\$0	\$0	\$0
TOTAL MITIGATION/REMEDIATION COSTS	\$0	\$0	\$0	\$200,000	\$200,000	\$0	\$0	\$0	\$0	\$0
<b>PARKING</b>										
TOTAL PARKING COSTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TRANSIT</b>										
TOTAL TRANSIT COSTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>IMPACT FEES</b>										
TOTAL IMPACT FEES COSTS	\$0	\$0	\$0	\$100,000	\$100,000	\$0	\$0	\$0	\$0	\$0
<b>SOFT COSTS RELATED TO ELIGIBLE COSTS</b>										
TOTAL SOFT COSTS RELATED TO ELIGIBLE COSTS	\$0	\$0	\$0	\$1,500,000	\$1,500,000	\$0	\$0	\$0	\$0	\$0
<b>OTHER CAPITAL ASSET COSTS</b>										
TOTAL OTHER CAPITAL ASSET COSTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL PROJECT COSTS</b>										
TOTAL PROJECT COSTS	\$0	\$0	\$0	\$10,865,000	\$10,865,000	\$0	\$0	\$0	\$0	\$0
Note: Total amount in TOD Grant Column must equal amount requested in application										
<b>COST NARRATIVE: USE THE SPACE BELOW TO EXPLAIN ANY EXTRAORDINARY SITE CONDITIONS WHICH RESULT IN DEVELOPMENT COSTS TO BE HIGHER THAN ACCEPTED INDUSTRY STANDARDS.</b>										

TOD Grant – Infrastructure Round 2  
 NOFA Date: 1/30/09  
 Rev. Date: 6/13/13  
 Prep. Date:

**EXHIBIT C**

**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.

## EXHIBIT C

- B. 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 which may affect the provisions, terms or funding of this Agreement in any manner.
- C. If the State does not appropriate sufficient funds for the Program, the Department may amend the Agreement to reflect any reduction in funds or it may terminate this Agreement by giving fourteen (14) days written notice to the Recipient.

### 3. **Transit-Oriented Development Grant Documents**

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

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

Prior to the disbursement of Program funds, the Recipient shall enter into a written Covenant Regarding Development of Affordable Housing ("Covenant") with the Department, and including such other parties as the Department may reasonably require, which shall require the development and construction of the Housing Development with, the number of units and the number of bedrooms per unit, the extent and depth of affordability, as set forth in Exhibit A, and other uses and amenities for which points were granted to the Application. The Covenant shall be recorded against the parcel or parcels of real property on which the Housing Development is to be located and shall be binding on all successors, transferees, and assignees acquiring an interest in the Housing Development as follows:

- A. For rental housing developments, the Covenant shall require the continuation of the affordability of the Housing Development for a period of not less than fifty-five (55) years from the date of the filing of a notice of completion for Housing Development.
- B. For homeownership housing developments the Covenant shall require the continuation of the affordability for a period of not less than thirty (30) years from the date of a filing of a Notice of Completion for the Housing

## EXHIBIT C

Development. The affordability will be ensured through a resale restriction or equity sharing upon resale.

- C. The Department may waive this requirement for the Covenant upon the Department's determination that sufficient protections are in place to ensure the development and continued operation and occupancy of the Housing Development in accordance with this Agreement.

### 5. Site Control

The Recipient shall ensure that site control of the real property for both the Infrastructure Project and Housing Development is sufficient to meet the requirements of the Program. This shall include, but not be limited to, ensuring the timely commencement of the Infrastructure Project and the Housing Development as determined by the Department. Site control of the Infrastructure Project and Housing Development may be evidenced by one of the following:

- A. Fee title;
- B. A leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all program requirements;
- C. An option to purchase or lease;
- D. A disposition and development Agreement with a public agency; or
- E. A land sales contract or other enforceable Agreement for the acquisition of the property.

The Recipient shall also obtain all licenses, easements and rights-of-way or other interests required for completion of the Infrastructure Project and the Housing Development, and provide evidence of such instruments prior to the first disbursement of Program funds.

### 6. Appraisals

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

## EXHIBIT C

### 7. **Relocation Plan**

If there is or will be any residential or commercial displacement directly or indirectly caused by the Project, as defined in state law, the Recipient shall provide a relocation plan conforming to the requirements of state law and regulations issued by the Department in California Code of Regulations, Title 25, section 6000 et seq. In addition to the regulatory requirements, the relocation plan shall contain a line item budget. The project and/or the development budget shall contain sufficient funds to pay all costs of relocation benefits and assistance as set forth in the relocation plan accepted by the Department.

### 8. **Article XXXIV**

The Recipient shall submit to the Department satisfactory evidence that the requirements of Article XXXIV of the California Constitution are inapplicable or have been satisfied as to the Housing developments identified in the Recipient's Program application.

### 9. **Environmental Conditions**

The Recipient shall provide to the Department the following:

- A. All Environmental Site Assessment ("ESA") Reports (to include Phase I, II, III, supplemental or update assessments and reports) for the Infrastructure Project and the Housing Development, in conformance with ASTM Standard Practice E 1527, evaluating whether the Infrastructure Project is affected by any recognized environmental conditions.
- B. Documentation and/or a certification satisfactory to the Department that all ESA Report recommendations including remediation and/or mitigation work have been completed.
- C. Mitigation requirements required as a result of the Final Environmental Impact Report ("EIR") or Mitigated Negative Declaration if applicable and evidence satisfactory to the Department that all mitigation requirements have been satisfied.

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

The Recipient agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Infrastructure

## EXHIBIT C

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

### 11. Litigation

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

### 12. Milestones

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

### 13. Insurance

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

### 14. Change of Conditions

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

## EXHIBIT C

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

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

### 16. Waivers

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

### 17. Identity of Interests

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

## DESIGN

### 18. Architect

The Recipient shall utilize the services an architect and/or an engineer to provide professional design and engineering services for the Infrastructure Project and Housing Development. The contract shall require an architect and/or an engineer to supervise the construction work, conduct periodic site visits, prepare periodic inspection reports, verify the validity of the construction contractor's payment requests, prepare or review change orders, and, upon completion of construction, provide the certification described in paragraph 33 of these General Conditions. At

## EXHIBIT C

the request of the Department, Recipient shall submit any and all contracts for these services to the Department for its review and approval.

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

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

### 20. **Reasonable Development Costs**

At the request of the Department, the Recipient shall provide evidence acceptable to the Department that the total costs of the Infrastructure Project and Housing Development are reasonable and necessary for the proposed improvements. To verify cost reasonableness, the Department may require qualified third party verification of cost, evidence of the competitive bidding of major cost components and appraisals.

### 21. **Adaptability and Accessibility**

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

### 22. **Acoustics Report**

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

### 23. **Approval by Public Works Department**

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

## EXHIBIT C

### **CONSTRUCTION**

#### **24. Construction Contract**

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

#### **25. Contractor's Assurance of Completion**

The Contractor(s) shall provide security to assure completion of the Infrastructure Project by furnishing the Recipient with Performance and Payment Bonds, or a Letter of Credit, which shall remain in effect during the entire term of the Construction Contract(s), and which shall be in a form and from an issuer which is acceptable to the Department. The Performance Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the faithful performance of the Construction Contract(s) including a warranty period of at least twelve (12) months after completion. The Payment Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs included in the Construction Contract(s) to provide security for the payment of all persons performing labor on the Infrastructure Project and Housing Development and furnishing materials in connection with the Construction Contract. A Letter of Credit shall be in an amount equal to at least twenty percent (20%) of the approved construction costs included in the Construction Contract(s), in the form of an unconditional irrevocable, stand-by letter of credit. The Department shall be named as an additional obligee in the Bonds or an additional beneficiary under the Letter of Credit.

#### **26. Prevailing Wages**

Pursuant to Section 109(h)(5) of the Guidelines, for the purposes of the State Prevailing Wage Law (Labor Code Sections 1720-1781), a grant under the Program shall be considered public funding for the construction, rehabilitation, demolition, relocation, preservation, or other physical improvement of the Infrastructure Project subject to the provisions of the State Prevailing Wage Law. Program funding of an Infrastructure Project shall not necessarily, in and of itself, be considered public

## EXHIBIT C

funding of a Housing Development unless such funding is otherwise considered public funding under the State Prevailing Wage Law. It is not the intent of the Department to subject Housing Developments to the State Prevailing Wage Law by reason of Program funding of the Infrastructure Project in those circumstances where such public funding would not otherwise make the Housing Developments subject to the State Prevailing Wage Law. Although the use of Program funds does not require compliance with federal Davis-Bacon wages, other funding sources may require compliance with federal Davis-Bacon wages. The Recipient shall prepare a plan for compliance with this section, which plan shall be subject to the review and approval of the Department.

### **27. Construction Phase Information**

If requested by the Department, the Recipient shall provide the Department:

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

**EXHIBIT C**

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

**28. Signage**

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

**INFRASTRUCTURE PROJECT/HOUSING DEVELOPMENT NAME**

**THIS PROJECT HAS BEEN MADE POSSIBLE  
BY FINANCING FROM VOTER-APPROVED**

**PROPOSITION 1C  
TRANSIT-ORIENTED DEVELOPMENT HOUSING PROGRAM**

**THROUGH THE CALIFORNIA DEPARTMENT  
OF HOUSING AND COMMUNITY DEVELOPMENT**

- B. The sign shall be maintained in a prominent location visible and legible to the public through construction completion. If the job sign includes the acknowledgment and/or logo of one or more other public lenders or grantors, the Department acknowledgement and logo shall also be displayed in a similar size and layout. A copy of the Department logo can be obtained by contacting the Department Contract Manager.
- C. Upon installation of the sign, the Recipient shall submit a digital photograph thereof to the Department. The Recipient will also provide the Department, upon its request, with copies of any photographs that may be taken of the Infrastructure Project and the Housing Development by or on behalf of the Recipient or its architect. The Recipient will provide an acceptable written consent and release agreement authorizing use of said photographs, all at no expense to the Department.

## EXHIBIT C

### **INSPECTION OF GRANT ACTIVITIES**

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

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

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

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

## EXHIBIT C

the Recipient, the contractor, the construction lender, the architect, the structural engineer, the locality or anyone else of any obligation to inspect the Infrastructure Project and the Housing Development.

### 31. **Audit/Retention and Inspection**

- A. The Department, its representatives or employees, or its delegatee shall have the right to review, obtain, and copy all records pertaining to performance of the Agreement. Recipient shall provide the Department or its delegatee with any relevant information requested and shall permit the Department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material. Recipient further agrees to maintain such records for a minimum period of four (4) years after final payment under the Agreement, unless a longer period of records retention is stipulated.
- B. Payment for any cost which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee by the Recipient.
- C. At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Infrastructure Project or the Housing Development. At the Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.
- D. The audit shall be performed by a qualified State, Department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
- E. If there are audit findings, the Recipient shall submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Recipient in writing. If the Department is not in agreement, the Recipient will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.
- F. If so directed by the Department upon termination of this Agreement, the Recipient shall cause all records, accounts, documentation and all other

## EXHIBIT C

materials relevant to this Agreement to be delivered to the Department as depository.

### **COMPLETION OF CONSTRUCTION**

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

The Recipient shall provide a report, in a form acceptable to the Department, summarizing the actions taken and identifying all recipients of relocation assistance and benefits, and the amounts paid, and benefits provided, to or on behalf of each recipient.

#### **33. Architect Certification**

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

#### **34. Cost Certification**

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

#### **35. Recorded Notice of Completion**

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

## EXHIBIT C

### 36. “As-built” Plans and Specifications

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

## HOUSING DEVELOPMENT REQUIREMENTS

### 37. Confirmation of Permitted Housing Units

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

## REPORTING REQUIREMENTS

### 38. Reports on Infrastructure Project

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

### 39. Reports on Housing Development

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

### 40. Updated Information

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

## EXHIBIT C

### 41. Monitoring Requirements

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

## REPAYMENT OF GRANT FUNDS

### 42. Breach of this Agreement

In the event of a breach or violation by the Recipient of any of the provisions of this Agreement, including without limitation, the times for commencement and completion of the construction of the Housing Development set forth in Paragraph 1.B. of this Exhibit C, the Department may give written notice to the Recipient to cure the breach or violation within a period of not less than thirty (30) days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default of the Agreement and may seek remedies for the default, including the following:

- A. The Department may terminate this Agreement and demand repayment of the Program funds to the extent that work for costs to be paid by Program funds as provided in Exhibit B remains unperformed or uncompleted. Recipient shall be liable for all costs to complete all such uncompleted or unperformed work.
- B. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Infrastructure Project in accordance with Program requirements.
- C. The Department may seek such other remedies as may be available under this Agreement or any law.
- D. This Agreement may be canceled by the Department under any of the following conditions:
  - 1) An uncured breach or violation by Recipient of this Agreement or the Disbursement Agreement.

### EXHIBIT C

- 2) The objectives and requirements of the Program cannot be met by continuing the commitment or this Standard Agreement;
- 3) Construction of the Infrastructure Project or Housing Development cannot proceed in a timely fashion in accordance with the Performance Milestones in Exhibit A of this Agreement;
- 4) Funding or disbursement conditions have not been or cannot be fulfilled within required time periods.

#### **43. Repayment of Grant Funds for Failure to Obtain Land Use Approvals**

Recipient shall repay disbursed Program Grant funds to the Department where, pursuant to §105(g)(1) of the Guidelines, all necessary and discretionary public land use approvals were not received for the Housing Development within five (5) years of the date of the Program award.

**EXHIBIT D**

**STATE OF CALIFORNIA**

**GENERAL TERMS AND CONDITIONS – GTC 610**

**1. Approval**

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

**2. Amendment**

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

**3. Assignment**

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

**4. Audit**

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

**5. Indemnification**

Recipient agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person,

## EXHIBIT D

firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Recipient in the performance of this Agreement.

### 6. **Disputes**

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

### 7. **Termination For Cause**

The State may terminate this Agreement and be relieved of any payments should the Recipient fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Recipient under this Agreement and the balance, if any, shall be paid to the Recipient upon demand.

### 8. **Independent Contractor**

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

### 9. **Recycling Certification**

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

### 10. **Non-Discrimination Clause**

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability,

## EXHIBIT D

medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Recipient and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Recipient and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

### 11. **Certification Clauses**

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

### 12. **Timeliness**

Time is of the essence in this Agreement.

### 13. **Compensation**

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

### 14. **Governing Law**

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

### 15. **Antitrust Claims**

## EXHIBIT D

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

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

## EXHIBIT D

thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

### 16. **Child Support Compliance Act**

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

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

### 17. **Unenforceable Provision**

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

### 18. **Priority Hiring Considerations**

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

### 19. **Small Business Participation And DVBE Participation Reporting Requirements**

- A. If for this Contract Recipient made a commitment to achieve small business participation, then Recipient must within sixty (60) days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the

## EXHIBIT D

actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

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

### 20. Loss Leader

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

**EXHIBIT E**

**SPECIAL TERMS AND CONDITIONS**

**Transit Oriented Development Grant - Infrastructure**

Notwithstanding anything to the contrary set forth in the Standard Agreement and the Disbursement Agreement, the following Special Terms and Conditions shall apply:

1. The Department acknowledges and agrees that Lot 7a1 ("Lot 7a1") and Lot 7b1 ("Lot 7b1") as described in Exhibit A, Section 3B of the Standard Agreement (collectively, the "Property") were previously owned by S. Thomas Enterprises of Sacramento, LLC ("Thomas"). The acquisition of the Property by Thomas was financed with a loan (the "Loan") from IA Sacramento Holdings, L.L.C., a Delaware limited liability company ("IA"). IA as secured lender succeeded in fee title interest to the Property from Thomas as a result of its foreclosure on the Loan on October 22, 2010, and in connection therewith, IA acquired the rights and interests to the TOD Award in the amount of \$10,865,000 (the "TOD Award") that is the subject of this Standard Agreement and the Disbursement Agreement.
2. The Department acknowledges and agrees that Chelsea Investment Corporation or an affiliate of Chelsea Investment Corporation (collectively, "Chelsea") has acquired site control from IA with respect to Lot 7a1 and McMillin Companies or an affiliate of McMillin Companies (collectively, "McMillin") has acquired site control from IA with respect to Lot 7b1. The acquisition of Lot 7a1 and Lot 7b1 by Chelsea and McMillin, respectively, remain subject to the satisfaction of each party's respective due diligence review (including, without limitation, financial feasibility, title, survey and environmental review). During the due diligence review period, each of Chelsea and McMillin will complete such inspections, reviews and studies as each party shall, in its sole discretion, deem necessary or advisable to confirm the feasibility of construction of the Infrastructure Project as described in Exhibit A, Section 3A of the Standard Agreement, the one hundred and thirty nine (139) affordable units (the "Affordable Units") on Lot 7a1 and the one hundred and twelve (112) market rate units (the "Market Rate Units" and together with the Affordable Units, the "Housing Development") on Lot 7b1 as described in Exhibit A, Section 3B of the Standard Agreement. The Infrastructure Project, the Affordable Units and the Market Rate Units are collectively referred to herein as the "Project". Chelsea will investigate the feasibility of the Affordable Units in conjunction with the Infrastructure Project and McMillin will investigate the feasibility of the Market Rate Units in conjunction with the Infrastructure Project. The parties will not be responsible for each other's obligations. However, Chelsea's decision to close on Lot 7a1 may be dependent on McMillin's decision to close on Lot 7b1 and McMillin's decision to close on Lot 7b1 may be dependent on Chelsea's decision to close on Lot 7a1. Chelsea and McMillin

**EXHIBIT E**

may have mutual agreements between each other ensuring the necessary performance to make the Project successful.

3. In order to facilitate the development of the Infrastructure Project and the Housing Development, which is in the best interest of the public, the Department acknowledges and agrees that the Department shall approve the assignment and assumption of the TOD Award by the Recipient to Chelsea and McMillin upon Chelsea and McMillin's satisfaction of their respective due diligence review (including, without limitation, financial feasibility, title, survey and environmental review) in their sole and absolute discretion and their decisions to close on Lot 7a1 and Lot 7b1 respectively.
4. The Department specifically acknowledges and agrees to the following:
  - a. Any covenants, representations, obligations and conditions required of Recipient or its assignees shall be subject to Recipient's, Chelsea's and McMillin's satisfaction of their respective due diligence review (including, without limitation, financial feasibility, title, survey and environmental review) in their respective sole and absolute discretion and after an assignment and assumption agreement by and among the Department, Recipient, Chelsea and McMillin has been signed;
  - b. Unless and until an assignment and assumption agreement of the TOD Award is entered into by and among the Department, the Recipient, Chelsea and McMillin, in the event that there is any environmental issues relating to the Property, the Recipient, Chelsea, and McMillin shall not be responsible for any environmental clean up or remediation action. The Department shall look solely to IA as current holder of fee title interest for any environmental clean up or remediation action relating to the Property.
  - c. The current disbursement deadline of February 1, 2013 under the Standard Agreement and the Disbursement Agreement shall be extended to February 1, 2016. Any reference to commencement date and completion date in the Standard Agreement and Disbursement Agreement shall be extended accordingly.
  - d. The termination date of the Standard Agreement shall be extended to June 30, 2025.
5. Upon satisfaction by Chelsea and McMillin of their respective due diligence review (including, without limitation, financial feasibility, title, survey and environmental

**EXHIBIT E**

review) in their sole discretion and their decision to proceed with the closing of Lot 7a1 and Lot 7b1 respectively, the Department shall:

- a. Enter into an assignment and assumption agreement of the TOD award with the Recipient, Chelsea and McMillin;
  - b. Confer with Chelsea and McMillin and amend the Performance Milestone set forth in Exhibit A of the Standard Agreement; and
  - c. Confer with Chelsea and McMillin and amend the Project Sources and Uses set forth in Exhibit B of the Standard Agreement.
6. During Recipient, Chelsea and McMillin's due diligence review process, each party shall report to the Department from time to time (but not less than once a month) regarding the progress of such party's diligence activities.
  7. Recipient and its assignees shall not request the disbursement of any funds hereunder until Recipient and its assignees and the Department have executed the assignment and assumption agreement relating to the TOD Award.
  8. The parties hereto acknowledge and agree that unless and until the Department, Recipient, Chelsea and McMillin have entered into an assignment and assumption agreement of the TOD Award, neither Chelsea nor McMillin shall have any responsibility or liability under the Standard Agreement or the Disbursement Agreement.
  9. In the event that the Department, Recipient, Chelsea and McMillin enters into an assignment and assumption agreement of the TOD Award, the Department's rights and interests under the Standard Agreement and Disbursement Agreement shall be subordinated to the rights and interests of Chelsea and McMillin's construction loan and permanent lenders. The Department shall enter into a subordination agreement with such lenders.
  10. In the event of any conflicts between this Exhibit E, and the terms of the Standard Agreement and the Disbursement, the terms of this Exhibit E shall control.

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

This DISBURSEMENT AGREEMENT (the “Agreement”) is dated for reference purposes only as of \_\_\_\_\_, 2009, and is made by and among the 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 09-TOD-5913, entered into by the Recipient and the Department dated [month & date], 2009 (the “Standard Agreement”). The Department has conditionally agreed to provide the grant to the Recipient in an amount not to exceed Ten Million Eight Hundred-Sixty five Thousand AND 00/100 Dollars (\$10,865,000.00) (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:

Department's Address:

31. Amendments and Additional Agreements. This Agreement shall not be altered or amended except in writing executed by all parties. The Recipient agrees that any other agreements entered into by the Recipient relating to the performance of this Agreement shall be subject to the written approval of the Department.
32. Books and Records. Recipient shall maintain complete books of accounts and other records for the Project and for the use of the Program Funds; including, but not limited to, records of preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the Contractor and each subcontractor; and the same shall be available for inspection and copying by the Department upon reasonable notice to Recipient.
33. No Third Parties Benefited. No person other than the Department and Recipient and their permitted successors and assigns shall have any right of action under any of the Grant Documents.
34. Authority to File Notices. At any time subsequent to the funding of the Program Funds, Recipient irrevocably appoints and authorizes the Department, as Recipient's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's or Recipient's name, any notices, instruments or documents that the Department deems appropriate to protect the Department's interest under any of the Grant Documents.
35. Actions. At any time subsequent to the funding of the Program Funds, the Department may commence, appear in or defend any action or proceeding purporting to affect the Property, the Infrastructure Project, the Housing Development or the Grant Documents, or the rights, duties or liabilities of Recipient or the Department under the Grant Documents. In exercising this right, the Department may incur or incur and pay reasonable costs and expenses including, without limit, attorneys' fees and court costs and Recipient agrees to pay all such expenses so incurred and reimburse the Department for any expenses so paid.
36. Relationship of Parties. The relationship of Recipient and the Department under the Grant Documents is, and shall at all times remain, solely that of Recipient as the Grantee and Department as Grantor. The Department neither undertakes nor assumes any responsibility or duty to Recipient or

to any third party with respect to the Property, the Infrastructure Project or the Housing Development, except as expressly provided in the Grant Documents.

37. Assignment of Grant Documents. The Recipient shall not assign any interest, or any portion thereof, under the Grant Documents, or in any monies due or to become due thereunder, without the Department's prior written consent. Any such assignment made without the Department's consent shall be void. Recipient recognizes that this is not a commercial loan and that the Department would not make the grant except in reliance on Recipient's expertise and reputation. In this instance, the work to be funded has not been performed at the time of grant approval and the Department is relying on Recipient's expertise and prior experience to construct and develop the Infrastructure Project and Housing Development in accordance with the terms of the Grant Documents.
38. Restrictions on Transfer of the Project and Interest in Recipient. Recipient shall not assign, sell, transfer or convey any interest held by the Recipient in the Infrastructure Project or the Housing Development, including, without limitation, any general partnership interest in the Recipient, except as provided for in this Agreement, without the Department's prior written consent. Recipient shall promptly notify the Department of such transfers and shall provide the Department with any documents respecting such transfer as the Department may reasonably request; provided however that Recipient, if Recipient is a limited partnership, may sell, assign, transfer or convey limited partnership interests without the prior approval of the Department.
39. Integrated Agreement. This Agreement is made for sole benefit and protection of the parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend any Department Grant Documents.
40. Termination of this Disbursement Agreement. This Agreement shall terminate four years after all of the Program Funds have been fully disbursed and expended by Recipient.

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

or any other arbitrary factor.

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

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

**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**

**TO BE PROVIDED BEFORE SIGNING**

DRAFT

## Exhibit “B” to Disbursement Agreement

### Scope of Work

The TOD award will partially finance development of streets and related utilities that will give tenants of the supported Housing Development access to and from area in addition to the construction of a central plaza that will provide a walking path to the Sacramento Valley Station.

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Exhibit "C" to Disbursement Agreement

**TOD INFRASTRUCTURE PROJECT DEVELOPMENT BUDGET**

**TOD PROJECT NAME:** The Railyards

**ESTIMATED TOD CAPITAL IMPROVEMENT PROJECT COSTS**

**COMPARATIVE BREAKDOWN OF DEVELOPMENT COSTS**

Submit contracts, bids, engineer's estimates or any other back-up evidencing accuracy of eligible TOD CIP costs

COSTS CATEGORY	DEVELOPMENT COSTS				TOTAL	TOD Original Application Budget	TOD Revised Budget (Standard Agreement)	TOD \$ Change from APP to Revised Budget	Draw Request #1	Initial Disbursement-HCD Allowed
	QUANTITY	UNIT TYPE	UNIT PRICE	AMOUNT						
<b>SITE ACQUISITION</b>										
TOTAL SITE ACQUISITION COSTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
<b>SITE PREPARATION</b>										
TOTAL SITE PREPARATION COSTS	\$0	\$0	\$0	\$2,200,000	\$2,200,000	\$624,346	\$2,200,000	\$1,575,654		
<b>UTILITIES</b>										
TOTAL UTILITIES COSTS	\$0	\$0	\$0	\$3,200,000	\$3,200,000	\$5,720,550	\$3,200,000	-\$2,520,550		
<b>SURFACE IMPROVEMENTS</b>										
TOTAL SURFACE IMPROVEMENTS COSTS	\$0	\$0	\$0	\$1,800,000	\$1,800,000	\$3,731,904	\$1,800,000	-\$1,931,904		
<b>LANDSCAPE AND AMENITIES</b>										
TOTAL LANDSCAPE AND AMENITIES COSTS	\$0	\$0	\$0	\$900,000	\$900,000	\$2,590,000	\$900,000	-\$1,690,000		
<b>CONSTRUCTION MANAGEMENT</b>										
TOTAL CONSTRUCTION MANAGEMENT COSTS	\$0	\$0	\$0	\$865,000	\$865,000	\$925,000	\$865,000	-\$60,000		
<b>ENVIRONMENTAL MITIGATION/REMEDIATION</b>										
TOTAL ENVIRONMENTAL COSTS	\$0	\$0	\$0	\$100,000	\$100,000	\$185,000	\$100,000	-\$85,000		
TOTAL MITIGATION/REMEDIATION COSTS	\$0	\$0	\$0	\$200,000	\$200,000	\$0	\$200,000	\$200,000		
<b>PARKING</b>										
TOTAL PARKING COSTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
<b>TRANSIT</b>										
TOTAL TRANSIT COSTS	\$0	\$0	\$0	\$0	\$0	\$97,200	\$0	-\$97,200		
<b>IMPACT FEES</b>										
TOTAL IMPACT FEES COSTS	\$0	\$0	\$0	\$100,000	\$100,000	\$814,000	\$100,000	-\$714,000		
<b>SOFT COSTS RELATED TO ELIGIBLE COSTS</b>										
TOTAL SOFT COSTS RELATED TO ELIGIBLE COSTS	\$0	\$0	\$0	\$1,500,000	\$1,500,000	\$2,312,000	\$1,500,000	-\$812,000		
<b>OTHER CAPITAL ASSET COSTS</b>										
TOTAL OTHER CAPITAL ASSET COSTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
<b>TOTAL PROJECT COSTS</b>				<b>\$10,865,000</b>	<b>\$17,000,000</b>	<b>\$10,865,000</b>	<b>\$10,865,000</b>	<b>-\$6,135,000</b>		
Note: Total amount in TOD Grant Column must equal amount requested in application										
<b>COST NARRATIVE: USE THE SPACE BELOW TO EXPLAIN ANY EXTRAORDINARY SITE CONDITIONS WHICH RESULT IN DEVELOPMENT COSTS TO BE HIGHER THAN ACCEPTED INDUSTRY STANDARDS</b>										

TOD Grant - Disbursement Agreement

NOFA Date: 12/11/07

Page 28 of 38

Rev. Date: 08/05/09

Prep. Date: 6/13/13

Project Name: Railyards TOD Round 2

## Exhibit "D" to Disbursement Agreement

### Disbursement Schedule

Cost Category	Budget	Jul-13	Aug-13	Sept-13	Oct-13	Nov-13
Site Preparation	\$2,200,000					
Utility Costs	\$3,200,000					
Surface Improvement Costs	\$1,800,000					
Landscape and Amenities Costs	\$900,000					
Construction Management Costs	\$865,000					
Environmental Costs	\$100,000					
Mitigation/Remediation Costs	\$200,000					
Impact Fee Costs	\$100,000					
Soft Costs Related to Eligible Costs	\$1,500,000					
<b>Total Costs</b>	<b>\$10,865,000</b>					

Cost Category	Budget	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14
Site Preparation	\$2,200,000					
Utility Costs	\$3,200,000					
Surface Improvement Costs	\$1,800,000					
Landscape and Amenities Costs	\$900,000					
Construction Management Costs	\$865,000					
Environmental Costs	\$100,000					
Mitigation/Remediation Costs	\$200,000					
Impact Fee Costs	\$100,000					
Soft Costs Related to Eligible Costs	\$1,500,000					
<b>Total Costs</b>	<b>\$10,865,000</b>					

Cost Category	Budget	May-14	Jun-14	Jul-14	Aug-14	Sept-14
Site Preparation	\$2,200,000					
Utility Costs	\$3,200,000					
Surface Improvement Costs	\$1,800,000					
Landscape and Amenities Costs	\$900,000					
Construction Management Costs	\$865,000					
Environmental Costs	\$100,000					
Mitigation/Remediation Costs	\$200,000					
Impact Fee Costs	\$100,000					
Soft Costs Related to Eligible Costs	\$1,500,000					
<b>Total Costs</b>	<b>\$10,865,000</b>					

TOD Grant - Disbursement Agreement

NOFA Date: 12/11/07

Page 29 of 38

Rev. Date: 08/05/09

Prep. Date: 6/13/13

Project Name: Railyards TOD Round 2

## Exhibit "D" to Disbursement Agreement

### Disbursement Schedule

Cost Category	Budget	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15
Site Preparation	\$2,200,000					
Utility Costs	\$3,200,000					
Surface Improvement Costs	\$1,800,000					
Landscape and Amenities Costs	\$900,000					
Construction Management Costs	\$865,000					
Environmental Costs	\$100,000					
Mitigation/Remediation Costs	\$200,000					
Impact Fee Costs	\$100,000					
Soft Costs Related to Eligible Costs	\$1,500,000					
<b>Total Costs</b>	<b>\$10,865,000</b>					

Cost Category	Budget	Mar-15	Apr-15	May-15	Jun-15	Jul-15
Site Preparation	\$2,200,000					
Utility Costs	\$3,200,000					
Surface Improvement Costs	\$1,800,000					
Landscape and Amenities Costs	\$900,000					
Construction Management Costs	\$865,000					
Environmental Costs	\$100,000					
Mitigation/Remediation Costs	\$200,000					
Impact Fee Costs	\$100,000					
Soft Costs Related to Eligible Costs	\$1,500,000					
<b>Total Costs</b>	<b>\$10,865,000</b>					

Cost Category	Budget	Aug-15	Sept-15	Oct-15	Nov-15	Dec-15
Site Preparation	\$2,200,000					
Utility Costs	\$3,200,000					
Surface Improvement Costs	\$1,800,000					
Landscape and Amenities Costs	\$900,000					
Construction Management Costs	\$865,000					
Environmental Costs	\$100,000					
Mitigation/Remediation Costs	\$200,000					
Impact Fee Costs	\$100,000					
Soft Costs Related to Eligible Costs	\$1,500,000					
<b>Total Costs</b>	<b>\$10,865,000</b>					

## Exhibit "E" to Disbursement Agreement

### Insurance Requirements

These insurance requirements govern insurance coverage on Projects improved using infrastructure grant funding from the Department's 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) INDEMNIFICATION:

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

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

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

(b) INSURANCE

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

(c) CASUALTY INSURANCE

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

(d) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

- (1) In accordance with Labor Code Section 1860, the Contractor shall secure the payment of worker's compensation in accordance with Labor Code Section 3700.
- (2) In accordance with Labor Code Section 1861, the Contractor shall submit to the Department the following certification before performing the work:
  - (A) I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.
- (3) Contract execution constitutes certification submittal.
- (4) The Contractor shall provide Employer's Liability Insurance in amounts not less than:
  - (A) \$1,000,000 for each accident for bodily injury by accident
  - (B) \$1,000,000 policy limit for bodily injury by disease
  - (C) \$1,000,000 for each employee for bodily injury by disease
- (5) If there is an exposure of injury to the Contractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

(e) GENERAL LIABILITY INSURANCE

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

Limits/Additional Insureds," of these specifications shall apply to certified Small Business subcontractors for work performed on the project, regardless of tier. The provisions of Section 2(f)(1), "Liability Limits/Additional Insureds," shall be included in all subcontracts for all tiers.

(f) LIABILITY LIMITS/ADDITIONAL INSURED

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

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

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

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