

AGREEMENT NUMBER 07-TOD-4247
REGISTRATION NUMBER N/A

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

STATE AGENCY'S NAME
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CONTRACTOR'S NAME
City of San Leandro

2. The term of this Agreement is: Upon HCD approval through 6/30/2024

3. The maximum amount of this Agreement is: **\$10,320,000.00**

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

Exhibit A – Authority, Purpose and Scope of Work	7 page(s)
Exhibit B – Budget Detail and Payment Provisions	4 page(s)
Exhibit C – HCD General Terms and Conditions	17 page(s)
Exhibit D – State of California General Terms and Conditions	6 page(s)
Exhibit E – Special Terms and Conditions	1 page(s)
Exhibit F – Additional Provisions	0 page(s)
TOTAL NUMBER OF PAGES ATTACHED:	35 pages

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



CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) See Reverse		
BY (Authorized Signature)  See Reverse	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING See Reverse		
ADDRESS 835 E. 14th Street San Leandro, CA 94577-3767		
STATE OF CALIFORNIA		
AGENCY NAME Department of Housing and Community Development		<input checked="" type="checkbox"/> Exempt per: SCM 4.04.3 (DGS Memo Dated 6/12/81)
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Stacy Q. Hernandez, Contracts Manager, Budget and Contracts Branch		
ADDRESS 1800 Third Street, Room 350, Sacramento, CA 95811		

EXHIBIT A

AUTHORITY, PURPOSE AND SCOPE OF WORK

Transit-Oriented Development (TOD) Housing Program

Infrastructure Grant for Housing Developments

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 December 3, 2007 ("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 December 11, 2007. 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

EXHIBIT A

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

Phase 1 – BART Replacement Parking Lot

1. Design and engineering for the Phase 1 scope.
2. Impact fees including, but not limited to, City Building and Engineering fees and BART review fees. (IIG only)
3. Design and construction management fees.
4. Land acquisition.
5. Soil remediation.
6. Construction of a BART replacement parking lot for the majority or all of the BART replacement parking requirement. Work will include modification to BART's existing parking lot to accommodate the new parking area.
7. Street, sidewalk and utility improvements surrounding the parking lot including the relocation of overhead utility lines and a new traffic signal.

Phase 2 – Residential First Phase, Cornerstone Affordable Housing

1. Design and engineering for the Phase 2 scope.
2. Impact fees including, but not limited to, City Building and Engineering fees, school fees, water system capacity fees, sewer connection fees, and park fees. (IIG only)
3. The relocation of overhead utility lines along Carpenter Street to underground adjacent to the proposed development.
4. Street and sidewalk improvements including new sewer lines.
5. New structured parking garage for the residential development (one space per housing unit).
6. New structured parking for a small percentage of the BART replacement parking requirement.

Phase 3 – Residential Second Phase, Cornerstone West Affordable Housing

1. Design and engineering for the Phase 3 scope.
2. Impact fees including, but not limited to, City Building and Engineering fees, school fees, water system capacity fees, sewer connection fees, and park fees. (IIG only)
3. Soil remediation.
4. Street and sidewalk improvements including new sewer lines.
5. New structured parking garage for the residential development (one space per housing unit).

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and

- A. 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:

Location of Housing Development (APN, address, parcel map, specific plan or similar reference) City and County	Phase 1: Cornerstone at San Leandro Crossings (East BART Parking Lot) San Leandro, Alameda County 180 Units		
	Phase 2: Cornerstone West (Phase II) San Leandro Crossings 1333 Martinez Street San Leandro, Alameda County 30 Units		
Enter the number of units by bedroom size and income level.			
# of Bedrooms	# of Units	TOD Restricted	Income Limit (% of AMI)
<u>Phase 1 - Cornerstone</u>			
1	5	5	30%
1	26	26	50%
1	36	36	60%
1	8		Unrestricted
2	4	4	30%
2	20	20	50%
2	28	28	60%
2	2		Unrestricted
3	8	8	30%
3	31	31	50%
3	11	11	60%
3	1		Unrestricted
<u>Subtotal</u>	180	169	
<u>Phase II – Cornerstone West</u>			
1	4	4	30%
1	4	4	50%

EXHIBIT A

<u>2</u>	<u>6</u>	<u>6</u>	<u>30%</u>
<u>2</u>	6	6	<u>50%</u>
<u>3</u>	<u>5</u>	<u>5</u>	<u>30%</u>
<u>3</u>	4	4	<u>50%</u>
<u>3</u>	1		<u>Unrestricted</u>
Subtotal	30	29	
Total Project Units **	<u>210</u>	<u>198</u>	

*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 the 103(a)(4) of the Guidelines.

C. The Infrastructure Project is necessary for the development of the Housing Development or to facilitate connections between the Housing Development and the transit station. The Recipient is responsible for and shall ensure the completion of the Infrastructure Project and the completion and occupancy of the Housing Development in accordance with the criteria set forth above. The Department reserves the right to review and approve all Work to be performed by the Recipient, or contracted by the Recipient, in relation to this Agreement. Any substantial revision to the Work shall be submitted in writing for review and approval by the Department and shall require an amendment to this Agreement.

D. The Department, the Recipient and other parties as required by the Department shall enter into a Disbursement Agreement governing among other things the disbursement of Program funds as more particularly described in Exhibit B hereto.

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

A. Transit-Supportive Land Uses -- The Recipient's application was evaluated for rating points based on the existing and planned transit-supportive amenities, services and uses located within half-mile of the Qualifying Transit Station,

EXHIBIT A

pursuant to Section 108(d) of the Guidelines. Based on the points awarded to its application, Recipient assures the Department of the existence of the following amenities, services, and uses meeting the criteria of Section 108(d):

List of Transit- Supportive Amenities, Services, and Uses ("ASUs")	Status of ASUs (e.g., completed and in service or in construction stage.)	If not in service, anticipated completion date of ASUs
Community Center – San Leandro City Hall	Completed and in service	n/a
Hair Care – Top This Hair Salon	Completed and in service	n/a
Police – San Leandro Police	Completed and in service	n/a
Coffee Shop – Tina’s Deli Cafe	Completed and in service	n/a
Laundry – Russell Heath Cleaners	Completed and in service	n/a
Medical/Dental – East Bay Chiropractic Office	Completed and in service	n/a
Childcare – Montessori Schools	Completed and in service	n/a
Pharmacy – Long’s Drugs	Completed and in service	n/a
Bank – Bank Of America	Completed and in service	n/a
Medical/Dental – San Leandro Plaza Dental Office	Completed and in service	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
No more than 25% street blocks exceed 500 feet	Completed - No blocks exceed 500 feet	n/a
Paved ADA-compliant sidewalks	Improvements in design development	November 2014
Safe pedestrian crossings	Additional improvements in design development	November 2014
Lighted and overhead shelter at transit station	Completed and in service	n/a
Lighted corridor	Completed and in service	n/a

EXHIBIT A

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 Housing Development promotes economic efficiency and minimizes the development of new parking spaces, pursuant to Section 108(f) of the Guidelines. Based on the points awarded to its application, Recipient shall ensure the following attributes for motor vehicle parking serving the Housing Development:

List of Parking Attributes	Status of Attributes (e.g., completed and in service or in construction stage.)	If not in service, anticipated completion date of Attributes
Unbundled parking pricing	Design development	February 2017
Transit passes	Design development	February 2017
Shared parking	Design development	February 2017
Car sharing	Design development	February 2017
Maximum parking spaces	Design development	February 2017

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

5. Performance Milestones

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

6. State Contract Coordinator

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

Craig Morrow, Program Manager

TOD Grant – Infrastructure
NOFA Date: 12/11/07
Rev. Date: 2/16/10
Prep. Date: 6/15/2012

EXHIBIT A

TOD Housing Program
Division of Financial Assistance
Department of Housing and Community Development
P. O. Box 952054
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 San Leandro
Contact Name:	Tom Liao
Contact Phone No.:	510-577-6003

EXHIBIT A

PERFORMANCE MILESTONES

Performance Milestone	Infrastructure Project		Housing Development	
	BART Replacement Parking	Residential Components	Phase 1 Cornerstone	Phase 2 Cornerstone West
Executed binding agreement between the Recipient and developer of the proposed Housing Development detailing the terms and conditions of the Project development.	Jun-12	Jun-12	Jun-12	Jun-12
Site Control of Housing Development site(s) by proposed housing developer.	NA	NA	Jun-12	Jun-12
Completion of all necessary environmental clearances, including those required under CEQA and NEPA.	Sep-07	Sep-07	Sep-07	Sep-07
Obtaining all necessary and discretionary public land use approvals.	Sep-07	Sep-07	Sep-07 Site Plan Approval (Design Review) Jan-09	Sep-07 Site Plan Approval (Design Review) Jan-09
Obtaining all enforceable funding commitments for at least the first phase of the Housing Development supported by the infrastructure Project.	NA	NA	Oct-13	Oct-13
Obtaining all enforceable funding commitments for all construction period financing.	Jun-08	Jun-08	Oct-13	Oct-13
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.	Jun-08	Jun-08	Oct-13	Oct-13
Submission of Final Construction Drawings and Specifications to the appropriate local building department or permitting authority.	Apr-13	Aug-13	Aug-13	Aug-13
Commencement of construction	Jul-13	Oct-13	Oct-13	Oct-13
Construction complete and the filing of the Notice of Completion.	Oct-13	Feb-15	Feb-15	Dec-14
Program funds fully disbursed	Feb-15	Feb-15	Feb-15	Feb-15

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Project Sources and Uses

The preliminary projected 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 updated and modified by the Disbursement Agreement described below. The Recipient shall provide evidence and

EXHIBIT B

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, 2012. All undisbursed funds remaining as of June 30, 2012, shall be disencumbered. All invoices for payment must be submitted to the Department no later than February 1, 2012.
- B. This Agreement shall expire on June 30, 2016.

5. Method of Payment

- A. Payment shall be made as progress payments as set forth in the Disbursement Agreement. Recipient shall request payment for Work completed on forms provided by the Department and subject to such documentation as the Department may require.
- B. The Department shall not authorize payments unless it determines 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

EXHIBIT B INFRASTRUCTURE DEVELOPMENT BUDGET				
QIP/QIA/MPP DEVELOPMENT NAME:		SAN LEANDRO CROSSINGS		
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS		DEVELOPMENT COSTS BY FUNDING SOURCE		
	DEVELOPMENT COSTS	FUNDING SOURCES		
COSTS CATEGORY	TOTAL AMOUNT	TOD	Infill Grant Program	City of San Leandro
PROJECT ACTIVITY (Hard Cost)	\$ 17,232,211	\$ 8,979,031	\$ 6,189,180	\$ 2,064,000
SOFT COST AND OTHER PROJECT RELATED COSTS	\$ 6,863,029	\$ 1,340,969	\$ 5,522,060	\$ -
TOTAL PROJECTED CIP COSTS	\$ 24,095,240	\$ 10,320,000	\$ 11,711,240	\$ 2,064,000

TOD Grant – Infrastructure
NOFA Date: 12/11/07
Rev. Date: 2/16/10
Prep. Date: 6/15/2012

EXHIBIT C

HCD GENERAL TERMS AND CONDITIONS

GENERAL

1. Effective Date, Commencement of Work and Completion Dates

This Agreement is effective upon approval by the State which is the date stamped by the Department in the lower right hand corner of the coversheet of this Agreement. The Recipient agrees that 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.

2. Sufficiency of Funds and Termination

- 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.
- 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.

EXHIBIT C

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

EXHIBIT C

- 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 Environmental Site Assessment Report recommendations including remediation and/or mitigation work has been completed.
- C. Mitigation requirements required as a result of the Final Environmental Impact Report ("EIR" or Mitigated Negative Declaration if applicable and evidence satisfactory to the Department that all mitigation requirements have been satisfied.

EXHIBIT C

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

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

11. Litigation

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.

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

EXHIBIT C

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.

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.

EXHIBIT C

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 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.

EXHIBIT C

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.

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

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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 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

EXHIBIT C

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

28. **Signage**

Recipient shall place signs on the construction site for the Infrastructure Project and Housing 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:

San Leandro Crossings

**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**

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

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and layout. A copy of the Department logo can be obtained by contacting the Department Contract Manager.

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

INSPECTION OF GRANT ACTIVITIES

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)

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to correct the non-conforming circumstances is/are corrected by the Recipient and approved by the Department.

- C. The Department reserves the right to withhold payment for any costs found not to conform to applicable Program requirements until such actions have been taken to correct the non-conforming circumstances and such corrective actions have been approved by the Department.
- D. The Department shall have no affirmative duty to inspect the Infrastructure Project or the Housing Development and shall incur no liability for failing to do so. Once having undertaken any inspection, neither the Department, nor any representative of the Department shall incur any liability for failing to make any such inspection properly, or for failing to complete any such inspection. The fact that such inspection may or may not have occurred shall not relieve the Recipient, the contractor, the construction lender, the architect, the structural engineer, the locality or anyone else of any obligation to inspect the Infrastructure Project and 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

EXHIBIT C

Department's request, the Recipient shall provide, at its own expense, a financial audit prepared by a certified public accountant.

- D. The audit shall be performed by a qualified State, Department, local or independent auditor. The Agreement for audit shall include a clause which permits access by the Department to the independent auditor's working papers.
- E. If there are audit findings, the Recipient shall submit a detailed response to the Department for each audit finding. The Department will review the response and, if it agrees with the response, the audit process ends and the Department will notify the Recipient in writing. If the Department is not in agreement, the Recipient will be contacted in writing and will be informed as to the corrective actions required to cure any audit deficiencies. This action could include the repayment of disallowed costs or other remediation.
- F. If so directed by the Department upon termination of this Agreement, the Recipient shall cause all records, accounts, documentation and all other materials relevant to this Agreement to be delivered to the Department as depository.

COMPLETION OF CONSTRUCTION

32. Relocation Plan Implementation Report

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

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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.

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.

EXHIBIT C

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.

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.

EXHIBIT C

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, 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.
 - 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.

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43. Repayment of Grant Funds for Failure to Develop Housing

Pursuant to §105(f)(1) of the Guidelines, the grant shall be repaid to the Department if all necessary and discretionary public land use approvals have not been 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

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

1. General.

- a. The Disbursement Agreement described in Exhibit B, Paragraph 6, shall include a breakdown of the various phases constituting both the Infrastructure Project and the Housing Development. The Disbursement Agreement shall designate which of the Program requirements shall apply on a phase by phase basis and which requirements shall apply only to particular phases for which Program Funds are being disbursed.
- b. The fee interest or ground leasehold interest in the lands on which the Housing Developments will be constructed shall be conveyed to separate limited partnerships which shall be the developers of the Housing Developments (collectively the "Housing Development Partnerships" and individually the "Housing Development Partnership"). The General Partner of each Housing Development Partnership shall be a subsidiary of, and controlled by the Developer. Removal and replacement of the General Partner in the Housing Development Partnership shall require the consent of the Department which consent shall not be unreasonably withheld. Limited partner interests may be transferred without such consent. Such transfer shall not release Recipient for purposes of this Agreement.
- c. The Recipient shall ensure that Bridge Housing Corporation (the "Developer") provides evidence, to the satisfaction of the Department, that Developer has executed a Purchase and Sales Agreement with Chang Income Property Partnership L.P., San Leandro Land Series R11 by September 1, 2012. The Department shall not be obligated to either make any disbursement of Program Funds or be obligated to take any other actions under this Standard Agreement, or any other Grant Documents, unless the Recipient or the Developer has provided evidence, satisfactory to the Department, that Developer has fee title or leasehold interest in the Infrastructure Project and Housing Development.

2. Changes to Exhibit B.

- a. Paragraph 1, is amended to add at the end: "Recipient may reallocate funds between the line items in the Project Budget incorporated in the

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Disbursement Agreement by up to a total aggregate amount of 10% of any line item.”

- b. Paragraph 3, is amended by adding to the end of the last sentence: “...for consistency with the requirements of the Program and the Grant Documents.”
- c. Paragraph 4 A and B – Completion Dates.

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

- A. Program funds must be disbursed no later than February 1, 2015. All undisbursed funds remaining as of February 1, 2015, will no longer be available for this Project. All invoices for payment must be submitted to the Department no later than December 1, 2014. Notwithstanding the disbursement deadline set forth in this Paragraph, the Recipient shall comply with all the disbursement extension requirements set forth in the Guidelines.
 - B. This Agreement shall expire on June 30, 2024.
- d. The requirements of Paragraph 5.C., shall be subject to the phasing plan and schedules set forth in the Disbursement Agreement.
3. Changes to Exhibit C.
- a. Paragraph 4.C. is amended to add at the end: “The Department may waive the requirement for recordation of covenants against the affordable Housing Developments if a local public entity has recorded regulatory agreement encumbering the real properties and the terms of the regulatory agreement satisfies the requirements of this paragraph. The Department may allow the recordation of covenants against the Housing Development on the BART property to have a limited duration and subject to BRIDGE, its assignee or the Housing Development Partnership, acquiring ownership or a long term ground leasehold, as applicable.”
 - b. The first sentence of Paragraph 9 is amended by adding at the beginning: “For each phase as described in the Disbursement Agreement...”
 - c. Paragraph 9.B. is amended by adding at the end: “...or will be completed by the completion of construction of the phase.”

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- d. Paragraph 9.C. is amended by adding at the end: "...or will be satisfied by the completion of construction of the phase."
- e. Paragraph 14 is amended to add at the end: "The Department's right to terminate the commitment of Program Funds under this Paragraph 14 shall terminate after the occurrence of all the following: the commencement of hard construction, as evidenced by a Notice to Proceed, of the first Phase of the Infrastructure Project as described in the Scope of Work and the Disbursement Agreement; and the initial disbursement of Program Funds pursuant to the Grant Documents."
- f. Paragraph 23 is amended to add at the end: "Approval by the public works department as part of the land use planning approvals, as opposed to permit approvals, is sufficient to satisfy the requirements of this Paragraph 23."
- g. The first sentence of Paragraph 27 is amended to read: "If requested by the Department for good cause, the Recipient shall provide to the Department the following:"
- h. Paragraph 29 is amended to add at the end: "The Department's right to cancel the funding commitment and terminate this Agreement based on its inspection of the Infrastructure Project Site pursuant to this Paragraph 29 shall not apply after the initial disbursement of Program Funds."
- i. Paragraph 37 is amended to add at the end: "The requirement with respect to entitlements shall not include design review or the issuance of a building permit. The requirement with respect to financing commitments shall be satisfied by financing commitments for the first phase of the Housing Development other than tax exempt bond allocation and commitments of bond purchaser or credit enhancer and tax credit allocation and commitment of tax credit purchaser."
- j. Paragraph 43 is amended to add at the end:

Recipient applied for the Program award that is the basis for this Agreement under section 108(k) of the TOD Housing Program Guidelines dated December 3, 2007 ("Guidelines"). That section requires the development of 200 or more residential units for which points were awarded as part of Recipient's application. In the event that, at the end of the time periods for the issuance of building permits and occupancy of residential units set forth in this Agreement and the Guidelines, the total number of residential units, as determined by the Department, that meet

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the requirements of this Agreement and the Guidelines does not meet or exceed 200, the Recipient will be no longer eligible for the award of the Program grant. In such event, the Recipient shall repay to the Department one hundred percent (100%) of the total outstanding, disbursed amount of the Program grant. This obligation shall exist notwithstanding any other obligation, including any repayment obligation, contained in this Agreement, the Disbursement Agreement or the Guidelines.