

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

This DISBURSEMENT AGREEMENT (the "Agreement") is dated for reference purposes only as of _____, 2012, and is made by and among the City of San Leandro, the City of San Leandro, as Successor Agency to the Redevelopment Agency of the City of San Leandro (collectively, the "Recipient"), BRIDGE Housing Corporation (the "Developer") 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 07-TOD-4247, entered into by the Recipient and the Department dated ~~month & date~~, 2012 (the "Standard Agreement"). The Department has conditionally agreed to provide the grant to the Recipient in an amount not to exceed Ten Million, Three Hundred Twenty Thousand AND 00/100 Dollars (\$10,320,000.00) (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 and Developer 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. The parties acknowledge that the terms "Recipient" or "Developer" in the Grant Documents includes all parties executing the Grant Documents, and that the various phases of the Infrastructure Project and the Housing Development will be developed by one or more of the parties comprising the Recipient, Developer or their permitted assignees. The parties who are responsible for construction of the Infrastructure Project and the Housing Development are identified on Exhibit B, attached hereto and made a part hereof. Any obligation of Recipient under the Grant Documents shall be deemed satisfied if performed by Developer. Each phase described on Exhibit B is referred to herein as a "Phase".

3. Representations and Warranties. Recipient and Developer represent and warrant to the Department as follows:
 - a. Organization. Recipient and Developer 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 and Developer 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 and Developer each 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 and Developer. All actions required under Recipient's and Developer'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 Developer or any provision of the organizational documents of the Recipient or Developer, will conflict with or constitute a breach of or a default under any agreement to which Recipient or Developer is a party, or will result in the creation or imposition of any lien upon the Property of Recipient or Developer, 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, Developer, 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, Developer, 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 and Developer are 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 or Developer, threatened against or affecting Recipient, Developer, 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 or Developer, materially affect Recipient's or Developer's ability to acquire, construct or develop the Infrastructure Project or the Housing Development.

- g. Title to Property. Recipient, Developer or Developer's affiliate 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 or Developer and other financial data and information if requested by the Department and furnished by Recipient or Developer, 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 Developer or to the Recipient or Developer 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 Developer 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.

- I. Hazardous Materials. Recipient or Developer 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.

The representations and warranties set forth in subdivisions 3(a)-(e), (f), (h), (j) and (k) above are made by the Developer and the Recipient as to itself only.

4. Sources and Uses. The Recipient or Developer 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 and Developer agree 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 and Developer agree 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 and Developer. "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, the Recipient and the Developer 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 or Developer shall provide relocation payments and assistance in accordance with the applicable Federal and State requirements.

The provisions of Sections 8 through 13 below, inclusive, shall apply on a Phase by Phase basis.

8. Contractors and Subcontractor. For the performance of all construction work on the Infrastructure Project, Developer 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 and Developer hereby certifies that the Contractor is in good standing with the California State Contractors' License Board. The Developer 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 Developer 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"). Developer shall not terminate or substantially amend the Construction Contract with respect to the Infrastructure Project without the prior written approval of the Department. Developer 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. Developer shall be solely responsible for all aspects of Developer'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 or Developer 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 or Developer 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 or Developer's other funding, Recipient or Developer 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 either Recipient or Developer 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 or Developer 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 or Developer 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 or Developer 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 or Developer has and will continue to maintain site control over the Infrastructure Project and Housing Development. Recipient or Developer has provided to the Department evidence demonstrating that Recipient or Developer 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 or Developer 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 and Developer has executed and provided to the Department a Certificate of Identity of Interest.
- d. Recipient or Developer has obtained all necessary insurance policies and endorsements as described in Exhibit E of this Agreement.

- e. For each Phase for which Program Funds are being requested, the Recipient or Developer shall provide security to assure completion of the Project by furnishing the Department and other construction lenders with Performance and Payment Bonds, or a Letter of Credit, which shall remain in effect during the entire term of construction of the Scope of Work, and which shall be in a form and from an issuer which is acceptable to the construction lenders and Department. The Performance Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs to provide security for the faithful performance of the Standard Agreement including a warranty period of at least 12 months after completion. The Payment Bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs to provide security for the payment of all persons performing labor on the Project and furnishing materials in connection with the Project. If a Letter of Credit is used, it shall be in an amount equal to at least 20% of the approved construction costs. The Department shall be named as an additional obligee in the Bonds or beneficiary under a Letter of Credit.
- f. Recipient or Developer 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 Recipient or Developer 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 or Developer 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 or Developer has obtained all applicable CEQA and NEPA clearances and submitted evidence thereof as required by the Department.
- k. Recipient or Developer has provided to the Department a Title Report acceptable to the Department.
- l. Recipient or Developer has executed and recorded a written covenant for the development of affordable housing with the Department as required in the Standard Agreement.
- m. Recipient or Developer 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 or Developer 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 or Developer has completed or complied with all events or conditions in the Disbursement Schedule prior to the submission of the Draw Request.
- q. Recipient or Developer 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. For the release of retention for the Housing Development, submission to the Department of a Certificate of Occupancy for the Housing Development issued by the local government having jurisdiction over the Housing Development, or any equivalent thereto acceptable to the Department.
- d. Receipt by the Department, if so requested, of a development cost audit for the Infrastructure Project satisfactory to the Department.
- e. Issuance of a certificate or certificates, each in form and substance satisfactory to the Department, executed by Recipient or applicable Developer 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 or Developer 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 or Developer 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 or Developer'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 or Developer'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 reasonable discretion of the Department, such causes being collectively referred to herein as "Force Majeure"); (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 unless caused by Force Majeure; 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 or Developer'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 or Developer's default under any ground lease or sale of the Housing Development, or Recipient's or Department'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. Any cure period for a nonmonetary default shall include such time as may be reasonably required to effect cure so long as Recipient commences cure within the specified period and diligently and continuously proceeds to complete cure, not to exceed 90 days.

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. Intentionally Omitted
- 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. The provisions of this Sub-Paragraph 22.d. shall apply on a Phase-by-Phase basis to the Phase in which the breach, violation or default occurs.

- 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 phase of the Infrastructure Project for which Program Funds have been disbursed, 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 and Developer agree 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 or Developer'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 and Developer'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 and Developer 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 and Developer to indemnify and hold harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Recipient and Developer 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 and Developer'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 and Developer's duty to

indemnify the Department shall survive the term of this Agreement or the cancellation of the Standard Agreement.

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

Recipient's Address:

City of San Leandro
835 East 14th St.
San Leandro, CA 94577

Department's Address:

Eugene Lee, Chief
Transit Oriented Development Housing Program
Department of Financial Assistance
Department of Housing and Community Development
P.O. Box 952054
Sacramento, CA 94252-2954

Developer's Address:

BRIDGE Housing Corporation
345 Spear Street, Suite 700
San Francisco, California 94105
Attn: Cynthia Parker
Rebecca Hlebasko

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 and/or Developer, as the case may be, 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 and/or Developer. The requirements of this Section 32 shall be applied on a Phase by Phase basis and the books and records for each Phase shall be prepared by the Recipient or Developer who is the developer of such Phase.
33. No Third Parties Benefited. No person other than the Department, Recipient, Developer 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 and Developer each irrevocably appoints and authorizes the Department, as Recipient's and Developer's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's, Recipient's, or Developer'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 and Developer agree 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 or the Developer 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 and Developer recognize 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 or Developer shall not assign, sell, transfer or convey any interest held by the Recipient or Developer in the Infrastructure Project or the Housing Development, including, without limitation, any general partnership interest in the Developer, except as provided for in this Agreement, without the Department's prior written consent. Recipient or Developer 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 Developer, if Developer 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 and Developer 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 B-1: Project Phasing
- Exhibit C: Sources and Uses of Funds – Infrastructure Project
- Exhibit C-1: Sources and Uses of Funds – Housing Development
- Exhibit D: Disbursement Schedule
- Exhibit E: Insurance Requirements
- Exhibit F: Special Conditions

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

RECIPIENT:

City of San Leandro

By: _____
Its: _____

City of San Leandro, as Successor Agency to the Redevelopment Agency of the
City of San Leandro

By: _____
Its:

DEVELOPER:

BRIDGE Housing Corporation,
a California nonprofit public benefit corporation

By: _____
Cynthia A. Parker
President

DEPARTMENT:

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

By: _____
Eugene Lee
Chief
Transit-Oriented Development &
Infill Infrastructure Grant Programs

Exhibit "A" to Disbursement Agreement

Legal Description

Cornerstone 180 unit parcel:

Real property in the City of SAN LEANDRO, County of ALAMEDA, State of CALIFORNIA, described as follows:

PARCEL ONE;

LOTS A, B, C, D, E, F, G, H, I, J, K, L, M AND N, IN BLOCK 30, AS SHOWN ON THE "MAP OF THE TOWN OF SAN LEANDRO, COUNTY SEAT OF ALAMEDA COUNTY", FILED FEBRUARY 27, 1855 AND RECORDED JUNE 14, 1870 IN BOOK 1 OF MAPS, PAGE 19 AND RECORDED NOVEMBER 24, 1873 IN BOOK 2 OF MAPS, PAGE 43 OF OFFICIAL RECORDS.

PARCEL TWO:

WEST JOAQUIN AVENUE, FORMERLY HEPBURN STREET, LYING BETWEEN THE EXTENSIONS SOUTHEASTERLY OF THE NORTHEASTERN LINE OF SAN LEANDRO BOULEVARD, FORMERLY ESTUDILLO STREET, AND OF THE SOUTHWESTERN LINE OF CARPENTER STREET, AS SAID STREETS ARE SHOWN ON THE "MAP OF THE TOWN OF SAN LEANDRO, COUNTY SEAT OF ALAMEDA COUNTY", RECORDED NOVEMBER 24, 1873 IN BOOK 2 OF MAPS, PAGE 43 OF OFFICIAL RECORDS.

APN: 075-0039-007-05

**Cornerstone West (30 units) (a portion of parcel 2)
Bart replacement parking (parcel 3 and a portion of Parcel 2)**

Real property in the City of San Leandro, County of Alameda, State of California, described as follows:

PARCEL 2:

THAT PORTION OF BLOCK 47 OF THE TOWN OF SAN LEANDRO, ACCORDING TO THE MAP THEREOF FILED FEBRUARY 27, 1855, MAP BOOK 2, PAGE 43, ALAMEDA COUNTY RECORDS, LYING NORTHEASTERLY OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC TRANSPORTATION COMPANY, AND THAT PORTION OF THE SOUTHEASTERN ½ OF WEST JUANA AVENUE, FORMERLY SAUNDERS STREET, AS SAID STREET IS SHOWN ON THE MAP HEREINABOVE REFERRED TO, LYING BETWEEN THE NORTHEASTERN LINE OF SAID RIGHT OF WAY AND THE SOUTHWESTERN LINE OF MARTINEZ STREET, AS SAID STREET IS SHOWN ON THE MAP HEREINABOVE REFERRED TO.

PARCEL 3:

THOSE PORTIONS OF BLOCKS 48 AND 49 OF THE TOWN OF SAN LEANDRO, ACCORDING TO THE MAP THEREOF FILED FEBRUARY 27, 1855, MAP BOOK 2, PAGE 43, ALAMEDA COUNTY RECORDS, LYING NORTHEASTERLY OF THE NORTHEASTERN LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC TRANSPORTATION COMPANY, INCLUDING THAT PORTION OF WEST JOAQUIN AVENUE, FORMERLY HEPBURN STREET, AS SAID STREET IS SHOWN ON THE SAID MAP HEREINABOVE REFERRED TO, LYING BETWEEN SAID BLOCKS 48 AND 49 AND THE SOUTHWESTERLY OF THE SOUTHWESTERN LINE OF MARTINEZ STREET AND NORTHEASTERLY OF THE NORTHEASTERN LINE OF THE RIGHT OF WAY OF SAID SOUTHERN PACIFIC TRANSPORTATION COMPANY; ALSO THAT PORTION OF THE NORTHWESTERN ½ OF WEST JUANA AVENUE, FORMERLY SAUNDERS STREET, AS SAID STREET IS SHOWN ON SAID MAP HEREINABOVE REFERRED TO, ADJOINING SAID PORTION OF BLOCK 48 ON THE SOUTHEAST, WHICH STREET WAS CLOSED JUNE 3, 1946, BY RESOLUTION NO. 801 OF THE CITY OF SAN LEANDRO, A CERTIFIED COPY OF SAID RESOLUTION WAS RECORDED JUNE 11, 1946, IN BOOK 4894 OR. PAGE 317, ALAMEDA COUNTY RECORDS.

EXCEPTING THEREFROM, THAT PORTION CONVEYED IN THE DEED TO THE CITY OF SAN LEANDRO RECORDED OCTOBER 2, 1998, INSTRUMENT NO. 88-257044.

APN: 075-0047-002 and 075-0047-003-02 and 075-0047-007

Exhibit "B" to Disbursement Agreement

Scope of Work

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).

Exhibit "B-1" to Disbursement Agreement

Project Phasing

Exhibit "C" to Disbursement Agreement
Sources and Uses of Funds – Infrastructure Project

Exhibit "C" to Disbursement Agreement

Sources and Uses of Funds – Infrastructure Project

QIP/QIA DEVELOPMENT NAME:		San Leandro Crossings						5/29/2012	
ESTIMATED CAPITAL IMPROVEMENT PROJECT COSTS		BREAKDOWN OF DEVELOPMENT COSTS BY FUNDING SOURCE							
Submit contracts, bids, engineer's estimates or any other back-up evidencing accuracy of eligible CIP costs									
COSTS CATEGORY	DEVELOPMENT COSTS	FUNDING SOURCES (by phase)							
		City	TOD			IIG			
	Phase	0	1	2	3	1	2	3	
	TOTAL AMOUNT	Downtown Street/Red	Replace Parking	Cornerstone	Cornerstone West	Replace Parking	Cornerstone	Cornerstone West	
SITE ACQUISITION									
Site acquisition of the Capital Improvement Project, including easements and right of ways	\$1,289,000		\$1,289,000						
Other: Closing Costs	\$15,000		\$15,000						
Total Site Acquisition Costs	\$1,304,000	\$0	\$1,304,000	\$0	\$0	\$0	\$0	\$0	\$0
SITE PREPARATION									
Clearing and Grubbing	\$20,000						\$10,000	\$10,000	
Demolition	\$40,000						\$20,000	\$20,000	
Excavation	\$72,000						\$27,000	\$45,000	
Total Site Preparation Costs	\$132,000	\$0	\$0	\$0	\$0	\$0	\$67,000	\$75,000	\$0
UTILITIES									
Storm Drain	\$145,000						\$145,000		
Joint Trench:	\$1,347,392		\$458,825	\$890,567					
Total Site Utilities Costs	\$1,492,392	\$0	\$458,825	\$890,567	\$0	\$0	\$145,000	\$0	\$0
SURFACE IMPROVEMENTS									
Traffic Mitigation	\$403,480		\$403,480						
Other: Pedestrian & Lighting Improvements	\$2,064,000	\$2,064,000							
Total Surface Improvements Costs	\$2,467,480	\$2,064,000	\$403,480	\$0	\$0	\$0	\$0	\$0	\$0
LANDSCAPE AND AMENITIES									
Parks:									
Other: Furnishings & Fences	\$32,340		\$32,340						
Total Landscape and Amenities Costs	\$32,340	\$0	\$32,340	\$0	\$0	\$0	\$0	\$0	\$0
ENVIRONMENTAL MITIGATION/REMEDIATION									
Environmental Remediation	\$175,000		\$160,000		\$25,000				
Total Mitigation/Remediation Costs	\$175,000	\$0	\$160,000	\$0	\$25,000	\$0	\$0	\$0	\$0
PARKING									
Replacement Transit Station Parking Spaces	\$3,310,600		\$3,310,600						
Residential Parking Structures	\$8,493,399			\$1,616,316	\$1,064,903		\$5,773,689	\$138,691	
Total Parking Costs	\$11,803,999	\$0	\$3,310,600	\$1,616,316	\$1,064,903	\$0	\$5,773,689	\$138,691	\$0
IMPACT FEES									
Impact fees are eligible for funding if used for identified Capital Assets eligible for funding and required by local ordinance.	\$4,822,060					\$50,000	\$3,995,194	\$776,866	
Total Impact Fees	\$4,822,060	\$0	\$0	\$0	\$0	\$50,000	\$3,995,194	\$776,866	\$0
SOFT COSTS RELATED TO ELIGIBLE COSTS									
Engineering	\$695,000		\$326,000	\$290,000	\$80,000				
Design	\$470,969		\$225,000	\$172,126	\$73,843				
Other: Design & Const Mgt Fee	\$250,000					\$250,000			
Other: Permits & Inspection	\$400,000					\$400,000			
Other: Legal & Insurance	\$50,000					\$50,000			
Total Soft Costs	\$1,865,969	\$0	\$550,000	\$462,126	\$153,843	\$700,000	\$0	\$0	\$0
TOTAL PROJECT COSTS	\$24,095,240	\$2,064,000	\$6,207,245	\$2,869,099	\$1,243,746	\$750,000	\$9,970,783	\$990,457	\$0
COST NARRATIVE: USE THE SPACE BELOW TO EXPLAIN ANY EXTRAORDINARY SITE CONDITIONS WHICH RESULT IN DEVELOPMENT COSTS TO BE HIGHER THAN ACCEPTED INDUSTRY STANDARDS.									
General contractor overhead and fee, design and construction management, and project specific legal and insurance are included in individual hard cost line items. Third-party utility and company charges (i.e. BART, EBMUD, PG&E) are included in individual									

Exhibit "C-1" to Disbursement Agreement
Sources and Uses of Funds – Housing Development
Permanent Sources & Uses

Cornerstone - 180 units		Residential Permanent Sources of Funds										Commercial Costs	
USES OF FUNDS	Total Costs (Residential & Commercial)	IIG	TOD	City	AHP	Perm Lender	Gross Tax Credit Equity	Total Residential Sources	Commercial Costs		Total		
NEW CONSTRUCTION													
Off-Site Improvements	\$1,342,000	\$202,000	\$890,567	\$249,433				\$1,342,000			\$0		
Environmental Remediation	\$50,000			\$50,000				\$50,000			\$0		
Site Work (hard costs)	\$900,000			\$900,000				\$900,000			\$0		
Structures (hard costs)	\$34,270,000	\$5,773,589	\$1,516,316	\$3,424,988	\$1,000,000	\$8,938,847	\$12,862,320	\$33,516,060			\$753,940		
General Requirements	\$1,247,000						\$1,219,566	\$1,219,566			\$27,434		
Contractor Profit	\$1,306,000						\$1,277,268	\$1,277,268			\$28,732		
General Liability Insurance	\$518,000						\$506,604	\$506,604			\$11,396		
Other: Commercial Improvements	\$45,000							\$0			\$45,000		
Total New Construction	\$39,678,000	\$5,975,589	\$2,406,883	\$4,624,421	\$1,000,000	\$8,938,847	\$15,865,758	\$38,811,498			\$866,502		
ARCHITECTURAL													
Design	\$1,315,000		\$172,126	\$1,113,944				\$1,286,070			\$28,930		
Total Architectural Costs	\$1,315,000	\$0	\$172,126	\$1,113,944	\$0	\$0	\$0	\$1,286,070			\$28,930		
SURVEY & ENGINEERING													
Engineering	\$560,000		\$290,000	\$257,680				\$547,680			\$12,320		
ALTA Land Survey	\$25,000			\$25,000				\$25,000			\$0		
Total Survey & Engineering	\$585,000	\$0	\$290,000	\$282,680	\$0	\$0	\$0	\$572,680			\$12,320		
CONTINGENCY COSTS													
Hard Cost Contingency	\$1,927,000						\$1,884,606	\$1,884,606			\$42,394		
Soft Cost Contingency	\$200,000						\$200,000	\$200,000			\$0		
Total Contingency Costs	\$2,127,000	\$0	\$0	\$0	\$0	\$0	\$2,084,606	\$2,084,606			\$42,394		
CONSTRUCTION PERIOD EXPENSES													
Construction Loan Interest	\$2,506,000					\$2,506,000		\$2,506,000			\$0		
Origination Fee	\$158,000					\$158,000		\$158,000			\$0		
Owner Paid Bonds/Insurance	\$383,000					\$383,000		\$383,000			\$0		
Title and Recording Fees	\$45,000					\$45,000		\$45,000			\$0		
Construction Mgmt. & Testing	\$180,000					\$180,000		\$180,000			\$0		
Predevelopment Interest Exp.	\$108,000			\$108,000				\$108,000			\$0		
Other: Issuer Fee	\$143,000					\$143,000		\$143,000			\$0		
Total Construction Expenses	\$3,523,000	\$0	\$0	\$108,000	\$0	\$3,415,000	\$0	\$3,523,000			\$0		

PERMANENT FINANCING EXPENSES										
Title and Recording	\$15,000							\$15,000	\$15,000	\$0
Other: Lender Expense	\$25,000							\$25,000	\$25,000	\$0
Total Permanent Financing	\$40,000	\$0	\$0	\$0	\$0	\$0	\$0	\$40,000	\$40,000	\$0
LEGAL FEES										
Construction Lender Legal Expenses	\$45,000			\$45,000					\$45,000	\$0
Permanent Lender Legal Fees	\$25,000						\$25,000		\$25,000	\$0
Sponsor Legal Fees	\$230,000			\$230,000					\$230,000	\$0
Organizational Legal Fees	\$7,000			\$7,000					\$7,000	\$0
Syndication Legal Fees	\$35,000			\$35,000					\$35,000	\$0
Total Legal Fees	\$342,000	\$0	\$0	\$317,000	\$0	\$0	\$25,000	\$0	\$342,000	\$0
CAPITALIZED RESERVES										
Operating Reserve	\$490,000						\$490,000		\$490,000	\$0
Total Capitalized Reserves	\$490,000	\$0	\$0	\$0	\$0	\$0	\$490,000	\$0	\$490,000	\$0
REPORTS & STUDIES										
Appraisal(s)	\$15,000			\$15,000					\$15,000	\$0
Market Study	\$10,000			\$10,000					\$10,000	\$0
Environmental Studies	\$40,000			\$40,000					\$40,000	\$0
Total Reports & Studies	\$65,000	\$0	\$0	\$65,000	\$0	\$0	\$0	\$0	\$65,000	\$0
OTHER										
TCAC App./Alloc./Monitor Fees	\$91,000			\$91,000					\$91,000	\$0
CDLAC Fees	\$16,000			\$16,000					\$16,000	\$0
Local Development Impact Fees	\$4,125,000	\$3,995,194		\$129,806					\$4,125,000	\$0
Other Costs of Bond Issuance	\$50,149			\$50,149					\$50,149	\$0
Syndicator / Investor Fees & Expenses	\$77,000			\$77,000					\$77,000	\$0
Furnishings	\$160,000						\$160,000		\$160,000	\$0
Final Cost Audit Expense	\$30,000						\$30,000		\$30,000	\$0
Marketing	\$435,000						\$435,000		\$435,000	\$0
Financial Consulting	\$45,000			\$45,000					\$45,000	\$0
Total Other Costs	\$5,029,149	\$3,995,194	\$0	\$408,955	\$0	\$0	\$625,000	\$0	\$5,029,149	\$0
SUBTOTAL	\$53,194,149	\$9,970,783	\$2,869,009	\$6,920,000	\$1,000,000	\$13,533,847	\$17,950,364	\$52,244,003	\$950,146	\$0
DEVELOPER COSTS										
Developer Fee/Overhead/Profit	\$2,500,000						\$2,500,000		\$2,500,000	\$0
Total Developer Costs	\$2,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,500,000	\$0
TOTAL DEVELOPMENT COST	\$55,694,149	\$9,970,783	\$2,869,009	\$6,920,000	\$1,000,000	\$13,533,847	\$20,450,364	\$54,744,003	\$950,146	\$0

**Exhibit "C-1" to Disbursement Agreement
Sources and Uses of Funds – Housing Development
Permanent Sources & Uses**

Comerstone West - 30 units		Residential Permanent Sources of Funds										Commercial Costs	
USES OF FUNDS	Total Costs (Residential & Commercial)	Total Residential Cost from Dev Budget	IIG	TOD	City	AHP	Perm Lender	Equity	Gross Tax Credit Equity	Total Residential Sources	Total	Commercial Costs	Total
ACQUISITION													
Lesser of Land Cost or Value	\$510,000	\$510,000						\$510,000		\$510,000	\$0	\$0	\$0
Legal & Closing Costs	\$15,000	\$15,000						\$15,000		\$15,000	\$0	\$0	\$0
Total Acquisition	\$525,000	\$525,000	\$0	\$0	\$0	\$0	\$0	\$525,000	\$0	\$525,000	\$0	\$0	\$0
NEW CONSTRUCTION													
Off-Site Improvements	\$75,000	\$75,000	\$75,000							\$75,000	\$0	\$0	\$0
Environmental Remediation	\$25,000	\$25,000		\$25,000						\$25,000	\$0	\$0	\$0
Site Work (hard costs)	\$200,000	\$200,000						\$200,000		\$200,000	\$0	\$0	\$0
Structures (hard costs)	\$4,925,000	\$4,481,750	\$138,591	\$1,064,903		\$290,000	\$6,696	\$1,735,696	\$1,245,864	\$4,481,750	\$443,250	\$0	\$0
General Requirements	\$187,000	\$170,170							\$170,170	\$170,170	\$16,830	\$0	\$0
Contractor Profit	\$196,000	\$178,360							\$178,360	\$178,360	\$17,640	\$0	\$0
General Liability Insurance	\$77,000	\$70,070							\$70,070	\$70,070	\$6,930	\$0	\$0
Total New Construction	\$5,685,000	\$5,200,350	\$213,591	\$1,089,903	\$0	\$290,000	\$6,696	\$1,935,696	\$1,664,464	\$5,200,350	\$484,650	\$0	\$0
ARCHITECTURAL													
Design	\$350,000	\$318,500		\$73,843	\$244,657					\$318,500	\$31,500	\$0	\$0
Total Architectural Costs	\$350,000	\$318,500	\$0	\$73,843	\$244,657	\$0	\$0	\$0	\$0	\$318,500	\$31,500	\$0	\$0
SURVEY & ENGINEERING													
Engineering	\$190,000	\$180,500		\$80,000	\$100,500					\$180,500	\$9,500	\$0	\$0
ALTA Land Survey	\$25,000	\$25,000			\$25,000					\$25,000	\$0	\$0	\$0
Total Survey & Engineering	\$215,000	\$205,500	\$0	\$80,000	\$125,500	\$0	\$0	\$0	\$0	\$205,500	\$9,500	\$0	\$0
CONTINGENCY COSTS													
Hard Cost Contingency	\$390,000	\$370,500							\$370,500	\$370,500	\$19,500	\$0	\$0
Soft Cost Contingency	\$75,000	\$75,000							\$75,000	\$75,000	\$0	\$0	\$0
Total Contingency Costs	\$465,000	\$445,500	\$0	\$0	\$0	\$0	\$0	\$0	\$445,500	\$445,500	\$19,500	\$0	\$0
CONSTRUCTION PERIOD EXPENSES													
Construction Loan Interest	\$263,000	\$263,000					\$263,000			\$263,000	\$0	\$0	\$0
Origination Fee	\$27,000	\$27,000					\$27,000			\$27,000	\$0	\$0	\$0
Owner Paid Bonds/Insurance	\$50,000	\$50,000					\$50,000			\$50,000	\$0	\$0	\$0
Title and Recording Fees	\$25,000	\$25,000			\$2,924		\$22,076			\$25,000	\$0	\$0	\$0
Construction Mgmt. & Testing	\$70,000	\$70,000					\$70,000			\$70,000	\$0	\$0	\$0
Predevelopment Interest Exp.	\$27,000	\$27,000			\$27,000					\$27,000	\$0	\$0	\$0
Other: Issuer Fee	\$34,000	\$34,000			\$34,000					\$34,000	\$0	\$0	\$0
Total Construction Expenses	\$496,000	\$496,000	\$0	\$0	\$63,924	\$0	\$432,076	\$0	\$0	\$496,000	\$0	\$0	\$0

PERMANENT FINANCING EXPENSES											
Title and Recording	\$10,000								\$10,000	\$10,000	\$0
Other Lender Expense	\$10,000								\$10,000	\$10,000	\$0
Total Permanent Financing	\$20,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$20,000	\$20,000	\$0
LEGAL FEES											
Construction Lender Legal Expens	\$10,000								\$10,000	\$10,000	\$0
Sponsor Legal Fees	\$75,000								\$75,000	\$75,000	\$0
Organizational Legal Fees	\$3,000								\$3,000	\$3,000	\$0
Syndication Legal Fees	\$15,000								\$15,000	\$15,000	\$0
Total Legal Fees	\$103,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$103,000	\$103,000	\$0
CAPITALIZED RESERVES											
Operating Reserve	\$57,000								\$57,000	\$57,000	\$0
Total Capitalized Reserves	\$57,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$57,000	\$57,000	\$0
REPORTS & STUDIES											
Appraisal(s)	\$15,000								\$15,000	\$15,000	\$0
Market Study	\$10,000								\$10,000	\$10,000	\$0
Environmental Studies	\$20,000								\$20,000	\$20,000	\$0
Total Reports & Studies	\$45,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$45,000	\$45,000	\$0
OTHER											
TCAC App./Alloc./Monitor Fees	\$17,000								\$17,000	\$17,000	\$0
CDLAC Fees	\$4,000								\$4,000	\$4,000	\$0
Local Development Impact Fees	\$815,000								\$38,134	\$815,000	\$0
Other Costs of Bond Issuance	\$43,785								\$43,785	\$43,785	\$0
Syndicator / Investor Fees & Exper	\$30,000								\$30,000	\$30,000	\$0
Furnishings	\$65,000								\$65,000	\$65,000	\$0
Final Cost Audit Expense	\$30,000								\$30,000	\$30,000	\$0
Marketing	\$172,000								\$172,000	\$172,000	\$0
Financial Consulting	\$15,000								\$15,000	\$15,000	\$0
Total Other Costs	\$1,191,785	\$176,866	\$0	\$147,919	\$730,000	\$290,000	\$0	\$0	\$267,000	\$1,191,785	\$0
SUBTOTAL	\$9,152,785	\$8,607,635	\$1,243,746	\$730,000	\$2,460,696	\$2,109,964	\$0	\$0	\$782,772	\$8,607,635	\$545,150
DEVELOPER COSTS											
Developer Fee/Overhead/Profit	\$690,000								\$690,000	\$690,000	\$0
Total Developer Costs	\$690,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$690,000	\$690,000	\$0
TOTAL DEVELOPMENT COST	\$9,842,785	\$990,457	\$1,243,746	\$730,000	\$2,460,696	\$2,799,964	\$0	\$0	\$782,772	\$9,297,635	\$545,150

Exhibit "C-1" to Disbursement Agreement
Sources and Uses of Funds – Housing Development

Cornerstone 1 of 2

Cornerstone West 1 of 2

TOD Grant - Disbursement Agreement

NOFA Date: 12/11/07

Rev. Date: 08/05/09

Prep. Date: 6/15/12

Project Name: San Leandro Crossings

Cornerstone West 2 of 2

TOD Grant - Disbursement Agreement

NOFA Date: 12/11/07

Rev. Date: 08/05/09

Prep. Date: 6/15/12

Project Name: San Leandro Crossings

Exhibit "D" to Disbursement Agreement

Disbursement Schedule

Cost Category	Sep. 12	Oct. 12	Nov. 12	Dec. 12	Jan. 13
SITE ACQUISITION		0	0	0	0
UTILITIES	0	0	0	0	0
SURFACE IMPROVEMENTS	0	0	0	0	0
LANDSCAPE AND AMENITIES	0	0	0	0	0
ENVIRONMENTAL MITIGATION/REMEDIATION	0	0	0	0	0
PARKING	0	0	0	0	0
SOFT COSTS	137,500	137,500	137,500	137,500	61,597
Total	137,500	137,500	137,500	137,500	61,597

Cost Category	Feb. 13	Mar. 13	Apr. 13	May 13	Jun. 13
SITE ACQUISITION	\$0	\$0	\$0	\$0	\$1,173,600
UTILITIES	\$0	\$0	\$0	\$0	\$0
SURFACE IMPROVEMENTS	\$0	\$0	\$0	\$0	\$0
LANDSCAPE AND AMENITIES	\$0	\$0	\$0	\$0	\$0
ENVIRONMENTAL MITIGATION/REMEDIATION	\$0	\$0	\$0	\$0	\$0
PARKING	\$0	\$0	\$0	\$0	\$0
SOFT COSTS	\$61,597	\$61,597	\$61,597	\$61,597	\$61,597
Total	\$61,597	\$61,597	\$61,597	\$61,597	\$1,235,197

Cost Category	Jul. 13	Aug. 13	Sep. 13	Oct. 13	Nov. 13
SITE ACQUISITION	\$0	\$0	\$0	\$0	\$0
UTILITIES	\$228,413	\$228,413	\$0	\$0	\$0
SURFACE IMPROVEMENTS	\$0	\$0	\$363,132	\$0	\$0
LANDSCAPE AND AMENITIES	\$29,106	\$0	\$0	\$0	\$0
ENVIRONMENTAL MITIGATION/REMEDIATION	\$150,000	\$0	\$0	\$0	\$0
PARKING	\$827,650	\$827,650	\$827,650	\$827,650	\$0
SOFT COSTS	\$61,597	\$61,597	\$6,597.00		\$0
Total	\$1,296,765	\$1,117,659	\$1,197,379	\$827,650	\$0

Cost Category	Dec. 13	Jan. 14	Feb. 14	Mar. 14	Retention
SITE ACQUISITION	\$0	\$0	\$0	\$0	\$130,400
UTILITIES	\$0	\$0	\$296,856	\$458,972.13	\$134,739
SURFACE IMPROVEMENTS	\$0	\$0	\$0	\$0	\$40,348
LANDSCAPE AND AMENITIES	\$0	\$0	\$0	\$0	\$3,234
ENVIRONMENTAL MITIGATION/REMEDIATION	\$0	\$7,500	\$0	\$0	\$17,500
PARKING	\$1,290,610	\$701,427.60	\$0	\$0	\$589,182
SOFT COSTS	\$0	\$0	\$0	\$0	\$116,597
Total	\$1,290,610	\$708,928	\$296,856	\$458,972	\$1,032,000

TOD Grant - Disbursement Agreement

NOFA Date: 12/11/07

Rev. Date: 08/05/09

Prep. Date: 6/15/12

Project Name: San Leandro Crossings

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 INSUREDS

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

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

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

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

1. General.

a. 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.

b. The Developer shall provide 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 Developer has provided evidence, satisfactory to the Department, that Developer has fee title or leasehold interest in the Infrastructure Project and Housing Development.

c. 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 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.