

## **AFFORDABLE HOUSING AND SUSTAINABLE COMMUNITIES PROGRAM DISBURSEMENT AGREEMENT**

This DISBURSEMENT AGREEMENT (the "Agreement") is dated for reference purposes only as of \_\_\_\_\_, 2020, and is made by and among the Alameda-Contra Costa Transit District, BRIDGE Housing Corporation and Berkeley Food and Housing Project, (the "Recipient") and the Department of Housing and Community Development, a public agency of the State of California (the "Department").

### **Recitals**

- A. Recipient has submitted an application (the "Application") to the Department for a grant under the Affordable Housing and Sustainable Communities Program ("Program") and in accordance with Part 1 of Division 44 of the Public Resources Code (commencing with Section 75200) and the Affordable Housing and Sustainable Communities Program Guidelines, issued by the State of California, Strategic Growth Council (the "Council") and dated October 29, 2018, amended February 19, 2019, and as amended in the future, (the "Guidelines"), to finance, in part, one or more of the following eligible activities

- Housing-Related Infrastructure (HRI)
- Program Costs (PGM)
- Sustainable Transportation Infrastructure (STI)
- Transportation Related Amenities (TRA)

as further described herein pursuant to the Standard Agreement Number 19-AHSC-12794, entered into by the Recipient and the Department dated [month & date], 2020 (the "Standard Agreement"). The Department has conditionally agreed to provide the grant to the Recipient in an aggregate total amount not to exceed Six Million Seventy-Three Thousand Nine Hundred Sixty-Eight AND 00/100 Dollars (\$6,073,968.00) (the "Program Funds"). The Program Funds consist of \$5,000,000.00 for Sustainable Transportation Infrastructure ("STI"), \$1,000,000.00 for Transportation Related Amenities ("TRA"), and \$73,968.00 for Programs ("PGM"). The Standard Agreement and all amendments, exhibits and attachments thereto, the Application, this Agreement and all amendments, exhibits and attachments thereto (the "Grant Documents"), and all the terms of the other Grant Documents are incorporated in full by reference to this Agreement.

- B. The parties hereto wish to enter into an agreement for the disbursement of Program Funds to ensure timely completion of the Work as set forth in the Standard Agreement (the "Work") in accordance with the requirements of the Grant Documents, the Guidelines, the Council, the Department, and the State of California.

Affordable Housing and Sustainable Communities (AHSC) Program  
Round IV - Grant  
NOFA 11/01/18  
Approved Date: 02/24/2020  
Project: 2012 Berkeley Way  
Prep Date: 5/5/2020

NOW, THEREFORE, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are a part of this Agreement.
2. Project. The Recipient shall complete the Work, as described in the Standard Agreement, on the real property described in Exhibit A hereto (the "Property") and incorporated herein, in accordance with the Standard Agreement and the Scope of Work as described in Exhibit B attached hereto and incorporated herein.
3. Representations and Warranties. Recipient represents and warrants to the Department as follows:
  - a. Organization. Recipient is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own or lease the Property and to own, develop, construct, operate and maintain the Work. The copies of the documents evidencing the organization of Recipient delivered to the Department are true, complete, and correct copies of the originals, as amended to the date of this Agreement.
  - b. Authority of Recipient. Recipient has full power and authority to execute and deliver the Grant Documents and all other instruments, agreements and documents executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.
  - c. Authority of Persons Executing Documents. The Grant Documents and all other instruments, agreements and documents executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Recipient. All actions required under Recipient's organizational documents and applicable governing law for the authorization, execution, delivery and performance of the Grant Documents and all other instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.
  - d. No Breach of Law or Agreement. None of the execution or delivery of the Grant Documents and other instrument,

agreement and document executed and delivered, or to be executed or delivered, pursuant to this Agreement, or the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission, or agency whatsoever binding on the Property or the Recipient, or any provision of the organizational documents of the Recipient, will conflict with or constitute a breach of or a default under any agreement to which Recipient is a party, or will result in the creation or imposition of any lien upon the Property of Recipient, other than liens approved by the Department.

- e. Compliance with Laws; Consents and Approvals. The Work will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies having jurisdiction over either the Recipient, the Property, the Work, and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency. All permits, consents, permissions and licenses required by any federal, state or local government or agency to which Recipient, the Property, the Work is subject, which may be necessary in relation to this Agreement or the acquisition, development, construction or ownership of the Work, at or prior to the commencement of construction, have been, or will be, obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.
- f. Pending Proceedings. The Recipient is not in default under any law or regulations or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Recipient, threatened against or affecting Recipient, the Property, or the Work, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Recipient, materially affect Recipient's ability to acquire, construct or develop the Work.
- g. Title to Property. Recipient or its Department-approved affiliate will have good and marketable title to the Property, Work or a leasehold interest therein approved by the Department and there shall exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of

any character whatsoever other than liens for current real property taxes and assessments not yet due and payable and other matters of record approved in writing by the Department.

- h. Financial Statements. The financial statements of Recipient and other financial data and information if requested by the Department and furnished by Recipient, fairly represents the financial information contained therein.
  - i. Adequacy of Program Funds. The amount of the Program Funds, together with any funds to be provided by the Recipient or to the Recipient from any other sources, is adequate as financing for the Work in accordance with Exhibit C.
  - j. Payment of Taxes. All federal, state, county and municipal taxes required to be paid by the Recipient or on account of the Property due and payable as of the date of this Agreement have been paid in full as of such date, and will continue to be paid when due, prior to delinquency, going forward.
  - k. Availability of Utilities. For HRI activities, all utilities necessary for the development and occupancy of the residential rental Affordable Housing Development described in the Application and the Standard Agreement providing the affordable housing units, as described therein, in consideration of that portion of the Grant ("Affordable Housing Development") are available at or within the boundaries of the Affordable Housing Development and all steps necessary to assure that such utility services will be available upon completion of the Affordable Housing Development have been taken.
  - l. Hazardous Materials. Recipient has performed due diligence review of the condition of the Work including review to disclose the possible existence of asbestos and toxic or hazardous materials. All information regarding the condition of the Work 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 Work.
4. Sources and Uses. The Recipient has received, or will receive, funds for the purpose of developing the Work in the amounts and the sources identified in the Sources and Uses of Funds attached hereto and incorporated herein as Exhibit C. All funds shall be used and

secured in the manner specified in Exhibit C. Recipient agrees to comply with and satisfy all the terms and conditions imposed on the Recipient in connection with the sources of funding identified in the Sources and Uses of Funds.

5. Use of Funds. Recipient agrees that the Program Funds shall be expended only in accordance with the applicable statutes and 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 reimbursement of 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 reimbursement for, costs to be made only after the same have been incurred by the Recipient. "Approved Costs" shall mean all hard and soft eligible costs under the Program (and modifications thereto), which were approved, or will be approved by the Department, which are needed for the completion of the Work, in accordance with Scope of Work.
6. Disbursement Schedule. The Disbursement Schedule attached to this Disbursement Agreement as Exhibit D represents a good faith estimate of when the Program Funds will be disbursed to pay costs. The Department and the Recipient shall confer as necessary, to update the Disbursement Schedule throughout the construction period.
7. Displacement and Relocation. If the acquisition, construction or development of the Work will result in the temporary or permanent displacement of occupants, the Recipient shall provide relocation payments and assistance in accordance with the applicable Federal and State requirements.
8. Contractors and Subcontractor. For the performance of all construction work on the HRI, STI or TRA, Recipient agrees to use a licensed, insured, financially solvent, and reputable general contractor or contractors ("Contractor") in order to complete the Scope of Work described in Exhibit B. Any successor to or substitute for the Contractor shall be subject to the approval of the Department. The Recipient hereby certifies that the Contractor is in good standing with the California State Contractors' License Board. The Recipient shall only contract with contractors, and shall ensure that the Contractor and any successor thereto shall only contract with subcontractors, which are so licensed.

For the completion and performance of all PGM work, if applicable



as set forth in the application, any successor to or substitute for the Recipient shall be subject to the approval of the Department.

9. Construction Contract. The Recipient shall enter into a written contract or contracts with the Contractor for the performance of the Scope of Work as set forth in Paragraph 2 above (the "Construction Contract"). Recipient shall not terminate or substantially amend the Construction Contract with respect to the HRI, STI or TRA without the prior written approval of the Department. Recipient shall monitor and enforce the terms and conditions of the Construction Contract to ensure completion of the Scope of Work. The Construction Contract shall contain provisions for compliance with State Prevailing Wage Law as required by the Grant Documents and the Guidelines.
10. Construction Responsibilities. Recipient shall be solely responsible for all aspects of Recipient's business and conduct in connection with the Property, the Work, including, but not limited to, the quality and suitability of the Scope of Work and the equipment used in the construction of the Work, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors and subcontractors of any tier, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements.
11. Delay. Recipient shall promptly notify the Department in writing of any event causing delay or interruption of construction work, in excess of three (3) working days, or the timely completion of construction for a period of five (5) working days beyond the scheduled completion date. The notice shall specify the particular work delayed and the cause and period of each delay.
12. Purchase of Materials Under Title Retention Agreement. The Recipient shall not purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the HRI, STI, or TRA under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to a vendor's lien, or to remove or to repossess any such items, or to consider them personal property after their incorporation into the HRI, STI, or TRA, unless authorized in writing by the Department.
13. Liens and Stop Notices. If a claim of lien is recorded affecting the Property, or the Work or a bonded stop notice is served upon the Department which affects Program Funds or the Recipient's other funding, Recipient shall, within twenty (20) days of such recording or

service or within five (5) days of the Department's demand (whichever last occurs): (i) pay and fully discharge the same; (ii) effect the release thereof by recording or delivering to the Department a surety bond in sufficient form and amount, or otherwise; or (iii) provide the Department with other assurance which the Department deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of the Department from the effect of such lien or bonded stop notice. If Recipient has not received actual notice of the claim of lien or bonded stop notice prior to the Department's demand, then the five (5) day period described above shall be extended to twenty (20) days. Recipient shall give the Department prompt written notice of all lien claims affecting the Property, or the Work.

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 of Approved Costs incurred by Recipient as provided for herein.
  - c. The aggregate disbursement of all or any portion of a Disbursement Request submitted to the Program for eligible hard construction costs under the Construction Contract shall be limited to an amount equal to ninety percent (90%) of such costs with the ten percent (10%) being retained except for the final disbursement of Program Funds. The ten percent retained amount shall be disbursed as part of the final disbursement as set forth in Paragraph 18 hereof.
  - d. There exists no Event of Default, as defined in this Agreement, or the Standard Agreement, or event, omission or failure of condition which would constitute a default or Event of Default after notice or lapse of time, or both that will not be cured concurrently with the funding of the Program Funds.
  - e. Recipient has satisfied all requirements for receipt of the Program Funds in accordance with the applicable statutes and the 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, in addition to satisfying any other conditions contained herein, all of the following conditions precedent are also satisfied at the time of such actions:
- a. Recipient has and will continue to maintain site control over the Work. Recipient has provided to the Department evidence demonstrating that Recipient has obtained all licenses, easements and right-of-way or other interest required for completion of the Work.
  - b. If applicable, Recipient has provided to the Department a relocation plan conforming to the requirements of state law and regulations issued by the Department in California Code of Regulations Title 25, Section 6000 et seq.
  - c. Recipient has executed and provided to the Department a Certificate of Identity of Interest.
  - d. Recipient has obtained all necessary insurance policies and endorsements as described in Exhibit E of this Agreement.
  - e. The Recipient shall provide security to assure completion of the Project by furnishing the Department and other construction lenders with performance and payment bonds, or a letter of credit for the Work, which shall remain in effect during the entire term of construction of the Work, and which shall be in a form and from an issuer which is acceptable to the construction lenders and Department. The performance bond shall be in an amount at least equal to one hundred percent (100%) of the approved construction costs to provide security for the faithful performance of the Standard Agreement including a warranty period of at least 12 months after completion. The payment bond shall be in an amount at least equal to one hundred percent (100%) of the approved



construction costs to provide security for the payment of all persons performing labor on the Project and furnishing materials in connection with the Project. If a letter of credit is used, it shall be in an amount equal to at least 20% of the approved construction costs. The Department shall be named as an additional obligee in the bonds or beneficiary under a letter of credit.

- f. Recipient has obtained all required permits and approvals required for the lawful construction of the Work and, when required by the Department, the Affordable Housing Development.
- g. Where approval by a local public works department, or its equivalent, is required for the HRI, STI, or TRA, the applicant must submit a statement from that department, or other documentation acceptable to the Department, indicating that the HRI, STI or TRA has received that approval.
- h. Recipient has received all required public agency entitlements and land use approvals for the Housing Development.
- i. Submission to the Department of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens.
- j. Recipient has obtained all applicable CEQA and NEPA clearances and submitted evidence thereof as required by the Department.
- k. For HRI activities, Recipient has provided to the Department a title report acceptable to the Department.
- l. For HRI activities, Recipient has executed and recorded a written covenant for the development of affordable housing with the Department as required in the Standard Agreement.
- m. Recipient has provided evidence of binding agreements for construction financing and enforceable commitments for permanent financing as identified in the Sources and Uses of Funds (or equivalent, alternative financing approved by the Department) demonstrating adequate funding to complete the Work.
- n. Recipient has provided evidence acceptable to the

Department of ongoing compliance with state prevailing wage law as required by the Grant Documents and the Guidelines.

- o. Recipient has completed, executed and submitted to the Department, on a form provided by the Department, a Draw Request indicating Recipient's request for disbursement of Program Funds.
- p. Recipient has completed or complied with all events or conditions in the Disbursement Schedule prior to the submission of the Draw Request.
- q. Recipient has complied with all special conditions contained in the Exhibit F, which are conditions precedent to the disbursement of Program Funds.
- r. Recipient has submitted a Draw Request as provided below.

16. Draw Requests.

- a. Application for Payment. Recipient shall request Program Funds by submitting a written itemized statement or Draw Request in a form that is acceptable to the Department (the "Draw Request"), subject to the conditions set forth below. A Draw Request for payment shall be submitted to the Department not more frequently than once monthly. The Department shall determine whether or not the conditions precedent to its obligation to advance Program Funds have been satisfied or whether or not to waive any conditions precedent to its obligations to advance its Program Funds which the Department determines have not been satisfied.
- b. Contents of Application for Payment. Each Draw Request shall set forth the following: (i) a description of work performed, material supplied and/or costs incurred 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 or expended 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. For HRI, STI and TRA activities, each Draw Request shall be accompanied by the following: (i) copies of paid invoices and unconditional lien releases for construction costs paid with the proceeds of prior Draw Requests (except for the first Draw Request), and conditional (upon receipt of payment) lien releases for construction costs to be paid with the proceeds of the present Draw Request, which invoices and lien releases shall be considered a part of each Draw Request; (ii) a copy of inspection report or other documentation from localities, municipalities, or other construction lenders indicating the percentage of work completed pertaining to present Draw Request; (iii) submission of all lien waivers required by the Department or passage of the applicable statutory periods for filing mechanic and other similar liens; and (iv) any applicable change order(s) that affect or alter the Scope of Work.

For PGM, each Draw Request shall be accompanied by copies of paid invoices for eligible costs.

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 Work and the conditions precedent to making disbursements in this Agreement, the Standard Agreement and the applicable statutes and 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 HRI activities, submission to the Department of a certificate of occupancy for the Affordable Housing Development issued by the local government having jurisdiction over the Affordable 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 HRI, STI or TRA satisfactory to the Department.
  - e. Issuance of a certificate or certificates, each in form and substance satisfactory to the Department, executed by Recipient and the architect, either jointly or severally, each certifying that the HRI, STI or TRA has been completed in accordance with the Scope of Work.

- f. Completion of the HRI, STI or TRA 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.
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 Work. The Department shall have the right to inspect the Work. 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 Work 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 Work 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) days after the date the notice is mailed to Recipient, by which such action must be taken:
- a. Monetary. (i) Recipient's failure or inability to secure anticipated permanent financing from parties other than the Department's Program Funds as specified in Exhibit C (or equivalent alternative financing approved by the Department),



regardless of fault of the Recipient; (ii) Recipient's failure to use or apply Program Funds in the manner specified by, or consistent with the purposes of this Agreement and as specified in Exhibits B and C; or (iii) the occurrence of an Event of Default under the terms of the commitment for any of the loans or grants received from other construction funding sources as specified in Exhibit C hereto which results in a termination or cancellation of such commitment(s).

- b. Construction; Use. (i) Recipient's failure to remedy any material deviation in the work of construction from the Scope of Work that occurred without the Department's approval or defective workmanship or materials in constructing the Work, 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 Work prior to completion for a continuous period of more than fifteen (15) days (unless caused by war, rebellion, insurrection, strike, lockout, boycott or act of God, or other event beyond the Recipient's control as determined in the sole discretion of the Department); (iii) the prohibition, enjoining or delay (in any manner) of the construction of, or the prohibition or enjoining (in any manner) of the leasing or sale of any unit in the Affordable Housing Development in accordance with the Grant Documents for a continuous period of more than thirty (30) days; or (iv) the curtailment in availability to the Work 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 Work.
- c. Performance of Obligations. Recipient's default and failure to cure such default in a timely manner under any other Grant Documents or other construction lender loan documents, Recipient's default under any ground lease or sale of the Affordable Housing Development, or Recipient's failure to perform its obligations under this Agreement.
- d. Representations and Warranties. (i) Any of Recipient's representations or warranties in any of the Grant Documents or any statements, certificates or schedules furnished by Recipient to the Department, shall prove to have been untrue in any material respect when made or the Recipient shall have concealed any material fact from the Department, (ii) any of the Recipient's representations or warranties in any of the Grant Documents or any statement, certificates or schedules

furnished by Recipient to the Department, other than representations, warranties, statements and certificates as to the financial condition of Recipient or any other person, shall cease to be true and shall remain untrue for thirty (30) days after notice of such change to Recipient by the Department, or (iii) any material adverse change in the financial condition of Recipient from the financial condition represented to the Department as of the date of this Agreement which alters or affects the Scope of Work.

- e. Voluntary Bankruptcy; Insolvency; Dissolution. Recipient's or any general partner, manager, or other controlling entity 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 or such other person'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, manager, or other controlling entity 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, manager, or other controlling entity of Recipient of a petition seeking the liquidation or dissolution of Recipient or any general partner, manager, or other controlling entity of Recipient or the commencement of any other procedure to liquidate or dissolve Recipient or any general partner, manager, or other controlling entity of Recipient.
- f. Involuntary Bankruptcy. Recipient's or any general partner, manager, or other controlling entity 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, manager, or other controlling entity of Recipient or all or a material part of the assets of the Recipient or any general partner, manager, or other controlling entity 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,

manager, or other controlling entity of Recipient or in any way restrains or limits Recipient or any general partner, manager, or other controlling entity of Recipient or the Department regarding the Program Funds, the Property, the Work, 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, the Work, or any part thereof, or service on the Department of any bonded stop notice relating to the Property, or the Work, and the continuance of the claim for lien or bonded stop notice for twenty (20) days after Recipient receives actual notice thereof without discharge, satisfaction or provision for payment being made as provided for in Paragraph 13 hereof; (ii) the condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material portion of the Property, or the Work, 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, the Work, 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 fully released, expunged or dismissed prior to the earlier of sixty (60) days after sequestration, attachment or execution or the sale of the assets affected thereby; or (iv) any survey provided to the Department upon a request for a disbursement of Program Funds shows encroachments which occurred without the written approval of the Department which, in its sole discretion, the Department requires to be removed or corrected, and the failure to remove or correct any such encroachments within thirty (30) days after receipt of the survey.
- h. General. Recipient's breach of any condition, covenant, warranty, promise or representation contained in this Agreement not otherwise resulting in an Event of Default hereunder and the continuance of such breach for a period of thirty (30) days after written notice thereof to Recipient.

22. Remedies upon an Event of Default. Upon the happening of an Event of Default, the Department's obligation to disburse Program Funds shall terminate and the Department shall have the right to withhold any further disbursement of Program Funds until the default has been cured. Upon the occurrence of an Event of Default, the Department may also, in addition to all other rights and remedies available to the Department hereunder or under the Grant Documents or applicable law or in equity, at its option, proceed with any or all remedies set forth herein:
- a. Terminate this Agreement.
  - b. Call all sums paid or advanced under the Program due and payable, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notice or demand of any kind or character.
  - c. Completion of Project. The Department shall have the right to enter into possession of the Property, or the Work, to take over and complete the Work in accordance with the Scope of Work, to discharge and replace the Contractor and to employ personnel to protect the Property, the Work and, for those purposes, to make disbursements of Program Funds. All such disbursements shall be deemed to have been paid to the Recipient by the Department. Any funds so paid or advanced shall be reimbursed to the Department by Recipient on demand, together with interest thereon at the rate of ten (10%) percent per annum from the date of expenditure. Any contracts entered into or indebtedness incurred upon the exercise of such right may be in the name of the Recipient, and for such purposes and the other purposes of this Paragraph 22 the Department is hereby authorized and irrevocably appointed attorney-in-fact (said appointment being coupled with an interest) to enter into said contracts or agreements or contracts or agreements theretofore made by or on behalf of Recipient and to do any and all things necessary or proper to complete the work of construction, including the signing of Recipient's name to such contracts and documents as may be deemed necessary by counsel for the Department.

In addition to the foregoing and not in limitation thereof, the Recipient hereby further empowers the Department as said attorney-in-fact as follows: (i) to use any Program Funds for the purpose of completing the construction of the HRI or TRI

in the manner called for by the Scope of Work; (ii) to make such additions, changes and corrections in the Scope of Work as shall be necessary or desirable to complete the HRI, STI, or TRA in substantially the manner contemplated by the Scope of Work; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (iv) to pay, settle or compromise all existing bills and claims which may be liens against the Property, the HRI, STI or TRA, or any part thereof, or as may be necessary or desirable for the completion of the construction of the HRI, STI, or TRA, or for clearance of title; (v) to execute all applications and certificates in the name of the Recipient which may be required by the Construction Contract or documents entered into in connection therewith; (vi) to prosecute and defend all actions and proceedings in connection with the Property or the construction of the HRI, STI, or TRA and to take such action and require such performance necessary; and (vii) to do any and every act which the Recipient might do in its own behalf with regard to completion of the construction of the HRI, STI, or TRA. In no event shall the Department be required to expend its own funds to complete the HRI, STI, or TRA if the remaining Program Funds are insufficient, but the Department may, at its option, advance such funds.

- d. Stoppage of Construction. Upon an Event of Default specified in subparagraph (b)(i), (b)(iv) or (g)(iv) of Paragraph 21, the Department may order immediate stoppage of construction and demand that the condition be corrected, notwithstanding any right of Recipient under this Agreement to correct or insure against such defects. After issuance of such an order in writing, no further work shall be done on the HRI or TRI without the prior written consent of the Department and until said condition has been fully corrected.
- e. Curing of Defaults by Disbursement From Program Funds. Upon the happening of any Event of Default that may be cured by payment of money, the Department shall have the right to make such payment from the Program Funds. If the payment of any such sums may, in the Department's good faith determination, result in the reduction in the total amount of remaining Program Funds below that required to complete construction of the HRI, STI, or TRA, 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 Work 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 Work or fulfillment of any condition precedent or covenant herein or result in lien claims against the Property or the Work, 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 herein and in the other Grant Documents, granted by law or otherwise, are cumulative and non-exclusive to the maximum extent permitted by law, 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 express, 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 Department in connection therewith, together with interest thereon from the date of such demand at the rate of ten percent (10%) per annum.
27. Enforcement of the Construction Contract. The parties hereto agree that the Department shall have, and is hereby assigned, the right of the Recipient to enforce the provisions of the Construction Contract and all documents related thereto in the event, as determined by the Department, in its sole discretion, that the Recipient fails, refuses, or is otherwise unable to enforce them. The Department shall notify the Recipient, in writing, of its determination to effect this assignment, specifying the reasons therefor, at least fifteen (15) days prior to the Department's undertaking any such action.
28. Indemnification and Waiver.
  - a. Indemnification. Recipient agrees to indemnify the Department and its agents, employees and officers against, and hold the Department and its agents, employees and

officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the Department may incur as a direct or indirect consequence of: (i) the making of the grant to the Recipient, except for violations of banking laws or regulations by the Department; (ii) Recipient's failure to perform any obligations as and when required by this Agreement or any of the Grant Documents; (iii) any failure at any time of any of Recipient's representations or warranties to be true and correct; (iv) any act or omission by Recipient, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property, or the Work; or (v) the presence of hazardous substances on or at the Property, or the Work. Recipient shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. The duty of the Recipient to indemnify and hold harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. Recipient shall indemnify, defend, and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department or the Recipient or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Recipient's duty to indemnify and hold harmless hereunder shall not extend to liability arising from gross negligence or willful misconduct of the Department. Recipient's duty to indemnify the Department shall survive the term of this Agreement or the cancellation of the Standard Agreement.

- b. Waiver and Release. The Recipient waives and releases any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
- c. Waiver. The Recipient expressly waives the protections of Section 1542 of the Civil Code in relation to subparagraphs (a) and (b) above. Said section 1542 provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have**

**materially affected his or her settlement with the debtor or released party.**

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:

Michael Hursh, General Manager  
Alameda-Contra Costa Transit District  
1600 Franklin Street  
Oakland, CA 94612

Smitha Seshadri, Executive Vice President  
BRIDGE Housing Corporation  
600 California Street, Suite 900  
San Francisco, CA 94108

Calleene Egan, Executive Director  
Berkeley Food and Housing Project  
3225 Adeline Street  
Berkeley, CA 94703

Department's Address:

Department of Housing and Community Development  
 Division of Financial Assistance - Administration  
 Affordable Housing and Sustainable Communities Program  
 2020 W. El Camino Avenue, Suite 500  
 Sacramento, California 95833

31. Amendments and Additional Agreements. This Agreement shall not be altered or amended except in writing executed by all parties. The Recipient agrees that any other agreements entered into by the Recipient relating to the performance of this Agreement shall be subject to the written approval of the Department.
32. Books and Records. Recipient shall maintain complete books of accounts and other records for the Project and for the use of the Program Funds; including, but not limited to, records of preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the Contractor and each subcontractor; and the same shall be available for inspection and copying by the Department upon reasonable notice to Recipient.
33. No Third Parties Benefited. No person other than the Department and Recipient and their permitted successors and assigns shall have any right of action under any of the Grant Documents.
34. Authority to File Notices. At any time subsequent to the funding of the Program Funds, Recipient irrevocably appoints and authorizes the Department, as Recipient's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's or Recipient's name, any notices, instruments or documents that the Department deems appropriate to protect the Department's interest under any of the Grant Documents.
35. Actions. At any time subsequent to the funding of the Program Funds, the Department may commence, appear in or defend any action or proceeding purporting to affect the Property, the Work or the Grant Documents, or the rights, duties or liabilities of Recipient or the Department under the Grant Documents. In exercising this right, the Department may incur, or incur and pay, reasonable costs and expenses including, without limit, attorneys' fees and court costs, and Recipient agrees to pay all such expenses so incurred and reimburse the Department for any expenses so paid together with interest thereon at the rate of ten percent (10%) per annum from the date incurred until repaid.



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

40. Termination of this Disbursement Agreement. This Agreement shall terminate ten years after all of the Program Funds have been fully disbursed and expended by Recipient.
41. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.
42. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. All code references herein refer to the California Codes, unless specifically indicated otherwise.
43. Titles and Captions. Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provisions hereof.
44. Interpretation. No provision in this Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.
45. Waiver, Amendments. No breach of any provisions hereof may be waived unless in writing. Waiver of any breach of any provisions hereof shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.
46. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction, to be illegal, invalid, or unenforceable, such provisions will be deemed to be severed and deleted from the Agreement, as a whole and neither such provisions, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Disbursement Agreement.
47. Voluntary Agreement. The parties hereto, and each of them, further represent and declare that the parties carefully read this Agreement and the parties know the contents thereof, and that the parties sign the same freely and voluntarily.

48. Attorney's Fees. In the event of any dispute between the parties regarding this Agreement, the prevailing party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.
49. Non-Discrimination. In the performance of this Agreement, Recipient shall not discriminate against any provider, or potential provider, on the basis of race, color, religion, ancestry, sex, age, national origin, physical handicap or any other arbitrary factor.
50. Incorporation. The following Exhibits, all attached hereto, are hereby incorporated into this Agreement:

Exhibit A: Legal Description  
 Exhibit B: Scope of Work  
 Exhibit C: Sources and Uses of Funds (Activity Budget)  
 Exhibit C - 1 Sources and Uses of Funds (Affordable 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.

**Recipients:**

**Alameda-Contra Costa Transit District,**  
a public transit agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Hursh,  
General Manager

Approved As to form and content

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Denise Standridge,  
General Counsel

Address:  
1600 Franklin Street  
Oakland, CA 94612

**BRIDGE Housing Corporation,**  
A California nonprofit public benefit corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Smitha Seshadri  
Executive Vice President

Address:  
600 California Street, Suite 900  
San Francisco, CA 94108

**Berkeley Food and Housing Project,**  
A California nonprofit religious corporation

By: \_\_\_\_\_

Calleene Egan  
Executive Director

Date: \_\_\_\_\_

Address:  
3225 Adeline Street  
Berkeley, CA 94703

**Department:**

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

By: \_\_\_\_\_

Leonila Floyd, Loan Closing Manager  
Loan Closing Branch

Date: \_\_\_\_\_



## Exhibit “A” to Disbursement Agreement

### Legal Description

1. HRI

N/A

2. STI

1750 Sacramento St, Berkeley, CA 94702. Part I of this project includes 0.56 miles of separated two-way cycle tracks (Class IV), 21 new curb ramps and other pedestrian improvements, pedestrian-scale lighting, irrigated landscaped areas and trees. Subsequent phases of work (not included in this grant application) will improve the Ohlone Greenway (from 8' multi-use path to 18' facility with separate two-way cycle-track and pedestrian path with new lights), add two-way cycle track on street, add raised crosswalks, add bulbouts, add additional pedestrian scale lights, and other pedestrian and bicycle improvements.

1904 Milvia St to Milvia/Allston Way intersection (at 2000 Allston) and 1501 Addison St to 1900 Addison St. Milvia Bikeway & Pedestrian Improvements: Construct pedestrian crossing improvements on Milvia St between Hearst Ave and Blake St and upgrade the Milvia St Class III bike boulevard to a Class IV separated bikeway between Hearst and Allston Way and between Channing Way and Blake. The project will also upgrade the existing Class II bike lanes to a Class IV separated bikeway on Milvia between Allston and Channing (not included in the miles calculation), providing a connection to the Channing bike boulevard that in turn connects to the Telegraph Ave commercial district on the south side of UC Berkeley. Addison Bike Blvd: Transform Addison Street into a Class III bike boulevard between Sacramento St and Martin Luther King, Jr. Way. Project components include shared lane markings (sharrows), signage, increased street lighting with a particular emphasis on intersections, and a rectangular rapid flashing beacon with median at the Addison/Martin Luther King, Jr. Way intersection to connect the Class III bike boulevard to downtown Berkeley. The Bicycle Boulevard treatment will extend from Sacramento Street to Martin Luther King Jr. Way, while Sharrows will extend from Martin Luther King Jr. Way to Milvia Street.

### 3. TRA

1750 Sacramento Street, Berkeley, CA 94702. New secure bicycle parking for an additional 120 bicycles, including oversized bicycles, as part of the North Berkeley BART Station Access Improvements Part I project.

1799 University Ave, Berkeley, CA 94703. Move the University Ave/Grant St bus stop to the far side of the intersection and widen the bus stop by way of a sidewalk extension. Project components include widening the sidewalk by ten feet, installing a bus-stop shelter including seating and a transit map, and providing night lighting for the waiting/boarding area.

1498 University Ave, Berkeley, CA 94702. Move the University Ave/Sacramento St bus stop to the far side of the intersection and widen the bus stop by way of a sidewalk extension. Project components include widening the sidewalk by ten feet, installing a bus-stop shelter including seating and a transit map, and providing night lighting for the waiting/boarding area.

## Exhibit “B” to Disbursement Agreement

### Scope of Work

#### 1. HRI

N/A

#### 2. STI

The Scope of Work for this Agreement for Sustainable Transportation Infrastructure (“STI Work”) shall consist of the following:

The grant will pay for one zero-emissions bus and the charging/fueling infrastructure needed to support it.

Part I of this project North Berkeley BART Access Improvements includes 0.56 miles of separated two-way cycle tracks (Class IV), 21 new curb ramps and other pedestrian improvements, pedestrian-scale lighting, irrigated landscaped areas and trees.

Milvia Bikeway & Pedestrian Improvements: Construct pedestrian crossing improvements on Milvia St between Hearst Ave and Blake St and upgrade the Milvia St Class III bike boulevard to a Class IV separated bikeway between Hearst and Allston Way and between Channing Way and Blake. The project will also upgrade the existing Class II bike lanes to a Class IV separated bikeway on Milvia between Allston and Channing (not included in the miles calculation), providing a connection to the Channing bike boulevard that in turn connects to the Telegraph Ave commercial district on the south side of UC Berkeley.

Addison Bike Blvd: Transform Addison Street into a Class III bike boulevard between Sacramento St and Martin Luther King, Jr. Way. Project components include shared lane markings (sharrows), signage, increased street lighting with a particular emphasis on intersections, and a rectangular rapid flashing beacon with median at the Addison/Martin Luther King, Jr. Way intersection to connect the Class III bike boulevard to downtown Berkeley. The Bicycle Boulevard treatment will extend from Sacramento Street to Martin Luther King Jr. Way, while Sharrows will extend from Martin Luther King Jr. Way to Milvia Street.

The Recipient is responsible for and shall ensure the completion of the STI Work in accordance with Program requirements, the Application, and the criteria set forth in the Project Report. The Department reserves the right to review and approve all STI Work to be performed by the Recipient in relation to this Agreement. Any revision to the STI Work shall be submitted in writing

for review and approval by the Department and shall require an amendment to this Agreement.

### 3. TRA

The Scope of Work for this Agreement for Transportation-Related Amenities ("TRA Work") shall consist of the following:

New secure bicycle parking for an additional 120 bicycles, including oversized bicycles, as part of the North Berkeley BART Station Access Improvements Part I project,

Move the University Ave/Grant St bus stop to the far side of the intersection and widen the bus stop by way of a sidewalk extension. Project components include widening the sidewalk by ten feet, installing a bus-stop shelter including seating and a transit map, and providing night lighting for the waiting/boarding area.

Move the University Ave/Sacramento St bus stop to the far side of the intersection and widen the bus stop by way of a sidewalk extension. Project components include widening the sidewalk by ten feet, installing a bus-stop shelter including seating and a transit map, and providing night lighting for the waiting/boarding area.

The Recipient is responsible for and shall ensure the completion of the TRA Work in accordance with the criteria set forth above and in the Project Report. The Department reserves the right to review and approve all TRA Work to be performed by the Recipient in relation to this Agreement. Any revision to the TRA Work shall be submitted in writing for review and approval by the Department and shall require an amendment to this Agreement.

#### 4. PGM

The Scope of Work for this Agreement for Program (PGM) Costs ("PGM Work") , shall consist of the following:

An AC Transit EasyPass will be provided to each unit annually for the lifetime of the project, with the first three years of funding being requested through the AHSC PGM Grant. Funding beyond the first three years will come from the AHD's Annual Operations budget.

The Recipient is responsible for and shall ensure the completion of the PGM Work associated with the Program Costs in accordance with the criteria set forth above and in the Project Report. The Department reserves the right to review and approve all PGM Work to be performed by the Recipient, or contracted by the Recipient, in relation to this Agreement. Any revision to the PGM Work shall be submitted in writing for review and approval by the Department and shall require an amendment to this Agreement.

# Exhibit "C" to Disbursement Agreement

## Sources and Uses of Funds Activity Budget

1. HRI

N/A

2. STI

INFRASTRUCTURE DEVELOPMENT BUDGET AND SOURCES					
2012 BERKELEY WAY			BRIDGE Housing Corporation Berkeley Food and Housing Project Alameda-Contra Cost Transit District		
ESTIMATED STI CAPITAL IMPROVEMENT PROJECT COSTS			DEVELOPMENT COSTS BY FUNDING SOURCE		
DEVELOPMENT COSTS					
COST CATEGORY		TOTAL AMOUNT	AHSC Grant Program	BART BOARD	2019 CIP CITY OF BERKELEY
PROJECT ACTIVITY (Hard Costs)					
Total Project Activity Costs		\$4,739,062	\$4,269,000	\$420,867	\$150,000
SOFT COSTS AND OTHER PROJECT RELATED COSTS					
Total Soft Cost and Other Project Related Costs		\$1,776,000	\$731,000	\$1,044,186	NA
TOTAL PROJECT COSTS		6,515,062	\$5,000,000	\$1,465,062	\$150,000



## 3. TRA

INFRASTRUCTURE DEVELOPMENT BUDGET AND SOURCES					
2012 BERKELEY WAY			BRIDGE Housing Corporation Berkeley Food and Housing Project Alameda-Contra Cost Transit District)		
ESTIMATED TRA CAPITAL IMPROVEMENT PROJECT COSTS			DEVELOPMENT COSTS BY FUNDING SOURCE		
DEVELOPMENT COSTS					
COST CATEGORY		TOTAL AMOUNT	AHSC Grant Program	BART BOND	CITY OF BERKELEY
PROJECT ACTIVITY (Hard Costs)					
Total Project Activity Costs		\$1,302,000	\$810,000	\$392,000	\$100,000
SOFT COST S AND OTHER PROJECT RELATED COSTS					
Total Soft Cost and Other Project Related Costs		\$437,500	\$190,000	\$247,500	N/A
TOTAL PROJECT COSTS		\$1,739,500	\$1,000,000	\$639,500	\$100,000

## 4. PGM

BUDGET AND SOURCES					
2012 BERKELEY WAY			BRIDGE Housing Corporation Berkeley Food and Housing Project Alameda-Contra Cost Transit District		
ESTIMATED PROGRAM COSTS			DEVELOPMENT COSTS BY FUNDING SOURCE		
DEVELOPMENT COSTS					
COST CATEGORY		TOTAL AMOUNT	AHSC Grant Program		
SOFT COST AND OTHER PROJECT RELATED COSTS					
Total Soft Cost and Other Project Related Costs		\$73,968	\$73,968	N/A	N/A
TOTAL PROGRAM COSTS		\$73,968	\$73,968	N/A	N/A

**Exhibit “C – 1” to Disbursement Agreement****Sources and Uses of Funds**  
**Affordable Housing Development**

AHD budget

N/A

## Exhibit “D” to Disbursement Agreement

### Disbursement Schedule

1. HRI

N/A

2. STI

<b>STI 1: AC Transit - Line F Frequency Improvement</b>			
<u>DATE</u>	<u>USE</u>		<u>AMOUNT</u>
August 2021	Bus purchase	\$	1,300,000.00
TOTAL		\$	1,300,000.00

  

<b>STI 2: BART - North Berkeley Station Access Improvements Part I</b>			
<u>DATE</u>	<u>USE</u>		<u>AMOUNT</u>
April 2021	Construction Activity - for commencement	\$	100,000.00
February 2022	Construction Activity - for completion	\$	300,000.00
May 2022	Funds Fully Disbursed	\$	100,000.00
TOTAL		\$	500,000.00

  

<b>STI 3: City of Berkeley - Milvia Bikeway &amp; Pedestrian Improvements, Addition Bike Boulevard</b>			
<u>DATE</u>	<u>USE</u>		<u>AMOUNT</u>
June 2021	Construction Activity - for commencement	\$	960,000.00
December 2021	Construction Activity - for completion	\$	1,920,000.00
June 2022	Funds Fully Disbursed	\$	320,000.00
TOTAL		\$	3,200,000.00

## 3. TRA

TRA 1: BART - North Berkeley Station Access Improvements Part I			
<u>DATE</u>	<u>USE</u>	<u>AMOUNT</u>	
April 2021	Construction Activity - for commencement	\$ 80,000.00	
February 2022	Construction Activity - for completion	\$ 240,000.00	
May 2022	Funds Fully Disbursed	\$ 80,000.00	
TOTAL		\$ 400,000.00	

TRA 2: City of Berkeley - University Ave/Grant St Bus Stop Upgrade			
<u>DATE</u>	<u>USE</u>	<u>AMOUNT</u>	
June 2021	Construction Activity - for commencement	\$ 99,000.00	
December 2021	Construction Activity - for completion	\$ 198,000.00	
June 2022	Funds Fully Disbursed	\$ 33,000.00	
TOTAL		\$ 330,000.00	

TRA 3: City of Berkeley - University Ave/Sacramento St Bus Stop Upgrade			
<u>DATE</u>	<u>USE</u>	<u>AMOUNT</u>	
June 2021	Construction Activity - for commencement	\$ 81,000.00	
December 2021	Construction Activity - for completion	\$ 162,000.00	
June 2022	Funds Fully Disbursed	\$ 27,000.00	
TOTAL		\$ 270,000.00	

## 4. PGM

PGM:			
<u>DATE</u>	<u>USE</u>	<u>AMOUNT</u>	
January 2022	Transit Passes	\$ 73,968.00	
TOTAL		\$ 73,968.00	

## Exhibit “E” to Disbursement Agreement

### Insurance Requirements for Capital Projects

These insurance requirements govern insurance coverage on the Capital Projects improved using grant funding from the Department’s Affordable Housing and Sustainable Communities 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 grants are responsible for carrying, and requiring their Contractor(s) to carry, 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.

Prior to commencement of the Work, Recipients will submit a certificate of insurance (or other evidence) that acknowledges the Department’s security interest and evidences 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. Workers compensation coverage as required by applicable law, or 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 Recipient's obligations regarding indemnification of the Department and the State of California ("State"), and the appointees, officers, employees, and agents of each, 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 Recipient shall defend, indemnify, and save harmless the Department and 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 Recipient's performance of this contract, or Recipient's and/or Contractor's performance of the Work, 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 Recipient, Contractor, the Department, or 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 Recipient, Contractor, or anyone directly or indirectly employed by the Recipient, Contractor, or anyone for whose acts the Recipient or Contractor may be liable.
4. Except as otherwise provided by law, these requirements apply regardless of the existence or degree of fault of the Department or the State. The Recipient is not obligated to indemnify the Department or 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 Recipient to maintain existing highway facilities and the claim arises from the Recipient's failure to maintain. The Recipient'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 Recipient that occurred during the course of the work. Department or State inspection is not a waiver of full compliance with these requirements.

5. The Recipient's obligation to defend and indemnify shall not be excused because of the Recipient's inability to evaluate liability or because the Recipient evaluates liability and determine that the Recipient is not liable. The Recipient shall respond within 30 days to the tender of any claim for defense and indemnity by the Department or the State, unless this time has been extended by the Department. If the Recipient 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 Department or the State reasonably considers necessary for its defense and indemnity until disposition has been made of the claim or until the Recipient accepts or rejects the tender of defense, whichever occurs first.
6. With respect to third-party claims against the Recipient, the Recipient waives all rights of any type to express or implied indemnity against the Department, the State, and the officers, employees, or agents of each (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 Recipient shall, and will cause Contractor to, procure and maintain insurance on all of its operations with companies acceptable to the Department and the State as follows:
  - A. The Recipient shall, and will cause Contractor to, 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 Recipient shall, and will cause Contractor to, 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 Recipient shall, and will cause Contractor to, secure the payment of worker's compensation in accordance with Labor Code Section 3700.
  2. In accordance with Labor Code Section 1861, the Recipient 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 Recipient shall, and will cause Contractor to, 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 Recipient's or 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 Recipient shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Recipient 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 Recipient and 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 <sup>4</sup>	For Each Occurrence <sup>1</sup>	Aggregate for Products/ Completed Operation	General Aggregate <sup>2</sup>	Umbrella or Excess Liability <sup>3</sup>
≤\$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
>\$1,000,000 ≤\$15,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
>\$15,000,000 ≤\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
>\$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

1. Combined single limit for bodily injury and property damage.
2. This limit shall apply separately to the Recipient'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 AHSC funds.

2. The Department and the State, including the officers, directors, agents (excluding agents who are design professionals), and employees of each, 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 Recipient and 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 Recipient started work, unless such condition has been changed by the work or the scope of the work requires the Recipient to maintain existing roadway facilities and the claim arises from the Recipient'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 Recipient or 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. **RECIPIENT'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 Department or the State is excess only and shall not be called upon to contribute with this insurance.

- h. **AUTOMOBILE LIABILITY INSURANCE**

The Recipient shall carry, and shall cause Contractor to carry, automobile liability insurance, including coverage for all owned, hired, and non-owned 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 Recipient and Contractor shall each 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 Department or the State. Regardless of the allowance of exclusions or deductions by the State, the Recipient is responsible for any deductible amount and shall warrant that the coverage provided to the Department or the State is in accordance with Section 2(b), "Insurance."

- k. **ENFORCEMENT**

1. The Department may assure the Recipient's and Contractor's compliance with its insurance obligations. Ten days before an insurance policy lapses or is canceled during the contract period, the Recipient shall submit to the Department evidence of renewal or replacement of the policy.



2. If the Recipient or Contractor fails to maintain any required insurance coverage, the Department may maintain this coverage and withhold or charge the expense to the Recipient or terminate the Recipient's control of the work.
3. The Recipient is not relieved of its duties and responsibilities to indemnify, defend, and hold harmless the State, the Department, and the officers, agents, and employees of each by the Department's acceptance of insurance policies and certificates; and Recipient's indemnification, defense, and hold harmless obligations set forth in this Agreement shall not be limited by the limits of any insurance contemplated herein.
4. Minimum insurance coverage amounts do not relieve the Recipient for liability in excess of such coverage, nor do they preclude the State or the Department from taking other actions available to it, including the withholding of funds under this contract.

**Exhibit “F” to Disbursement Agreement**  
**Special Conditions**

**\*\*\*Pending until Standard Agreement is finalized\*\*\***

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