



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
Department of Housing



**DATE:** February 16, 2012  
**BOARD MEETING DATE:** March 13, 2012  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors  
**FROM:** Duane Bay, Director, Department of Housing  
**SUBJECT:** Agreement with MP Delaware Pacific Associates, L.P

**RECOMMENDATION:**

Adopt a Resolution authorizing the:

- A. President of the Board to execute an Agreement with MP Delaware Pacific Associates, L.P., to assist in the development of affordable housing at 2000 South Delaware, San Mateo, in the amount of \$1,986,532 for the term of four years from March 13, 2012 to March 12, 2016; and
- B. Director of the Department of Housing or the Director's designee to execute contract amendments modifying the County's maximum fiscal obligation by no more than \$25,000 (in aggregate,) and/or modifying the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

**BACKGROUND:**

The County received funding for the development of affordable housing at 2000 South Delaware in San Mateo in three increments during Fall/Winter 2010 and Spring 2011. The Project competed for funding through a public participation process in accordance with requirements of the U.S. Department of Housing and Urban Development (HUD) for annual allocations of federal funds under two programs: Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME).

**DISCUSSION:**

**Overview.** The Project consists of 60 units of affordable housing to be developed by MP Delaware Pacific Associates, L.P., a for-profit affiliate of the nonprofit housing provider MidPen Housing. Affordable housing developments often are structured within for-profit entities to garner equity financing from investors, typically corporations, which receive tax credits in return for their investments. The tax credits are used by the investors to offset taxable business income. In tax credit deals, the nonprofit stays in the ownership structure as managing general partner to ensure project compliance with both the affordable housing objectives and IRS regulations. In this case, the nonprofit managing

general partner will be MP Greenridge, a nonprofit affiliate of MidPen Housing.

Project Parameters. The Project represents one-half of a larger development of 120 units, half targeted to households with incomes not exceeding 50-60% Area Median Income (AMI), and the other half targeted to moderate income households with incomes up to 120% AMI. The latter portion will be developed simultaneously by a separate developer, Palo Alto Partners. While two buildings are envisioned, each targeting a different income group, the overall development has been designed as a unified undertaking and approved through a single entitlement process.

The land, the former site of the City of San Mateo Police Station, is owned by the City of San Mateo Redevelopment Agency (RDA), which had intended to retain the site and enter into separate long-term groundleases with each developer to develop its own parcel. As a result of a recently enacted State statute requiring the dissolution of all RDAs by February 1, the RDA's housing obligations will transfer to the City, including ownership of the site. The City has become successor to the RDA's rights and obligations under a Development and Disposition Agreement executed in March 2011, and all other documents relating to the development of the project will be finalized and executed with the City or its designee just prior to construction start.

Until construction close, anticipated for April 2012, County funding will be unsecured. Upon execution of the ground-lease for the affordable component, the County will immediately secure its funding against the leasehold interest. County funding will be structured as a 55-year loan at 3% simple interest. Repayment will be made from surplus cash generated from Project operations.

Other. The Resolution and Agreement have been reviewed and approved by County Counsel, and Risk Management has reviewed and approved the contractor's insurance. The Contractor has assured compliance with the County's Contractor Employee Jury Service Ordinance, as well as all other contract provisions that are required by County ordinance and administrative memoranda, including but not limited to insurance, hold harmless, non-discrimination and equal benefits. Approval of this Agreement contributes to the Shared Vision 2025 outcome of a Livable Community by increasing the overall supply of much-needed affordable housing. The Project's location on Delaware Street near Interstate 92, in close proximity with a concentration of retail shopping, renders this Project a hallmark of smart growth development.

Performance Measure:

Measure	FY 2010-11 Actual	FY 2011-12 Projected
No. of County-funded housing units developed and occupied	69	122

FISCAL IMPACT:

There is no Net County Cost. The total County obligation under this Agreement is \$1,986,532, of which \$677,338 is CDBG funding and \$1,309,194 is HOME funding. This contract amount is included in the Department of Housing Budget for FY 2011-12.

RESOLUTION NO. \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

\* \* \* \* \*

**RESOLUTION AUTHORIZING THE: (A) PRESIDENT OF THE BOARD TO EXECUTE AN AGREEMENT WITH MP DELAWARE PACIFIC ASSOCIATES, L.P., TO ASSIST IN THE DEVELOPMENT OF AFFORDABLE HOUSING AT 2000 SOUTH DELAWARE, SAN MATEO, IN THE AMOUNT OF \$1,986,532 FOR THE TERM OF FOUR YEARS FROM MARCH 13, 2012 TO MARCH 12, 2016; AND (B) THE DIRECTOR OF THE DEPARTMENT OF HOUSING OR THE DIRECTOR'S DESIGNEE TO EXECUTE CONTRACT AMENDMENTS MODIFYING THE COUNTY'S MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFYING THE CONTRACT TERM AND/OR SERVICES SO LONG AS THE MODIFIED TERM OR SERVICES IS/ARE WITHIN THE CURRENT OR REVISED FISCAL PROVISIONS**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of special services to or for County or any Department thereof; and

**WHEREAS**, in April 2010 the County Board of Supervisors approved the FY 2010-11 Action Plan funding for various activities under the federal Community Development Block Grant ("CDBG") and HOME Investment Partnerships ("HOME") Programs, including a housing reserve for projects selected through an off-cycle solicitation process; and

**WHEREAS**, in response to two off-cycle processes in Fall 2010, Contractor through its nonprofit affiliate MP Greenridge, Inc. applied for and was approved through a HUD-approved public participation process for incremental funding for the development of 60 units of affordable housing at 2000 South Delaware Street, San Mateo ("Project"); and

**WHEREAS**, Contractor made a third funding request through the County's FY 2011-12 annual Notice of Funding Availability cycle, resulting in supplementary funding to the Project under the FY 2011-12 Action Plan, which the Board approved in May 2011; and

**WHEREAS**, total County Project funding amounts to \$1,986,532, comprising \$677,338 CDBG funds and \$1,309,194 HOME funds; and

**WHEREAS**, in addition to the nonprofit, MP Greenridge, Inc., Contractor is also affiliated with the nonprofit housing provider, MidPen Housing, which formed both MP Greenridge, Inc. and the Contractor limited partnership, the latter a for-profit entity to take advantage of low income housing tax credits, a tax mechanism enabled under the IRS to attract equity financing for affordable housing projects; and

**WHEREAS**, Project is one-half of a larger 120-unit housing development, the other half of which is workforce housing targeted to households earning up to 120% AMI and which will be developed by a for-profit developer, Palo Alto Partners ("PAP"); and

**WHEREAS**, it is necessary and desirable that Contractor receive funding assistance in the amount of \$1,986,532 for the purpose of assisting in Project development;

**WHEREAS**, both parties now wish to enter into an Agreement in the amount of \$1,986,532 for affordable housing development at 2000 South Delaware Street, San Mateo, for the term of four years from execution; and

**WHEREAS**, there has been presented to this Board of Supervisors for its consideration and acceptance an Agreement between the County of San Mateo and Contractor, reference to which is hereby made for further particulars, and the Board of Supervisors has examined and approved the same as to form and content and desires to enter into the same.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** that the President of this Board of Supervisors be and is hereby authorized and directed to execute said Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto.

**BE IT FURTHER RESOLVED**, that the Director of the Department of Housing or the Director's designee shall be authorized to execute contract amendments modifying the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modifying the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

\* \* \* \* \*



**AGREEMENT BETWEEN  
COUNTY OF SAN MATEO  
DEPARTMENT OF HOUSING  
AND**

**MP Delaware Pacific Associates, L.P.,**

**TO ASSIST WITH**

**Development of Affordable Housing at  
2000 South Delaware Street, San Mateo**

**FOR THE PERIOD**

**March 13, 2012 through March 12, 2016**

Contact Person: Marina Yu  
Telephone number: (650) 802-5039

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO  
AND  
MP DELAWARE PACIFIC ASSOCIATES, L.P.**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012,  
by and between the COUNTY OF SAN MATEO, hereinafter called "County," and MP  
Delaware Associates, L.P., a California Limited Partnership, hereinafter called "Contractor";

WITNESSETH:

WHEREAS, in April 2010, the County Board of Supervisors had approved the FY 2010-11 Action Plan funding for various activities under the federal Community Development Block Grant ("CDBG") and HOME Investment Partnerships ("HOME") Programs, including a housing reserve for projects selected through an off-cycle solicitation process; and

WHEREAS, in response to two off-cycle processes in Fall 2010, Contractor through its nonprofit affiliate MP Greenridge, Inc. applied for and was approved through a HUD-approved public participation process for incremental funding for the development of 60 units of affordable housing at 2000 South Delaware Street, San Mateo ("Project"); and

Whereas, Contractor made a third funding request through the County's FY 2011-12 annual Notice of Funding Availability cycle, resulting in more supplementary funding to the Project under the FY 2011-12 Action Plan, which the Board approved in May 2011; and

WHEREAS, total County Project funding amounts to \$1,986,532, comprising \$677,338 CDBG funds and \$1,309,194 HOME funds; and

WHEREAS, in addition to the nonprofit, MP Greenridge, Inc., Contractor is also affiliated with the nonprofit housing provider, MidPen Housing Corporation, which formed both MP Greenridge, Inc. and the Contractor limited partnership, the latter a for-profit entity to take advantage of low income housing tax credits, a tax mechanism enabled under the Internal Revenue Code to attract equity financing for affordable housing projects; and

WHEREAS, the Project is one-half of a larger 120-unit housing development, of which the other half is workforce housing targeted to households earning up to 120% AMI and which will be developed by a for-profit developer, Palo Alto Partners ("PAP"); and

WHEREAS, the land for the 120-unit development is owned by the Redevelopment Agency of the City of San Mateo, which will enter into separate long-term ground-leases with Contractor and PAP to develop their respective parcels; and

WHEREAS, it is necessary and desirable that Contractor receive funding assistance in the amount of \$1,986,532 for the purpose of assisting in Project development;

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits**

The following exhibits and attachments are included hereto and incorporated by reference herein:

- Exhibit A – Program/Project Description
- Exhibit B – Disbursements and Rates
- Exhibit C – Contractor Declaration Form
- Exhibit D – Additional Program Requirements
- Exhibit E – 504 Compliance

Notwithstanding any other provisions of this Agreement, in the event of a conflict between the terms of this Agreement and those of an Exhibit, the terms of the Exhibit will control.

**2. Services to be performed by Contractor**

In consideration for the funding assistance set forth herein and in Exhibit "B," Contractor shall perform the services (hereinafter referred to as the "services" or the "work") necessary to implement the Program/Project as described in Exhibit A. For the purposes of this contract "Program" or "Project" may be used interchangeably.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein, County shall disburse funding assistance to Contractor in the form of payments based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold disbursements if the County determines that the quantity or quality of the work performed is unacceptable. In no event will the County's total fiscal obligation under this Agreement exceed **One Million Nine Hundred Eighty-Six Thousand Five Hundred Thirty-Two Dollars, (\$1,986,532).**

**4. Term and Termination** Subject to compliance with all terms and conditions, the term of this Agreement will be for four years from execution unless otherwise modified in Exhibit A.

County may terminate this Agreement for cause after giving Contractor written notice of any breach or default and after the expiration of 30 days from the date of such notice to cure said breach or default, if Contractor fails to cure said breach or default to the satisfaction of County, in County's reasonable discretion.

County reserves the right to waive any and all breaches of this Agreement, and any such waiver will not be deemed a waiver of all previous or subsequent breaches. In the event County chooses to waive a particular breach of this Agreement, it may condition same on payment by Contractor of actual damages occasioned by such breach of Agreement and shall make every effort to resolve the same quickly and amicably.

**5. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by

providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

## **6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

## **7. Hold Harmless**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any services or work provided by Contractor or payments made pursuant to this Agreement, provided that this will not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, will include the duty to defend as set forth in Section 2778 of the California Civil Code.

## **8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent will give County the right to automatically and immediately terminate this Agreement.

## **9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates will specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the

Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and it will comply with such provisions before commencing the performance of the work of this Agreement.

- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as will protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance will be combined single limit bodily injury and property damage for each occurrence and will be not less than the amount specified below.

Such insurance will include:

- (a) Comprehensive General Liability .....\$1,000,000, per occurrence
- (b) Motor Vehicle Liability Insurance:.....\$1,000,000, per occurrence
- (c) Professional Liability .....\$1,000,000, per occurrence

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which will also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants will be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance will be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

## **10. Compliance with laws; payment of Permits/Licenses**

All services to be performed by Contractor pursuant to this Agreement will be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Exhibit E, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Charter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies will be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:
  - i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification will include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Equal Benefits Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

#### **12. Compliance with Contractor Employee Jury Service Ordinance.**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to its employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees regular pay the fees received for jury service.

#### **13. Retention of Records, Right to Monitor and Audit**

- A Contractor shall maintain all required records for five (5) years after the County makes final payment and all services provided pursuant to this Agreement have been completed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
- B Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.
- C Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

#### **14. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

#### **15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement

shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

**16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United Sates mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

<div>In the case of County, to: Duane Bay, Director Department of Housing County of San Mateo 262 Harbor Blvd., Bldg. A Belmont, CA 94002-4017 Phone 650 802-5050</div>	<div>In the case of Contractor, to: Matthew O. Franklin MP Delaware Pacific Associates, L.P. c/o MidPen Housing Corporation 303 Vintage Park Drive, Suite 250 Foster City, CA 94404 Phone 650 356-2900</div> <div>With a copy to: Union Bank, N.A. 200 Pringle Ave., Suite 355 Walnut Creek, CA 94596</div>
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In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

**REST OF PAGE DELIBERATELY LEFT BLANK.**

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands

**COUNTY OF SAN MATEO**

By: \_\_\_\_\_  
President, Board of Supervisors

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

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

**MP DELAWARE PACIFIC ASSOCIATES, L.P.,  
a California limited partnership**

By: MP Delaware Pacific LLC, its general partner

By: Mid-Peninsula Greenridge, Inc.,  
its member/manager

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

Contractor's Signature (use blue ink only)

Name: \_\_\_\_\_  
Title: Assistant Secretary

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

**Exhibit A**  
**Program/Project Description and Specific Requirements**

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1. Project Description/Eligible Costs. Funding provided in this Agreement is for predevelopment and other eligible soft costs and development activities in connection with the development of 60 units of affordable housing at 2000 South Delaware Street, San Mateo ("Project" or "Property"). Project will be developed subject to a long-term ground-lease provided by the City of San Mateo Redevelopment Agency.

Construction of the Project will meet federal Section 504 requirements, described in Exhibit D, for persons with physical and sensory accessibility needs, and applicable federal prevailing wage requirements under Davis-Bacon, also described herein this exhibit and Exhibit D, in addition to all other applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter that govern the construction.

Proposed Project will consist of 60 units, with the following unit size distribution:

# Bedrooms	Total Units	HOME-Assisted Units	Proposed Rent for HOME-Assisted Units (excluding utilities)
0	0	0	0
1	18	4	\$714
2	22	4	\$850
3	20	3	\$975
4	0	0	
<b>Total</b>	<b>60</b>	<b>11</b>	

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services/activities listed in the table below.

Prior to the first draw request/request for reimbursement and at either each subsequent funding draw request or upon submission of the quarterly performance report described later in this Exhibit A, but no less frequently than quarterly throughout the Performance Period as defined below in Paragraph 10 of this Exhibit A, Contractor shall provide County Department of Housing ("DOH") with a performance schedule, including milestones, for use of funds, including tasks to be performed, and a timeline for completing tasks within the overall Project budget, shown below, and shall provide timely updated performance schedules reflecting any changes as they become known.

Work Scope	County CDBG *	County HOME	Total
Acquisition - Legal	77,338		77,338
Demolition & Site work	570,000		570,000
Water Connection	30,000		30,000
Local Development Impact Fees		769,197	769,197
Building Permit and City fees		438,952.00	438,952
Hard Costs		101,045.00	101,045
<b>TOTAL</b>	<b>\$677,338</b>	<b>\$1,309,194</b>	<b>\$1,986,532</b>

\* In the event that HUD disallows eligibility for any County approved CDBG activity, County shall substitute HOME funds and will amend Notes and Deeds of Trust accordingly after Project Completion.

DOH and Contractor understand that the above-referenced costs are estimates and subject to variability. Should there be a substantial change in work scope activities and/or estimated costs (defined as a 10% +/- variance in line item cost estimate), Contractor shall inform DOH in writing for DOH review and approval. In the event of uncertainty, DOH will make the determination of substantial change.

Unless otherwise noted herein, funding is provided in the form of a loan in accordance with terms described below. Funding provided in this agreement is from the following sources:

	CDBG (\$)	HOME (\$)	HOME CHDO RESERVE (15%) \$	OTHER (\$)	TOTALS (\$)
FY 2010-11	281,081	305,451	NA	NA	586,532
FY 2011-12	396,257	1,003,743	NA	NA	1,400,000
<b>TOTAL</b>	<b>677,338</b>	<b>1,309,194</b>			<b>1,986,532</b>

2. HOME Match Contribution. For housing projects receiving HOME assistance, prior to the start of construction, Contractor shall provide DOH with written information confirming the type and amount of HOME match contribution that will satisfy the 25% HOME Program match contribution requirement as described in HOME regulations 24 CFR 92.218 through 92.222. No later than DOH project close-out, Contractor shall provide documentation that it has met the 25% HOME match contribution requirements.

Contractor has identified the minimum HOME match in the amount of : \$ 327,299 in the form of: To be determined.

3. CHDO Project. Contract is not certified as a Community Housing Development Organization (CHDO) under the HOME 24 CFR 92.300 and 92.301. For CHDO projects, unless stated otherwise herein, in accordance with County policy for CHDO-sponsored Projects, all HOME funds provided in this Agreement will be treated as CHDO funds. CHDO projects undergoing development and upon occupancy must comply with all HOME requirements.
4. HOME Affordability Covenant. **Eleven (11)** units in Project are HOME-assisted as indicated above in Section 1 of this Exhibit. In accordance with HOME Program requirements, all

Projects receiving HOME funds must record on title a HOME affordability covenant ("Covenant") or deed restriction ("Deed Restriction") that runs with the land and restricts household incomes and rents of HOME-assisted units such that these units remain continuously affordable to very low and low income tenants for a specified period of time. The minimum affordability term ranges from five to twenty years depending on the per-unit HOME costs and HOME-funded activity. This restriction will be binding on the Contractor and any and all successors in interest. Contractor will record the restriction, which will become effective at Project Completion. The County defines Project Completion as the date of issuance of the Certificate of Occupancy or some other document acceptable to DOH evidencing completion, notwithstanding that HUD currently defines Project Completion as the date when final HOME funds are drawn down and project completion information has been entered in the disbursement and information system established by HUD. The Covenant will incorporate the following provisions:

5.

(1) HOME Definitions

The following definitions and dollar amounts referred to in these definitions may be adjusted from time to time based upon action by the United States Department of Housing and Urban Development (HUD) or any successor agency, and any such adjustments shall be incorporated by reference into this Agreement.

- a. High HOME Rent is rent that does not exceed the lesser of (1) the Section 8 Fair Market Rents (FMRs), as established by HUD under 24 CFR Part 888, for existing housing minus tenant-paid utilities; or (2) 30% of annual income for households at the HOME income limit for San Mateo County described below and adjusted for family size, less tenant-paid utilities. Under this definition (2) for San Mateo County, High HOME Rent is calculated at 60% of the Area Median Income (AMI).

If tenant is paying any utilities, a "utility allowance" must be deducted from the above rent figures. This allowance is calculated by HUD under 24 CFR Part 880 - 886 and should be obtained annually by contacting the San Mateo County Housing Authority.

- b. Low HOME Rent is rent that is 30% of annual income for households at the Very Low-Income limit (or 50% AMI) for San Mateo County, adjusted for family size, minus tenant paid utilities.

If tenant is paying any utilities, a "utility allowance" must be deducted from the above rent figures. This allowance is calculated by HUD under 24 CFR Part 880 - 886 and should be obtained annually by contacting the San Mateo County Housing Authority.

- c. Very Low-Income is the qualifying income with adjustments for family size, for very low-income households as established by HUD pursuant to Section 8 of the United States Housing Act of 1937, as amended. These income limits are adjusted from time to time.

- d. HOME Income is income at 60% AMI, adjusted for family size as calculated by HUD and adjusted from time to time by HUD or a successor agency.

(2) Rent and Occupancy Restriction

**At least 20% of the HOME assisted units (3 units)** must be occupied by households whose income does not exceed the **Very Low-Income** limit as specified above, which limit may be adjusted from time to time by HUD or any successor agency. The rent on said units, including tenant paid utilities, may not exceed the Low HOME Rent specified above, which rent may be adjusted from time to time by HUD or any successor agency.

**All remaining HOME assisted units** must be occupied by households whose income does not exceed the HOME Income Limit as specified above, except that after initial occupancy, tenant incomes in these units may increase up to 80% AMI. The rent on said units, including tenant paid utilities, may not exceed the High HOME Rent, which rent may be adjusted from time to time by HUD or any successor agency.

Floating HOME Units: The specific units affected by this Restriction shall be "floating" units, that is, there shall be no specified HOME-assisted units provided a minimum number of units is occupied in compliance with the HOME requirements specified above, and the floating units reflect the unit-size mix of the entire Project.

Over-Income Tenants: In the event that the income of a qualifying tenant increases so that the tenant no longer meets the income criteria (i.e., 50% AMI for the Low HOME Units and 80% AMI for the High HOME Units), the Owner will be allowed a variance to the income criteria of this Restriction until such time as said formerly qualifying tenant vacates the unit, or another unit of comparable size in the Project becomes available, at which time that unit must be rented to a qualifying tenant and the restriction shall transfer to the new unit. The rent for an over-income tenant whose income exceeds 80% AMI, adjusted for household size, must be calculated at 30% of adjusted gross income, capped at market rent for comparable, unassisted units, provided however, that if the tenant is occupying a unit that has been allocated low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986 (26 USC 42), the rent will be governed by that provision.

(3) Subordination:

The Covenant shall be subordinate to any mortgage or Deed of Trust and the affordability period shall be terminated in the event of a foreclosure or transfer in lieu of foreclosure if the foreclosure or other transfer recognizes any contractual or legal rights of the County of San Mateo to take actions that would avoid the termination of low-income affordability. However, this affordability restriction shall be revived if, during the original term hereof, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the property.

Owner grants to the County of San Mateo the right to take any and all legal action necessary to enforce the provisions of this restrictive covenant, and Owner will be responsible for all reasonable legal expenses incurred by the County in the enforcement of this restrictive covenant. Within the HOME Program guidelines, the County of San Mateo will have the right to waive any and all breaches of the terms of this affordability restrictive covenant, but any such waiver shall not be deemed a waiver of any previous or subsequent breaches.

6. NEPA Environmental Review: Prior to disbursement of funds under this agreement, a HUD-required environmental review (ER) under the National Environmental Protection Act (NEPA) will be undertaken by DOH on behalf of the County to determine any environmental impacts on the physical and built environment. Non-staff costs to prepare the ER will be deducted

from the proceeds of funding provided in this agreement. In no case will funds be disbursed to Contractor for the Project until the ER has been completed to the satisfaction of DOH and/or HUD. Parties to this Agreement acknowledge the NEPA ER has been completed with HUD issuance of the Authority to Grant Funds, dated June 3, 2011.

7. Conditional Commitment of Funds. Not applicable.
8. NEPA Conditions of Approval. Should the ER establish conditions of approval for funding, Contractor shall comply with these conditions. DOH may require a separate written assurance regarding Contractor compliance. ER has determined that Project will need to meet noise abatement requirements enumerated in the Special Environmental Clearance and Waiver of EIS dated March 21, 2011 and signed by the Certifying Officer, the DOH Director.
9. Davis-Bacon Prevailing Wage. As provided in Exhibit D herein, for applicable construction projects, Contractor shall comply with federal requirements requiring the payment of prevailing wages, as determined by the U.S. Department of Labor, to all laborers and mechanics on construction projects funded with federal funds. In summary, the following project types are subject to the Davis-Bacon prevailing wage requirements: CDBG assistance for housing construction activities in connection with projects involving 8 or more units; CDBG assistance of non-housing projects (public facilities) in which the construction contract exceeds \$2,000; and HOME assistance of housing projects in which HOME is assisting 12 or more units. (Projects receiving a commitment of project-based vouchers ("PVB") under Section 8 of the National Housing Act from the County of San Mateo Housing Authority ("Housing Authority") for newly constructed or rehabilitated units will be subject to Davis-Bacon prevailing wage requirements if the PBV commitment covers nine or more units. Contractor should consult with the Housing Authority for guidance.) Contractor is directed to [www.gpo.gov/davisbacon/](http://www.gpo.gov/davisbacon/) for compliance information, including the applicable Wage Determination.
10. Displacement, Relocation, and Acquisition. In accordance with Exhibit D regarding Relocation Assistance and Real Property Acquisition Policies Act of 1970, and as applicable HOME and CDBG regulations at respectively 24 CFR 92.353 and 24 CFR 570.606, Contractor shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations and farms) as a result of the Project. As applicable, Contractor shall be responsible for meeting compliance with requirements of the aforementioned regulations and shall include relocation costs in the Project budget to determine total Project costs.
11. Performance Period. Contractor shall complete the Project during the Performance Period, which shall be the exact Term of this Agreement as set forth in Paragraph 4 of this Agreement, as such Term may be amended by the parties. Failure to complete the activities described in Project Description during the Performance Period will constitute a breach of the terms of this Agreement, provided, however, the Performance Period may be extended at the sole discretion of the Director of the DOH on behalf of the County. During the Performance Period, Contractor shall submit required quarterly progress reports described below and records of costs incurred for County review as necessary.
12. Compliance Period. Owners of rental housing assisted with HOME funds must maintain the housing in habitable condition and for HOME-assisted Projects, in compliance with property standards at HOME 24 CFR 92.251, for the entirety of the Compliance Period. The Compliance Period is defined as the time frame beginning immediately upon completion of the

Performance Period and ending the later of the expiration of the HOME Affordability Covenant or the maturity of the Note described herein. For Projects involving construction, the Compliance Period will begin immediately upon issuance of the Certificate of Occupancy, the Certificate of Completion, or some other document acceptable to DOH. Contractor shall provide DOH with a housing completion report, including final Project funding sources/uses, and tenant profile described below on forms provided by the DOH within the first 180 days of the Compliance Period. Upon Contractor request to DOH, the due dates for these reports may be extended to accommodate a longer lease-up period as the case may be. The aforementioned forms are accessible on the DOH website, accessible on DOH website, [www.smchousing.org](http://www.smchousing.org).

Thereafter, on an annual basis during the Compliance Period, or more often if required by the County, Contractor will provide the County with all information necessary to monitor the Project relating to program compliance matters. Annual information required will include but is not necessarily limited to: evidence of continuing fire and liability insurance; annual certified financial audit; tenant incomes and rents; and any other compliance information as may be required by the County.

13. Property Standards. Construction of the Project must fully comply with all applicable local and State building codes and regulations. All HOME-funded projects also must meet property standards in 24 CFR 92.251 of the HOME Program Rules ("HOME"). Improvements to existing residential property must meet federal lead-based paint standards referenced in Exhibit D.
14. Agreement Term Extension. The parties to this Agreement hereby acknowledge and affirm that notwithstanding **Section 4 Term and Termination, of this Agreement**, completion of the Performance Period shall automatically and without further action on the part of the parties, extend the Term to coincide with the expiration of the Affordability Covenant period or of the Compliance Period, whichever such event occurs later.
15. Quarterly Performance Reporting. During the Performance Period, Contractor shall submit to DOH a Quarterly Performance Report within 30 days of the end of each quarter. The report should be in the form of a narrative description of all activities performed in relation to the project including all pre-development activities. The report should include a project time-line, including a schedule for completing milestones and/or tasks, and indicate the status of the project in relationship to this time-line. Contractor must document any changes from the time-line submitted with the original application. Quarterly performance reports will be provided to DOH during the course of the Project until after Project completion, even if all of the funds provided under this Agreement have been expended. This report requirement is in addition to any information submitted with requests for reimbursement.
16. Project Completion Reporting. Upon completion of the project, Contractor shall provide reports depending on the Project type and in a format provide by DOH. Completion reports include, but are not limited to: Tenant Profile; a Project Completion audit or other audit required under tax credit requirements or other affordable funder performed by an independent certified public accountant identifying the sources and uses of all Project funds; Project Financial Completion Report (sources and uses of funding), which shows the total of all funds expended for the Project. County completion forms are accessible on the DOH website, [www.smchousing.org](http://www.smchousing.org). Should Project financing involve tax credits or other financing requiring the preparation of a final Project Cost Audit ("Cost Audit"), Contractor shall provide a copy of such audit to DOH within the same timeframe prescribed by the funding source requiring such audit.

17. Affirmative Marketing. Projects containing five or more units, regardless of funding source, must comply with affirmative marketing responsibilities that meet federal and state requirements. Projects with five or more HOME-assisted units must also comply with affirmative marketing standards enumerated at HOME regulation 24 CFR 92.35.
18. Monitoring. In accordance with the Agreement provision pertaining to *Retention of Records*, during the Performance and Compliance Periods described in this Exhibit, County may undertake monitoring of Contractor's records and premises for program compliance. As applicable, Contractor shall keep and maintain income records of all tenants who rent any HOME-assisted units for the entire period of affordability term. Notwithstanding the aforementioned, Contractor shall maintain all required records for a period of five (5) years after the end of the Compliance Period. Contractor shall be given adequate notice of any monitoring.

DOH may review documents relevant to the financial condition of Projects to ensure long-term viability. DOH will conduct a monitoring review of Project periodically according to HUD requirements for affordability and other standards. Monitoring visits will consist of the following:

- (1) On-site inspections of selected units/common areas and resident files. All units and files need to be accessible during the monitoring visit for random sampling.
  - (2) Verification of Contractor-completed Tenant Profile form, as applicable, required by HUD, containing demographic information such as race/ethnicity, and income verification. If a resident refuses to provide race/ethnicity, Contractor may make a visual observation and note in the application that the resident declined to answer. Income verifications should be completed on an annual basis.
19. Contract Number. All correspondence, invoices, payments, and reports must include the County contract number.
  20. Rents and Occupancy. Project financing is anticipated to include proceeds from low-income tax credits. As such, the Project rents and occupancy will be restricted by this funding source to low income occupancy with affordable rents. Notwithstanding that HOME-assisted unit rents and occupancy will be subject to HOME affordability requirements as referenced above, financing provided under this Agreement is not intended to make the rents and occupancy more restrictive than those required by tax credits or other affordable housing finance sources. Compliance with these other requirements will constitute substantial compliance with County requirements.

Prior to marketing in accordance with **Section 15** above, and prior to the initial Project leasing period, Contractor shall submit for County review and approval, the Project's initial rent schedule and utility allowances. For HOME-assisted units, Contractor shall certify each tenant's income in accordance with HOME Section 92.203(a)(1)(i). Contractor shall re-certify each tenant's income in accordance with Section 92.252(h). For tax credit projects, County shall defer to income certification requirements imposed by tax credits. Otherwise Contractor shall rely on income determination calculations set forth in 24 CFR Part 5 (i.e., the Section 8 Voucher Program). County low income and HOME rent-limits may be obtained from the DOH website [www.smchousing.org](http://www.smchousing.org).

Contractor shall not refuse to lease HOME-assisted units to a certificate or voucher holder pursuant to 24 CFR Part 982 (Section 92.252(d)).

21. Tenant Protections. Contractor shall provide a lease for rental housing and such lease will be for not less than one year, unless by mutual agreement between the tenant and the owner. Leases for HOME-assisted units will comply with provisions enumerated at HOME 24 CFR 92.254, *Tenant and Participant Protections*.
22. Ground-Lease. Project will be developed on land leased for an anticipated term of 99 years from the City of San Mateo Redevelopment Agency. The ground-lease ("Ground-Lease") rent is anticipated to be One Dollar (\$1.00) a year. County shall be provided an opportunity to review and approve the terms and conditions of the Groundlease prior to its execution.
23. Security/Term. Funding provided will be unsecured until such time Contractor secures a leasehold interest in the Property, anticipated to occur before start of construction, described in Section 1 of this Exhibit. Prior to County recording a lien against the leasehold interest, DOH Director shall determine a maximum amount of funds disbursable under this Agreement.

Should the funding provided in this agreement be from more than one source, separate Promissory Notes ("Note") and Deeds of Trust will be executed for each funding source. For each funding source Contractor shall execute and deliver a Promissory Note in the amount indicated below, and Deed of Trust secured against a leasehold interest in favor of the County to secure the performance of all terms and conditions of the Note and this Agreement.

Funding Source*	Note Amount (\$)	Deed of Trust Amount
CDBG	677,338	Same as Note Amount
HOME	1,309,194	Same as Note Amount

In the event that HUD disallows eligibility for any County-approved CDBG activity, County shall substitute HOME funds and will amend the Notes and Deeds of Trust accordingly after Project Completion.

The Note[s] will be non-recourse. The Deed[s] of Trust will be recorded in the Office of the Recorder of the County of San Mateo. The Deed[s] of Trust may be subordinate to any liens of Contractor's construction and permanent financing. County agrees to execute subordination agreements reasonably requested by Contractor's construction and permanent lenders.

For each Note, no interest will accrue on the Note until Project Completion. Interest at the rate of three percent (3%) simple will be charged annually, commencing on the first day of the first month following the issuance of the Certificate of Occupancy, Notice of Completion, or some other document evidencing completion acceptable to DOH. Payment in full on the Note, including any accrued interest, will be due and payable no later than fifty-five (55) Years after receipt of the afore-mentioned completion document for the Project ("Note Maturity"). The Note will be executed prior to any disbursement of funds under this Agreement. Should there be a conflict in the language between the Note and this Agreement, the Note will prevail.

24. Repayment. **The provisions and requirements in this and foregoing sections will refer to each Note unless stated otherwise.**

Annual payments on the Note will be made from Project Operations, which begins on the first day of the month after Project receives a Certificate of Occupancy, Notice of Completion, or some other document evidencing completion acceptable to DOH. Annual payments will be equal to the lesser of: (a) **50%** of Residual Receipts, with payment amount determined by amount of County funding provided in this Agreement as a proportion of all Public Agency subordinate residual receipts funding (to be confirmed by DOH and Contractor in writing

outside of this Agreement), or (b) equal annual payments amortized to pay the loan in full by Note Maturity.

Payment will be first applied to outstanding interest and then to principal until the Note is paid in full. In the event this payment is less than accumulated interest owed plus current interest, any unpaid interest will carry over to the following year. Interest will not compound on this interest carry-over. The entire outstanding principal balance plus any unpaid accrued interest will be due and payable upon Note Maturity.

The first payment will be due no later than 120 days after the end of the Project's first fiscal year after completion of construction. A copy of the annual independent financial audit delineating Residual Receipts payment to the County will also be delivered to the County not later than 120 days after the end of each of the Project's fiscal years.

Residual Receipts will mean, with respect to the Project's fiscal year, the amount by which Gross Revenue exceeds Annual Operating Expenses, as defined below.

"Gross Revenue" is defined as all rental and incidental income from the Project; but excluding tenant security deposits, loan proceeds and capital contributions; and any interest earned on said deposits.

"Annual Operating Expenses" means costs reasonably and actually incurred for operations and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally acceptable accounting principles. A copy of the audit will be delivered with payment as specified above. Costs associated with the Project Operations and maintenance include the following: property and other taxes and assessments imposed on the Project; premiums for property damage and liability insurance; utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas and electricity; maintenance and repair including but not limited to pest control, landscaping and grounds maintenance, painting, and decorating, cleaning, common systems repairs, general repairs, janitorial supplies, and others; any license or certificates of occupancy fees required for operation of the Project general administrative expenses including but not limited to advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other; resident services expenses, standard for the industry, for staffing, equipment, and onsite programs; subsidized transit pass programs, transportation coordination and Transportation Management Association fees as required by the City of San Mateo; property management fees and reimbursements including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by the County (which such approval will not be unreasonably withheld); asset management fees; annual cash deposited into a reserve for capital replacements of Project improvements in an amount of Five Hundred Dollars (\$500) per unit per year, provided any changes to the amount deposited into this replacement reserve will require DOH approval; cash deposited into an operating reserve for the Project and such other reserves as may be required by the Contractor's Partnership Agreement or the Contractor's senior lenders; payments of any deferred developer fees; annual partnership management fee of Thirty Five Thousand Dollars (\$35,000) in the first year of Project Operations and increasing by three percent (3%) each year thereafter; any advances by partners required under the Partnership Agreement, if applicable, of Contractor and any fees (including deferred developer fees) to partners required under the Partnership Agreement of the contractor; and required debt service payments of loans in senior position to this Loan.

Notwithstanding specific dollar amounts noted herein, prior to start of Project operations, Contractor will confirm in writing with DOH all fee and reserve amounts to be included in the above calculations for Residual Receipts. Annual operating expenses will not include the following: depreciation, amortization, depletion, or other non-cash expenses, or any amount expended from a reserve account.

25. Excess Construction Proceeds/Cost Savings. Surplus Construction Cash is defined as the difference between total of all sources of funds received for the Project and the total cost of the Project including funding of required reserves and payment of developer fee. If Surplus Construction Cash remains after construction is completed and all obligations to construction contractors, subcontractors, lenders and investors for construction period expenses are satisfied, Contractor shall reimburse the County for its pro rata share based on its loan amount. Contractor shall prepare and submit to County a Cost Audit detailing the amount of Surplus Construction Cash, if any, within 90 days of Project completion. County may, at its sole option, accept a Cost Audit required by another funding source as evidence of Surplus Construction Cash, if any.

Contractor shall distribute Surplus Construction Cash among the County and any other governmental agency(-ies) requiring reimbursement/repayment in direct proportion to the share of total Project funds from each such agency funding the Project. In addition to the County, the other governmental agencies entitled to reimbursement/payment are: The Redevelopment Agency of the City of San Mateo and California Housing Finance Agency. County investment in the Project comprises the funding amount provided in this Agreement. This reimbursement will be counted toward repayment of the amount owed on the County Note(s), with such payment first applied toward any interest accrued before reduction of the principal balance.

Contractor may opt to retain up to 50% of the Surplus Construction Cash proceeds with the other 50% to be distributed to the County and other applicable public/governmental agencies in the proportion described above. Should Contractor opt to retain a portion of the Surplus Construction Cash, its portion shall be used solely for ongoing Project Operations or for Developer Fees. In either case, Contractor shall inform County of its intent to retain up to 50% of the Surplus Construction Cash, and provide a detailed description of the intended use(s) of the Surplus Cash, as well as the identity of any other public/governmental funding agencies, in writing, no later than the permanent loan closing date.

26. Prepayment. Prepayments may be made at any time without penalty.
27. Due on Sale, Refinance or Transfer of Title. Contractor shall not assign its rights under this Agreement without obtaining the prior written consent of the Director or his/her designee or sell or refinance the Property or Project other than a refinance for a permanent loan to repay any interim loans taken out to undertake the construction of the Project. In the event of a sale or transfer of the Project or any interest therein by Contractor without such consent, the entire principal balance of the Note, including any accumulated interest, will be immediately due and payable, provided, however, the assignment or transfer of the Project to a partnership for purposes of syndicating low income tax credits and in which the Contractor or a nonprofit affiliate of the Contractor or a limited liability company whose members are a nonprofit affiliate of the Contractor and any transfer of limited partnership interests in Contractor or removal of the general partner of Contractor and replacement with Union Bank, N.A. or an affiliate thereof, shall not be considered a sale or transfer of the Project.

28. Acceleration of Note. In the event Contractor breaches any of the terms and conditions of this Agreement after thirty (30) days written notice to Contractor and a subsequent 30 day notice to Union Bank, N.A. as investor limited partner of Contractor and failure to correct the breach, the Contractor will be in default of the terms and conditions of this Agreement as well as the Note, and the County may demand immediate and full payment of the principal amount of this Note and any accrued interest, and/ or may initiate foreclosure proceedings under the Deed of Trust. Provided, however, if the breach cannot reasonably be cured within 30 days, Contractor shall not be in default under this Agreement if Contractor has commenced the cure within 30 days' written notice from County and is diligently pursuing the cure to completion.

Default may result from:

- a. Failure of Contractor to make any payment hereunder as when and due;
  - b. Failure of Contractor to perform or observe any terms or provisions of this Agreement, including but not limited to meeting HOME affordability requirements as described in Section 92.252 or 92.254, as applicable ;
  - c. Failure of Contractor to perform under the ground-lease after expiration of applicable cure periods;
  - d. Use of funds under this Agreement for purposes not approved by the County; or
  - e. Occurrence of any other event (whether termed default, event of default or otherwise) which under the terms of this Agreement will entitle the County to exercise rights or remedies hereunder.
29. Title Policy. If funds provided in this Agreement are to assist in property acquisition, Contractor shall open an escrow with a mutually acceptable title company. County as a lender shall provide enabling escrow which will include instructions to record the Deed of Trust.

For all loans secured by a deed of trust, at the close of escrow Contractor shall obtain an ALTA extended coverage lender's policy of title insurance in an amount not less than the face value of the Note, clear of any title defects which would prevent the operation of the proposed Project. Contractor shall be responsible for paying all recording fees, escrow fees, the premium for the title insurance policy, all fees and cost for any new financing, and shall pay any applicable transfer taxes.

30. Fire and Extended Coverage. Contractor at its costs shall maintain on the Project a policy of standard fire and extended coverage during the life of the Note and Deed of Trust securing this Agreement, or any subsequently executed document which replaces the Note and Deed of Trust, with vandalism and malicious mischief endorsements, to the extent of at least the full replacement value of the improvements which are part of the premises. The insurance policy must be issued in the names of Contractor and the County as their interests appear. The insurance policy must contain a lender's loss payable endorsement, providing that any proceeds will be payable to the County as its interests appear and will be subject to the interest of senior lenders.

Subject to the requirements of senior lenders in the event that Contractor shall undertake to restore the damaged improvements or to reconstruct the destroyed improvements within a period of sixty (60) days of receipt of insurance proceeds, such insurance proceeds received by the County will be released to Contractor as payments are required for said purposes, and upon completion of such restoration or reconstruction, any balance thereof remaining will be paid to Contractor forthwith, subject to the rights of senior lenders.

In the event that Contractor fails to undertake the restoration or reconstruction of such improvements within sixty (60) days after receipt of insurance proceeds following any such damage or destruction, there will be paid and released to the County from such insurance proceeds a sum equal to the cost of clearing the premises in the event Contractor does not at its own expense clear the premises within said period. Subject to the rights of senior lender, the balance will be held to compensate the parties to this Agreement as if the premises were sold. Subject to the requirements of senior lenders, Contractor shall also sell the vacant land on the open market and the proceeds of said land sale will be paid to County to repay the loan subject to the rights of senior lenders.

31. Notification to County of Lease-Up and Tenant Marketing. Contractor shall provide the County with a copy of Contractor's tenant marketing plan for the Project plus notices advertising availability of units. The County shall, in turn, advertise any Project openings or vacancies through its on-going housing informational communication to outside agencies.
32. Mandatory Acknowledgment of County as Funder. All projects/programs receiving any type of funding assistance and or substantial technical assistance through DOH will be required to indicate such in any advertising, marketing, public presentations, press releases, written materials or project descriptions. Such acknowledgement should also identify HUD's involvement in the Project.

All Capital projects must display signage as described below:

- Temporary Construction Signage identifying DOH funding and/or technical assistance and HUD involvement must be appropriately displayed during the major portion of the construction phase. Such signage must be provided by the Contractor and must be pre-approved by the DOH in design and content.
- Permanent Signage must be attached to all completed projects and must be displayed in a visible, heavily trafficked area of the Project, e.g., front lobby, main entry or walkway, etc. Location of display must be approved by DOH. Permanent historical signage in the form of an 8' x 10" bronze plaque may be provided by DOH and may be reimbursed from loan proceeds as a project cost. As an alternative, County may agree to other signage which acknowledges DOH and HUD, but such signage must be approved in advance.

## Exhibit B Disbursements and Rates

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In consideration of the services provided by Contractor in Exhibit "A", County shall reimburse Contractor based on the following terms:

Except in cases in which funding provided in this agreement will be used for property acquisition, funding assistance by County will be provided upon submission of reimbursement requests by Contractor to the County. Requests for reimbursement will include copies of invoices paid together with warrants, canceled checks, or other proof that the invoices have been paid. The request must include a brief narrative description of the progress of the Project and the items being reimbursed.

For all other payment requests of County, Contractor shall certify in writing that the specific services for which funding assistance is being requested have been satisfactorily completed, that the amounts requested are accurate and that all such amounts are being or have been expended on behalf of and exclusively for the project. The County reserves the right to verify such completion prior to payment to Contractor.

For property acquisition, County shall deposit funds into an escrow held by a title company mutually approved by County and Contractor, in accordance with County enabling instructions. County funds deposited into escrow will be used by the title company to consummate the transaction within the acceptable time constraints of CDBG and/ or HOME, as the case may be.

In the event of a questionable reimbursement request by Contractor, County shall state in writing the specific nature of its objections to the request. The County shall also specify what actions or changes are necessary to make the work acceptable. Contractor shall respond to County within 15 days of receipt of such objections. The parties to this Agreement shall meet to discuss such objections at the request of either party. The County will not be obligated to make reimbursement for any amount requested unless and until any and all objections to the request, including but not limited to the adequacy of the services rendered or the amount of the reimbursement request, have been resolved.

None of the funding assistance provided under this Agreement shall be used to support Contractor's program administration, including salary, fringe benefits or other compensation of its employees or affiliates.

## Exhibit C

### Contractor's Declaration Form

#### I. CONTRACTOR INFORMATION

Contractor Name:		Phone:	
Contact Person:		Fax:	
Address:			

#### **II. EQUAL BENEFITS** (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☐ Contractor complies with the County's Equal Benefits Ordinance by:
- ☐ offering equal benefits to employees with spouses and employees with domestic partners.
  - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
  - ☐ Contractor is a party to a collective bargaining agreement that began on \_\_\_\_ (date) and expires on \_\_\_\_ (date), and intends to offer equal benefits when said agreement expires.

#### **III. NON-DISCRIMINATION** (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☐ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

#### **IV. EMPLOYEE JURY SERVICE** (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☐ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
  - ☐ Contractor is a party to a collective bargaining agreement that began on \_\_\_\_ (date) and expires on \_\_\_\_ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**Exhibit D**  
**Additional Program Requirements**

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**1. BREACH OF AGREEMENT**

This Agreement is governed by applicable federal statutes and regulations, as referred to elsewhere herein. Any material deviation by Contractor for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination of the Agreement at the election of County or upon the direction of HUD.

**2. AGREEMENT TERMINATION**

County may terminate this Agreement for cause in accordance with the provisions of Paragraph 4 of this Agreement and/or initiate acceleration of the Note in accordance with Paragraph 28 of Exhibit A.

**3. CONFLICT OF INTEREST**

No members, officers, or employees or agents of County, no member of the County's Board of Supervisors, and no other public official who exercises any function or responsibility with respect to the program that is the subject of this Agreement ("Program") during his/her tenure, or for one year thereafter, shall have any financial interest, direct or indirect, in this Agreement or a related subcontract, or the proceeds thereof.

During his/her tenure, and for one year thereafter, no member, officer, board member or employee or agent of Contractor who exercises any function or responsibility with respect to Contractor's performance hereunder, shall have any personal financial interest, direct or indirect, in any real property or improvements receiving a direct benefit from the Program. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

Contractor shall not contract with any third party or subcontractor that will cause a violation of the preceding paragraph. Contractor shall incorporate the above provision into all contracts awarded in connection with this Agreement.

**4. LOBBYING PROHIBITED**

Federal funds will not be used by Contractor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government. Federal funds will not be used by Contractor to lobby or influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal contract.

**5. INFLUENCING PROHIBITED**

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and

C. The language of paragraphs 5A and 5B will be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

## **6. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS**

Contractor, to the extent applicable to this Agreement, shall comply with the following Federal laws and regulations as set forth in 24 CFR §§570.600-612:

A. Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, including community development funds, on the grounds of race, color, or national origin.

B. Public Law 90-284, Fair Housing Act (42 U.S.C. §§3601- 20), which provides that it is the policy of the United States to provide, within constitutional limitations, fair housing throughout the United States and prohibits any person from discriminating in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin handicap or familial status. The Fair Housing Act, as amended in 1988, also establishes requirements for the design and construction of new rental or for sale multifamily housing to ensure a minimum level of accessibility for persons with disabilities. Multifamily dwelling units in buildings containing 4 or more units served by one or more elevators, or ground floor dwellings units with 4 or more units, constructed for first occupancy after March 13, 1991, must be designed and constructed in a manner that the public and common use portions of such dwellings are readily accessible to and usable by disabled persons. All premises within such dwellings must incorporate features of adaptive design regarding accessibility routes into and through the dwelling and design features within the units. (Regarding accessibility design issues, State accessibility requirements will prevail if they are stricter than federal requirements.)

C. Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services, programs or benefits supported by Federal funds.

D. Rehabilitation Act of 1973, Section 504, which prohibits discrimination against otherwise qualified handicapped persons in the provision of programs, facilities and employment supported by Federal funds.

In the case of multifamily rental housing, projects of five or more units must be designed and constructed to be readily accessible to and usable by persons with disabilities. For new construction involving five or more units, and substantial rehabilitation projects of 15 or more units (with substantial rehabilitation defined as rehabilitation costs representing 75 percent or more of the replacement costs of the completed facility), the following requirements must be followed - a minimum of 5 percent of the dwelling units must be accessible to individuals with mobility impairments and an additional 2 percent accessible to individuals with sensory impairments. At the minimum, one unit will be made accessible to mobility-impaired individuals and one unit accessible to sensory impaired individuals. When less than substantial rehabilitation is undertaken in multifamily rental housing projects of any size, these alterations must, to the maximum extent feasible, make the dwelling units accessible to and usable by individuals with disabilities, until a minimum of 5 percent of the dwelling units (but not less than one unit) are accessible to persons with mobility impairments; for this category of less than substantial rehabilitation, the additional 2 percent of the units for persons with sensory impairments does not apply. Also for this category of rehabilitation, if undertaking accessibility alterations imposes undue financial and administrative burdens on the operation of the multifamily housing project, the alterations are not required.

In the case of non-housing facilities involving new construction, the facilities will be designed and constructed to be readily accessible to and usable by persons with disabilities. For facilities involving alterations, to the extent possible, the alterations should ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible, if doing so, would impose undue financial and administrative burdens on the operation of the recipient program or activity. (However, State law will prevail if State accessibility requirements are stricter than federal 504 requirements.) Recipients are still required to take other actions that would ensure that persons with disabilities receive the benefits and services of the program.

E. Davis-Bacon Act, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with Federal funds will be paid prevailing wages of the locality as determined by the Secretary of Labor.

F. Section 3, Housing & Urban Development Act of 1968. For all programs receiving \$100,000 or more, or construction projects receiving \$200,000 or more, of HUD financial assistance, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in the area. Section 3 Residents are defined as: 1) residents of public housing; or 2) low and very-low income persons living in the area. Section 3 Businesses are defined as businesses: 1) that are at least 51% owned by Section 3 Residents; 2) whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or 3) that provide evidence of a commitment to subcontract in excess of 25 % of the dollar award of all subcontract to be awarded to a Section 3 business concern. Contractors must maintain appropriate documentation of their efforts to comply with Section 3 requirements.

G. Flood Disaster Protection Act of 1973, which provides that no federal financial assistance for acquisition or construction purposes may be approved for an area having special flood hazards unless the community in which the area is located is participating in the National Flood Insurance Program.

H. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which provides for relocation assistance for any family, individual, business, non-profit organization or farm displaced as a result of acquisition of property with federal funds.

I. Executive Order 11246, as amended by Executive Order 12086, Equal Employment and Contracting Opportunities, which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally assisted construction contracts.

J. Housing and Urban Development Act of 1968, Section 3, which requires that, in the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible, opportunities for training and employment be given to low- and moderate-income persons residing within the unit of local government in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same unit of local government as the project.

K. Lead-Based Paint Poisoning Act, which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance.

L. Housing & Community Developments Act of 1974, 24 CFR Part 5, which provides that assistance will not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR part 24. This provision covers all Contractors and subrecipients, as well as subcontractors of Contractor or subrecipient, whose names are included in the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs." Inclusion in the aforementioned List during the term of this agreement would constitute grounds for contract termination as described in Sections 1 and 2 herein this Exhibit. The aforementioned List can be found on the Web at <http://epls.arnet.gov>.

## **7. UNIFORM ADMINISTRATIVE REQUIREMENTS**

A. Contractor, if a governmental entity or public agency, will comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments", OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations", and applicable sections of 24 CFR §85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as set forth in 24 CFR §570.502(a).

B. Contractor, if a non-profit organization, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations", OMB Circular A-133 Audits of State, Local Governments and Non-Profit Organizations", and applicable Attachments to OMB Circular No. A-110, as set forth in 24 CFR §570.502(b).

## **8. RETENTION OF RECORDS**

Notwithstanding Section 13 A of the Agreement, the Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years after completion of all services rendered under this Agreement.

## **9. CDBG PROGRAM INCOME**

If specifically authorized in this aAgreement, Contractor may keep CDBG program income. In all cases, CDBG program income must be used for CDBG-eligible activities. Program income is defined at 24 CFR 570.500 as gross income that is directly generated from the use of CDBG funds. Program income includes, but is not limited to: proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds; proceeds from the disposition of equipment purchased with CDBG funds; gross income from the use or rental of real or personal property acquired with CDBG funds, less costs incidental to generation of the income; and gross income from the use or rental of real property that was constructed or improved with CDBG funds, less costs incidental to generation of income. For activities funded with CDBG funds, Contractor shall comply with CDBG program income requirements at 24 CFR 570.503 and 504. Unless specifically designated otherwise by the County herein, any program income on hand when the agreement expires, or received after the agreement's expiration, will be transferred to the County.

## **10. REVERSION OF ASSETS, INCLUDING REAL PROPERTY**

Upon expiration or completion of the performance period in agreements providing CDBG funds for real property, any real property under Contractor's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to Contractor in the form of a loan) must either be: used to meet one of the national objectives in Section 570.208 until five (5) years after expiration of the agreement, or for such longer period as the County may determine to be appropriate; or not used to meet one of the national objectives, in which event the Contractor shall pay the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvements to, the property. The payment is program income to the County. After lapse of the aforementioned specified time, treatment of the CDBG-assisted asset is specifically designated in this Agreement through reconveyance of the deed of trust, as the case may be, and/or some other mutually agreed-upon asset disposition plan between County and Contractor.

## **11. The applicable CFDA # for the federal entitlement programs funding provided in this agreement includes one or more of the following:**

- 1) Community Development Block Grant (CDBG): **14.218**
- 2) Emergency Shelter Grant (ESG): **14.231**
- 3) HOME Investment Partnership (HOME): **14.239**
- 4) Community Development Block Grant-Recovery (CDBG-R): **14.253**
- 5) Homeless Prevention and Rapid Re-housing Program (HPRP): **14.257**

## Exhibit E

### Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. ☐ Employs fewer than 15 persons.
- b. ☐ Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

\_\_\_\_\_  
Name of 504 Person - Type or Print

\_\_\_\_\_  
Name of Contractor(s) - Type or Print

\_\_\_\_\_  
Street Address or P.O. Box

\_\_\_\_\_  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."