

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Budget Detail

Awardee has been awarded the Program funds amount set forth in this Agreement.

2. Conditions of Disbursement

Upon execution of the Disbursement Agreement, Program fund payments will be made on a reimbursement basis and work must be completed prior to requesting reimbursement. The Awardee and partners must have adequate cash flow to pay all Program fund-related expenses prior to requesting reimbursement from the Department.

In unusual circumstances, the Department may consider alternative arrangements to reimbursement and payment methods based on documentation demonstrating cost burdens, including the inability to pay for work. Under no circumstances shall funds be disbursed prior to work being completed. The Awardee shall append the following supporting documents to the request for reimbursement of funds, all in form and substance acceptable to the Department:

- A. Payee Data Record (STD 204) or Government Agency Taxpayer ID Form, as applicable;
- B. An executed resolution from a Local Government demonstrating the value and form of the Local Government Contribution(s) to the Selected Developer for Predevelopment Costs or Development Costs for the Selected Project, and an attached project budget including all sources.
- C. Documentary evidence of any eligible costs incurred;
 - 1) After the award of an Excess Site to the Selected Developer, and
 - 2) On or before the Expenditure Deadline.
- D. Certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law;
- E. Evidence of the insurance coverages required under the Program or a written acknowledgment of self-insured status;
- F. A current title report (dated within 30 days of the request for funds), showing the property to be free of any liabilities, settlements, or liens;

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- G. Any forms, certifications, or documentation required pursuant to Paragraph 1.E – Additional Conditions Precedent to Disbursement of Exhibit E of this Agreement; and
- H. Any other forms, certifications, or documentation deemed necessary by the Department prior to disbursement of Program funds.

3. Additional Conditions of Disbursement Prior To Construction Close

In certain circumstances, and at the Department's sole discretion, the Department may authorize disbursement of Program funds prior to the closing of an awarded project's construction financing. Such pre-closing disbursements carry additional conditions of disbursement and require submission of additional documentation by Awardee.

Eligible uses of pre-closing disbursements limited to the following eligible uses:

- A. Offsite improvements, such as sewers, utilities and streets, directly related to, and required by the Selected Project;
- B. Onsite improvements related to the Selected Project;
- C. Architectural, appraisal, engineering, legal and other consulting costs and fees, which are directly related to the planning and execution of the Selected Project and which are incurred through third-party contracts;
- D. Building permits and state and local fees;
- E. Costs for items intended to ensure the completion of construction, such as contractor bond premiums;
- F. Environmental hazard reports, surveys, investigations and mitigation;
- G. Costs associated with preparing the site for construction of the Selected Project, including removal of existing improvements and site clearance; and
- H. Any other Predevelopment or Development Costs with written approval by the Department.

Pre-closing disbursements require submission of evidence of completion of work prior to requesting reimbursement. Invoices are not sufficient documentation of completion of work for pre-closing disbursements, and should be submitted alongside the completed work product itself (e.g. a copy of a completed third-party report, or lien releases for construction).

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In the case that reimbursement prior to Construction Close is being requested of the Program for onsite or offsite improvements, completion of work must be evidenced through fully executed applications for payment from Awardee's contractor, as well as executed copies of all applicable lien waivers. Payment applications lacking certification by the responsible design professional will not be accepted. Submission of photographs evidencing the completion of work is required whenever feasible.

In the event that reimbursement is being requested of the Program for design services (architecture, engineering, etc.), reimbursement for said services shall require the contractor and developer to provide ownership rights to the State for the deliverable being reimbursed. For example, if reimbursement is being requested of the Program for schematic design plans, said plans would need to be submitted with the reimbursement request accompanied by a signed agreement agreeing to transfer ownership of the plans to the State in the event that this Agreement is terminated. No funds shall be disbursed for design services that have not been assigned to the State in the event of termination of this Agreement.

In the case that reimbursement is being requested of the Program for third-party reports (including but not limited to appraisals, market studies, Environmental Site Assessments, etc.) reliance letters naming the State as a reliant party shall be submitted in the form and manner prescribed by the Program.

Determination of the amount of funds eligible for disbursement prior to Construction Close is at the sole and absolute discretion of the Program.

All pre-closing disbursements are subject to 10 percent retainage, which shall be released with the first approved disbursement following Construction Close.

4. **Performance**

After disbursement of the funds, the Awardee shall meet each Performance Milestone set forth at Exhibit E by the relevant Milestone Completion Date. After satisfaction of each Performance Milestone, the Awardee shall submit to the Department in writing its Performance and Expenditure Report. Awardee may apply to the Department for an extension of any Milestone Completion Date based on good cause shown and best efforts and assurances from the Awardee for timely completion of the remaining Performance Milestones and subject to the Expenditure Deadline.

FAILURE TO SATISFY ANY ONE OF THE PERFORMANCE MILESTONES WILL CONSTITUTE A BREACH OF THIS AGREEMENT AND ENTITLES THE DEPARTMENT TO MANDATE THE AWARDEE TO RETURN TO THE DEPARTMENT ANY FUNDS DISBURSED; IN ANY SUCH INSTANCE, THE DEPARTMENT MAY

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ALSO CANCEL THIS AGREEMENT WITHOUT OWING ANY DAMAGES OR OTHER PAYMENT TO AWARDEE.

5. **Breach of this Agreement**

In the event of a breach or violation by the Awardee of any of the provisions of this Agreement, the Department may give written notice to the Awardee to cure the breach or violation within a period of not less than thirty (30) days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default of the Agreement and may seek remedies for the default, including the following:

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

6. **Fiscal Administration**

Awardee shall either deposit the Program funds with an escrow company licensed to do business in the State of California and in good standing or deposit the Program funds in an interest-bearing checking or savings account insured by the federal or state government. All interest earned from the deposit of Program funds shall be used for eligible Program activities.

California Department of Housing and Community Development
Attention: LGMG 2023 NOFA
Division of Housing Policy Development
2020 West El Camino Avenue, Suite 550
Sacramento, California 95833

7. **Duplication of Benefit**

Program funds are not required to be used as funding of last resort. Awardee may not use Program funds to cover expenditures that have already been funded through other sources.