



City of San Leandro

Meeting Date: February 6, 2017

Staff Report

File Number: 16-030

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for Approval of a Loan Agreement for Eight Hundred Thousand Dollars (\$800,000) Between the City of San Leandro and BRIDGE Economic Development Corporation to Construct Tenant Improvements for a Childcare Center at the Marea Alta Project

SUMMARY AND RECOMMENDATIONS

Childcare is a vital service for families, particularly lower income working households, in San Leandro. The development of a ground floor childcare center in the Marea Alta mixed use and affordable rental development is a high priority for the City. The shell of the childcare center is already constructed, which was part of the Phase 1 Marea Alta development. This proposed funding is for the childcare center tenant improvements. Staff recommends that the City Council approve the loan amount and authorize the City Manager to execute an \$800,000 loan agreement between the City and BRIDGE Economic Development Corporation (BREDCO), an affiliate of BRIDGE, and all other necessary documents for the design and construction of the childcare center tenant improvements.

BACKGROUND

In 2009, planning entitlements for the 200 unit residential development (formerly called Cornerstone and renamed Marea Alta) were approved by the Planning Commission and City Council. The former Redevelopment Agency of the City of San Leandro (RDA) also approved a \$9.1 million development loan from RDA Housing Set-Aside Funds to BRIDGE for the construction of Marea Alta.

The City also negotiated a memorandum of understanding (MOU) primarily between BRIDGE, Davis Street Family Resource Center (Davis Street), and the City to convene a working group and coordinate efforts to plan for and develop a childcare center as part of BRIDGE's proposed affordable housing development. The working group included key local stakeholders such as Alameda County, the Child Care Coordinating Council of Alameda County, and Congregations Organizing for Renewal (COR). For providing technical expertise for these efforts, Davis Street received a \$20,000 early stage planning grant from the City's

Low Income Investment Fund (LIIF) in 2009.

In 2009, federal, state and regional funds were envisioned as the primary funding sources for the tenant improvements for the Childcare Center. Unfortunately, these public funding sources are no longer available or have been substantially diminished for capital costs. This has left a shortfall for the development of a long planned and anticipated facility for child care services.

Analysis

Phase 1 of Marea Alta is nearing completion and full occupancy is scheduled for the end of January 2017. The project includes 115 affordable rental units that are primarily 2- and 3-bedroom units, an over 400 parking garage for tenants and BART replacement parking. The childcare center will be located on the ground floor.

The child care center will total approximately 7,200 square feet. It will be comprised of 4,850 square feet of child care center indoor space and an adjacent 2,400 square foot outdoor play area. The center will be licensed to serve up to 60 children (2 years to kindergarten age) and create 7 new jobs (1 site supervisor and 6 full time employees). Annual operating revenues for the childcare center are expected to come primarily from subsidized slots, but it will also include some private pay slots. The center will be open to the general public, including San Leandro residents, and will not be exclusive to Marea Alta tenants.

The total estimated construction and improvements cost for the childcare center is approximately \$975,000. See Exhibit A "Development Budget" of the Child Care Center Loan Agreement attached to the resolution. The construction costs are subject to change as the design is finalized. The source of funding for the childcare center to date is a \$50,000 grant from the San Francisco Foundation to BRIDGE. BRIDGE and Davis Street entered into a Memorandum of Understanding in 2015. They are currently negotiating a lease agreement. In the MOU, Davis Street committed to raise funds to close the gap between the loan and the total development costs of the improvements. This amount is currently estimated to be \$125,000, but it is subject to change.

On June 6, 2016, the City Council amended the FY 2016-17 Budget and set aside \$800,000 in funding in anticipation of this loan agreement. Funding was available from the \$2.1 million former Redevelopment Agency General Fund loan repayment that the City received.

Key terms of the loan agreement between the City and BRIDGE are:

- \$800,000, 1% annual interest, 20 year loan term - the outstanding loan principal will be reduced and forgiven annually by \$40,000 as long as BRIDGE is not in breach of the lease.
- All interest and principal will be forgiven if BRIDGE complies with all loan terms and conditions.
- No more than \$50,000 of the loan may be used for predevelopment costs (i.e., architecture, engineering, etc.), while the remaining \$750,000 must be used for construction costs related to the building of the child care center.
- BRIDGE cannot commence construction of the child care center improvements until it has confirmed that Davis Street, or another organization if Davis Street and BRIDGE

fail to come to terms on an agreement, has fundraised its financial contribution share.

- BRIDGE is committed to ensuring the long-term viability of the child care center at Marea Alta. However, in the unlikely but worst case scenario that BRIDGE's chosen operator is unable to operate the center, BRIDGE would have up to 12 months to find a replacement child care center provider. After 12 months, BRIDGE would then proceed to identify and lease the center to a community-serving use acceptable to the City.
- BRIDGE will pay prevailing wages to construct the tenant improvements.

The design of the interior space of the childcare center is currently underway. BRIDGE anticipates commencing construction of the child care center in 2017, depending upon the success of Davis Street's fundraising efforts. The tenant improvements are expected to take approximately two months to complete. Davis Street will prepare and submit a planning application to the City for a use permit for the child care center as required by the City Zoning Code.

Previous Actions

- April 6, 2009 - City Council approved the Owner Participation and Loan Agreement for a \$9.1 million RDA Housing Set-Aside Loan to BRIDGE Housing for an affordable rental housing development project (formerly Cornerstone and now named Marea Alta).
- July 20, 2009 - City Council approved planning entitlements and environmental clearance under CEQA for Marea Alta.
- April 9, 2012 - Staff from the City's Community Development Department, BRIDGE Housing, Westlake Development Partners, and OSIssoft presented the revised San Leandro Crossings Master Plan at a City Council Work Session.
- May 16, 2013 - BRIDGE and City staff presented to the City Council the development scope of work and architectural designs for the current 200 unit affordable rental housing development including a Phase 1 (115 workforce/family units) and Phase 2 (85 senior units).
- December 2, 2013 - City Council approved a resolution authorizing execution of the First Amendment to the Owner Participation and Loan Agreement (OPLA) and Regulatory Agreement with Alameda Housing Associates, L.P.
- September 15, 2014 - City Council approved the First Amendment to a HOME Investment Partnerships Program (HOME) Funds Loan Agreement, Promissory Note, Deed of Trust, and Regulatory Agreement with Alameda Housing Associates, L.P.
- June 6, 2016 - City Council approved amendments to the City of San Leandro FY 2016 -17 Budget that includes \$800,000 in funding for a childcare center at Marea Alta.

Applicable General Plan Policies

- Policy 3.05: MIXED USE ON TRANSIT CORRIDORS
Encourage mixed use projects containing ground floor retail and upper floor residential uses along major transit corridors. Such development should be pedestrian-oriented, respect the scale and character of the surrounding neighborhood, and incorporate

architectural themes that enhance the identity of adjacent commercial districts.

- Policy 3.07: AMENITIES AND SOCIAL SERVICES WITHIN NEW HOUSING
Encourage new affordable housing development to provide amenities for future residents, such as on-site recreational facilities and community meeting space. Where feasible, consider the integration of social services such as child care within such projects.
- Policy 48.01: INCREASE AVAILABILITY OF SERVICES
Increase the availability of affordable and accessible child care and after school activities, with an emphasis on center-based child care for infants and toddlers and additional activities at school sites.
- Policy 48.02: DEVELOPMENT IMPACTS
Ensure that child care needs are considered when new development is approved....
- Policy 48.03: Coordination with Service Providers
Work with social services agencies, non-profits, the school districts, and businesses to pursue creative and effective solutions to address child care needs in the community....

Environmental Review

The City, acting as the lead agency, reviewed and approved a mitigated negative declaration for the project on July 20, 2009 as required by Section 15096 of Title 14 of the California Code of Regulations. In addition, the project was considered in connection with the Final Environmental Impact Report for the Downtown San Leandro Transit-Oriented Development Strategy certified by the City Council pursuant to Resolution 2007-111 adopted on September 4, 2007.

Board/Commission Review and Actions

- July 9, 2009 - Planning Commission approved planning entitlements and environmental clearance under CEQA for the Cornerstone located at 1400 San Leandro Boulevard and the BART replacement parking project.

Legal Analysis

The staff report, resolution and loan agreement were reviewed and approved as to form by the City Attorney's Office.

Fiscal Impacts & Budget Authority

The funding source for the \$800,000 City loan is a portion of the \$2.1 million General Fund loan repayment from the former Joint City/County Redevelopment Area approved by the State Department of Finance (DOF). On June 6, 2016, the FY 2016-17 Budget was amended so that \$800,000 is available in Account No. 210-42-151-5240 for the Marea Alta child care center loan.

Attachment to Related Legislative File

- Child Care Center Loan Agreement between the City of San Leandro and BRIDGE Economic Development Corporation

PREPARED BY: Tom Liao, Deputy Community Development Director



City of San Leandro

Meeting Date: February 6, 2017

Resolution - Council

File Number: 16-032

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Authorizing the Execution of a Loan Agreement for Eight Hundred Thousand Dollars (\$800,000) Between the City of San Leandro and BRIDGE Economic Development Corporation and Authorizing the Execution of a Promissory Note (To Fund The Construction Of Tenant Improvements For A City Mandated Child Care Center In Phase 1 Of The Marea Alta Affordable Housing Development)

WHEREAS, Alameda Housing Associates, L.P., a California limited partnership ("**Partnership**") has a leasehold interest in that certain real property located in the City of San Leandro, County of Alameda, on which it is constructing 115 affordable residential units, together with approximately 7,200 square feet of commercial space ("**Apartment Project**"); and

WHEREAS, the Partnership and BRIDGE Economic Development Corporation ("**Borrower**") have entered into that certain Master Lease Agreement dated December 4, 2014 ("**Master Lease**") for the approximately 7,200 square feet of commercial space (including 2,400 square feet for outdoor play area space) located at the Apartment Project ("**Premises**"); and

WHEREAS, Borrower has been working with Davis Street Community Center, Inc. or its affiliate ("**Davis Street**") to operate the Premises as a child care center serving low and moderate income children and families ("**Project**") pursuant to a sublease agreement to be entered into by Borrower and Davis Street ("**Sublease**"); and

WHEREAS, the City desires to provide a loan to Borrower in the amount of Eight Hundred Thousand Dollars (\$800,000) ("**Loan**") for construction costs related to the installation of the tenant improvements and the use of the Premises for a childcare center; and

WHEREAS, the Borrower will execute a promissory note ("**Note**") to evidence the amount of the Loan; and

WHEREAS, the City Council can find that the Borrower has the necessary expertise, skill

and ability to successfully construct the Project and the child care center improvements, and that the Project is in the City's best interest and will materially contribute to the public health and welfare.

NOW THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That the above recitals are true and correct and a part of this Resolution.
2. The City Manager is authorized to execute the Loan Agreement, substantially in the form attached hereto as Exhibit A, as approved to form by the City Attorney, and such other documents and to take such other actions as necessary to carry out the intent of this Resolution.

LOAN AGREEMENT

This LOAN AGREEMENT (this “**Agreement**”) is entered into as of February 6, 2017 (the “**Agreement Date**”), between the City of San Leandro, a California charter city (the “**City**”) and BRIDGE Economic Development Corporation, a California nonprofit public benefit corporation (the “**Borrower**”). Borrower and City are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. Alameda Housing Associates, L.P., a California limited partnership (the “**Partnership**”) has a leasehold interest in that certain real property located in the City of San Leandro, County of Alameda, on which it is constructing 115 affordable residential units, together with approximately 7,200 square feet of commercial space (the “**Apartment Project**”).

B. The Partnership and Borrower have entered into that certain Master Lease Agreement dated December 4, 2014 (the “**Master Lease**”) for the approximately 7,200 square feet of commercial space (including 2,400 square feet for outdoor play area space) located at the Apartment Project (the “**Premises**”).

C. Borrower intends for a licensed child care provider (the “**Childcare Provider**”) to use the Premises for a child care center serving low and moderate income children and families (the “**Project**”) pursuant to a sublease agreement to be entered into by Borrower and Childcare Provider (the “**Sublease**”).

D. The City has agreed to provide a loan to Borrower in the amount of Eight Hundred and Thousand Dollars (\$800,000) (the “**Loan**”) for soft costs and construction costs related to the installation of the tenant improvements and the use of the Premises for a childcare center.

E. Concurrently herewith, Borrower will execute a promissory note (the “**Note**”) to evidence the amount of the Loan. This Agreement and the Note are hereinafter collectively referred to as the “**Loan Documents.**”

F. The City has concluded that the Borrower has the necessary expertise, skill and ability to successfully construct the Project and the child care center improvements (the “**Improvements**”), and that the Project is in the best interest of the City and will materially contribute to the health and welfare of the residents of the City.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

ARTICLE 1.
LOAN PROVISIONS

1.1 The Loan

(a) Loan Terms.

(1) Loan Amount. City agrees to lend the Loan to Borrower in the amount of Eight Hundred Thousand Dollars (\$800,000), of which up to Fifty Thousand Dollars (\$50,000) may be used for pre-development costs (the “**Predevelopment Component**”). The Loan is evidenced by the Note, which shall be dated as of the Agreement Date and executed by Borrower substantially in the form attached hereto as Exhibit B.

(2) Loan Interest. Commencing on the date of initial disbursement of the proceeds of the Loan and continuing through the date that all indebtedness and other amounts payable under this Agreement and the Note are paid in full, interest on the Loan shall accrue at the rate of one percent (1%) per annum on the unpaid principal outstanding from time to time. Provided that Borrower is not in default under this Agreement, interest will be forgiven in accordance with Section 1.1(d) below

(b) Term. Subject to Section 1.1(d) below, all principal outstanding under the Note, together with interest accrued thereon, is due and payable on the twentieth anniversary of the Agreement Date (the “**Maturity Date**”).

(c) Repayment. The Loan principal and interest, if any, is due and payable upon an Event of Default under Article 6 hereof, following the expiration of any applicable notice and cure periods.

(d) Forgiveness. Provided that no Event of Default is uncured and continuing, commencing on the first anniversary of the Agreement Date, and continuing on each anniversary thereafter through the Maturity Date (each, an “**Anniversary Date**”) (1) the outstanding principal amount of the Loan shall be reduced by Forty-Thousand Dollars (\$40,000) and forgiven by the City; and (2) all interest accrued to such Anniversary Date shall be forgiven by the City. Provided that no Event of Default is uncured and continuing, all remaining Loan principal and interest accrued thereon shall be forgiven by the City at the Maturity Date and this Agreement shall terminate. The City shall also forgive any funds disbursed to Borrower pursuant to Section 1.2 below in the event that this Agreement is terminated by Borrower pursuant to Section 4.5.

(e) Prepayment. The Note or any portion of the outstanding principal balance due under the Note may be prepaid at any time, and from time to time, without penalty or premium.

(f) Security. The Loan and Note shall be unsecured.

1.2 Conditions Precedent to City’s Obligation to Disburse Predevelopment Component. The obligation of City to disburse the proceeds of the Loan, in an amount not to

exceed Fifty Thousand Dollars (\$50,000), for those costs identified as predevelopment costs in the Development Budget (as defined in Section 1.5) (the "**Predevelopment Costs**") is conditioned upon the receipt by City of the following:

- (a) The executed Loan Documents;
- (b) A copy of Borrower's authorizing resolution, which authorizes Borrower to enter into the Loan Documents and carry out the obligations under the Loan Documents; and
- (c) No uncured Event of Default is continuing.

1.3 Conditions Precedent to City's Obligation to Disburse Construction Component. The obligation of City to disburse the proceeds of the Loan for costs other than Predevelopment Costs is conditioned upon the receipt by City of the following:

- (a) The conditions set forth in Section 1.2 have been and continue to be met;
- (b) The City has reviewed and approved Construction Plans pursuant to Section 4.1, the Construction Contract pursuant to Section 4.2 and the Development Budget;
- (c) The Borrower has provided evidence of insurance coverage required by Section 4.8; and
- (d) The Borrower has executed the Construction Contract (as defined in Section 4.2).

1.4 No Obligation to Disburse Proceeds upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse any portion of the proceeds of the Loan if there is an uncured and continuing Event of Default.

ARTICLE 2. DISBURSEMENT OF LOAN PROCEEDS

2.1 Disbursement of Loan Proceeds. Upon satisfaction of the conditions set forth in Section 1.2 or 1.3, as applicable, together with execution of this Agreement and the Note, City shall make the initial Loan disbursement to Borrower following Borrower's provision to City of a written requisition, in form and substance satisfactory to City, specifying the amount and use of the requested Loan proceeds, accompanied by copies of bills and invoices and such other documentation as City may reasonably require. Subsequent disbursements shall be made to Borrower upon City's receipt of written requisitions and supporting documentation as described in this Section. The City shall disburse loan funds within thirty (30) days following its receipt of Borrower's written requisition.

ARTICLE 3.
BORROWER REPRESENTATIONS AND WARRANTIES

3.1 Duly Organized. Borrower warrants that it is duly organized under applicable laws of the State of California, is qualified to do business in the City, and is in compliance in all material respects with all laws and regulations necessary to acquire and construct the Project.

3.2 Authority. Borrower warrants that it has authority, and has completed all proceedings and obtained all approvals necessary to execute, deliver, and perform its obligations under this Agreement, and the Note and the transactions contemplated thereby.

3.3 No Contravening Agreements. Borrower warrants that the execution, delivery, and performance of this Agreement and the Note will not constitute a default under or result in a lien upon assets of the Borrower pursuant to any applicable law or regulation, any charter document of the Borrower, or any instrument binding upon or affecting the Borrower, or any contract, agreement, judgment, order, decree, or other instrument binding upon or affecting the Borrower.

3.4 Valid and Binding Obligations. Borrower warrants that, when duly executed by the Borrower, this Agreement and the Note shall constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

3.5 No Adverse Action. Borrower warrants that there is no action, suit or proceeding pending or threatened against it which might adversely affect the Borrower in any material respect to its ability to enter into this Agreement or to construct the Project.

ARTICLE 4.
BORROWER OBLIGATIONS AND COVENANTS

4.1 Use of Proceeds. Subject to Section 4.5, Borrower covenants that it shall use the proceeds of the Loan solely for soft costs and construction costs related to the installation of the tenant improvements and the use of the Premises for a childcare center. Borrower's anticipated costs are identified in the budget attached as Exhibit A (the "**Development Budget**"). Borrower shall have no obligation to commence work under this Agreement to draw on any loan funds, commence construction of the Improvements or enter into a construction contract for the Project until such time as (a) it has received the Childcare Contribution (as defined below) and (b) it has entered into the Sublease.

4.2 Construction Plans. Prior to commencement of construction of the Improvements, Borrower shall submit to the City's Building Department detailed construction plans for the Improvements (the "Construction Plans"). As used herein "Construction Plans" means the final architectural drawings and building plans and specifications. Approval of the Construction Plans by City Building Department shall be deemed approval by City under this Agreement.

4.3 Construction Contract. Not later than ten (10) days prior to the commencement of construction of the Improvements, Borrower shall submit to the City for its approval the proposed construction contract for the Improvements (the "**Construction Contract**"). The City's approval of the Construction Contract shall in no way be deemed to constitute approval of or concurrence with any term or condition of the construction contract except as such term or condition may be required by this Agreement. The City shall, if the construction contract submitted conforms to the provisions of this Agreement, approve the construction contract. Unless rejected by the City for its failure to comply with the foregoing requirements within five (5) days after receipt by the City, said construction contract shall be deemed accepted. If the construction contract is not approved by the City, the City shall set forth in writing and notify Borrower of the City's reasons for withholding such approval. Borrower shall thereafter submit a revised construction contract for City approval, which approval shall be granted or denied in five (5) working days in accordance with the procedures set forth above.

4.4 Development Budget. As of the date of this Agreement, the City has approved the Development Budget. Borrower may amend the Development Budget as reasonably necessary to complete the Project; provided however, no such amendment shall obligate the City to increase the Loan amount beyond the \$800,000 currently contemplated by this Agreement.

4.5 Use of Project.

(a) Following completion of the Improvements, and subject to this Section 4.4, Borrower shall lease the Premises to the Childcare Provider for use as a childcare center.

(b) Borrower understands that the identity of the Childcare Provider is important to the City and that the City must approve the Childcare Provider. The Borrower has entered into a Memorandum of Understanding with a Childcare Provider (the "Proposed Childcare Provider") approved by the City.

(c) If the Borrower and the Proposed Childcare Provider (i) do not enter into the Sublease within three (3) months of the Agreement Date (the "**Sublease Deadline**"); or (ii) if the Sublease terminates prior to the Maturity Date ("**Sublease Termination**"), then, Borrower shall notify the City within ten (10) business days following the Sublease Deadline, or Sublease Termination of such event and the provisions of Section 4.5(d) shall apply.

(d) Borrower shall then proceed to find a replacement childcare provider that is mutually acceptable to the Borrower and City (the "**Replacement Childcare Provider**"). If the Borrower has not entered into a new sublease for the use of the Premises with a Replacement Childcare Provider by a date that is six (6) months following the date of the Sublease Deadline, or Sublease Termination, as applicable (the "**Search Period**"), then the Borrower may, but is not obligated, to continue to seek a Replacement Childcare Provider for up to an additional six (6) month period (the "**Additional Child Care Search Period**").

(e) If Borrower does not sublease the Premises to a Replacement Childcare Provider during this Additional Child Care Search Period, or if Borrower does not elect to continue to seek a Replacement Childcare Provider during the Additional Child Care Search Period, then for

an additional six (6) months beyond the Search Period or Additional Child Care Search Period, as applicable (the "**Alternate User Search Period**"), Borrower shall make efforts to identify and lease the Premises to a tenant for any community-serving use that is acceptable to the City.

(f) If at the end of the Alternate User Search Period, the Borrower has not identified another user of the Premises, Borrower shall continue to make efforts to identify an alternate tenant providing a community-serving use. If the Borrower then identifies an alternate tenant providing a community serving use, the Borrower shall notify the City in writing and the City shall approve or disapprove such tenant within twenty (20) days of Borrower's notice, and the City's approval shall not be unreasonably withheld or conditioned. Failure by the City to approve or disapprove of such tenant within the twenty (20) day period shall be deemed City approval of such tenant. If the City disapproves the proposed tenant, the process for selection of the alternate tenant as described in this subsection (c) shall continue until such time as the City approves a tenant for the Premises.

4.6 Tenant Financial Contribution. The Parties intend for the Childcare Provider to help finance the cost of the Project (the "**Childcare Contribution**"). The Childcare Contribution shall be established by Borrower and is intended to be in an amount that the Borrower determines is sufficient to cover Project costs in excess of the Loan amount. Borrower may terminate this Agreement upon written notice to the City if, prior to the date that Borrower commences construction on the Improvements, Borrower has not received the Childcare Contribution in an amount consistent with this paragraph and in no event less than \$125,000 and in a form acceptable to Borrower. Excepting the Fifty Thousand Dollars (\$50,000) in grant funds that Borrower has already obtained from the San Francisco Foundation, Borrower is not obligated to contribute or lend any funds to cover Project costs.

4.7 Prevailing Wage Obligations. To the extent, and if, required by applicable federal and state laws, rules and regulations, Borrower and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and applicable federal labor laws and standards, and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. Borrower shall submit to City and implement a plan for monitoring payment of prevailing wages. The cost of such plan shall be an eligible Loan cost.

Borrower shall indemnify, defend (with counsel approved by City) and hold the City, and its elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Borrower related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the

requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with Agency or City of any of the insurance policies described in this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Borrower's indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

4.8 Assignment. Borrower may assign the Loan Documents to an affiliate of Borrower or BRIDGE Housing Corporation. Borrower may also assign the Loan Documents to any other entity with the consent of the City.

4.9 Insurance.

(a) Prior to initiating work on the Project and continuing through the completion of the Improvements, Borrower and all contractors working on behalf of Borrower on the Project shall maintain a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees (as defined in Section 5.1) as additional insureds.

(b) Until completion of the Improvements, Borrower and all contractors working on behalf of Developer shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Borrower or any contractor with whom Borrower has contracted for the performance of work on the Premises or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction work and continuing until completion of the Improvements, Borrower shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Improvements on a replacement cost basis naming City as loss payee. Such insurance shall include coverage for risks of direct physical loss or damage, excluding the perils of earthquake, flood, and earth movement.

(d) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. The Commercial General Liability policy required hereunder shall name the Indemnitees as additional insureds.

**ARTICLE 5.
INDEMNITY REQUIREMENTS**

5.1 Indemnity. Borrower shall defend the Indemnities from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorney's fees, arising from the sole negligence or willful misconduct of Borrower.

**ARTICLE 6.
DEFAULT AND REMEDIES**

6.1 Events of Default. Each of the following events will constitute an event of default (“**Event of Default**”) under the Loan Documents:

- (a) Intentional misrepresentation by Borrower to the City that results in a material adverse effect on the City; and
- (b) Borrower engages in intentional misconduct and fails to fulfill its material obligations under the Loan Documents.

6.2 Declaring Default. Whenever any Event of Default has occurred, other than failure to pay any sums due, the City shall give written notice of default to the Borrower. If the default is not cured within sixty (60) business days after the date of such notice, or such longer period of time necessary to cure the violation so long as a cure is being diligently prosecuted to completion, the City may enforce its rights and remedies under Section 6.3 below.

6.3 Remedies. Upon the occurrence of any Event of Default and following the expiration of all applicable notice and cure periods, the City's remedies shall be limited to either of the following:

- (a) Accelerate and declare the entire unpaid and unforgiven principal balance of the Note, together with interest accrued thereon, and terminate this Agreement; or
- (b) Seek specific performance to require Borrower to perform its obligations and covenants under the Loan Documents.

In no event shall Borrower be liable to the City for monetary damages to the City due to an Event of Default.

**ARTICLE 7.
MISCELLANEOUS**

7.1 Relationship of Parties. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between City and Borrower or Borrower's agents or employees, and Borrower shall at all times be deemed a borrower and shall be wholly responsible for the manner in which it or its agents, or both, perform under this Agreement.

7.2 No Third Party Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any third person whom Borrower may have employed or contracted or may employ or contract relative to the purchase of any material, supplies or equipment, or the furnishing or the performance of any work or services with respect to any programs or projects being undertaken by Borrower.

7.3 Conflict of Interest. Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of the City or the Borrower who exercises or has exercised any function or responsibilities with respect to activities assisted by tax increment funds in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities assisted under this Agreement, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter.

7.4 Notices. Any notice, request or consent required pursuant to the Loan Documents shall be deemed delivered upon receipt when delivered personally or by facsimile transmission, provided that a transmission report is generated reflecting the accurate transmission thereof, or three (3) business days after being deposited in the U.S. mail, first class postage prepaid, return receipt requested, or one (1) day after deposit with a nationally recognized overnight carrier addressed as follows:

City: City of San Leandro
835 East 14th Street
San Leandro, CA
Attn: City Manager

Copy to: City Attorney
Meyers, Nave, Riback, Silver & Wilson
555 – 12th Street, Suite 1500
Oakland, CA 94607
Attn: Richard Pio Roda, City Attorney

Borrower: BRIDGE Economic Development Corporation
600 California Street, Suite 900
San Francisco, CA 94108
Attn: Vice President

or to such other addresses as the parties may designate by notice as set forth above.

7.5 Successors and Assigns. All of the terms of the Loan Documents shall apply to and be binding upon, and inure to the benefit of, the successors and permitted assigns of the City and Borrower, respectively, and all persons claiming under or through them.

7.6 Attorneys' Fees. If any action is instituted by any Party to the Loan Documents to enforce this Agreement, the Loan or the Note, or to collect any sums due hereunder or pursuant to the Loan or the Note, the prevailing Party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in that action.

7.7 Severability. If one or more provisions of this Agreement are found invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not in any way be affected, prejudiced, disturbed or impaired thereby, and all other provisions of this Agreement shall remain in full force and effect.

7.8 Amendments/Entire Agreement. City and Borrower reserve the right to amend this Agreement by mutual consent. It is mutually understood and agreed that no amendment, modification, alteration or variation of the terms of this Agreement shall be valid unless in writing and signed and acknowledged and approved by both parties. This Agreement constitutes the entire agreement of the parties and no oral understandings or agreement not incorporated herein shall be binding on either Party.

7.9 Joint and Several Liability. If the Borrower consists of more than one person or entity, each shall be jointly and severally liable to the City for the performance of this Agreement.

7.10 Time. Time is of the essence in the performance of the terms and conditions of this Agreement.

7.11 Governing Law. The laws of the State of California shall govern this Agreement.

7.12 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to the Borrower, or any successor in interest to the Borrower, in the event of any default or breach by the City or for any amount which may become due to Borrower or any successor under the terms of this Agreement.

7.13 City's Rights and Consent. No forbearance, failure or delay by the City in exercising any right, power or remedy, nor any single or partial exercise by the City of any right or remedy hereunder shall preclude the further exercise of such right, power or remedy. City's consent to any act or omission by Borrower may not be construed as the City's consent to any other or subsequent act or omission or as a waiver of the requirement to obtain City's consent in any other instance. All of City's rights, powers and remedies are cumulative and shall continue in full force and effect until specifically waived in writing by City.

7.14 Duration/Survival. This Agreement shall continue in full force and effect until the obligations due under this Agreement and the Note have been paid in full. Notwithstanding the foregoing, the indemnification provisions of Section 5.1 of this Agreement shall survive the expiration of this Agreement and the making and repayment of the Loan.

7.15 Headings. The headings within this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement.

7.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

7.17 Subordination. City agrees to subordinate this Loan to any lender and any loan for acquisition, development and/or construction of the Project or the Apartment Project. City agrees to execute the appropriate documents and/or agreements required by a lender to evidence subordination of this Loan.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the City and the Borrower have executed this Agreement as of the date first above written.

**CITY OF SAN LEANDRO,
a California Charter City**

By: _____
City Manager

ATTEST:

By: _____
City Clerk

REVIEWED AS TO FORM

By: _____
City Attorney

BRIDGE Economic Development Corporation,
a California nonprofit public benefit corporation

By: _____
Ann Silverberg, Vice President

Exhibit A
DEVELOPMENT BUDGET

Tenant Improvements at 1400 San Leandro Boulevard, San Leandro CA

Conceptual Development Budget based on data from Cannon Construction, Davis Street, BRIDGE Housing, City of San Leandro, Ankrom Moisan Architect (AMA) , Dorman Architects.

12/1/2015

Predevelopment		Price	Qualifications
Ankrom Moisan Professional Fees	Predevelopment, Schematic Design Development	\$ 34,050.00	AMA Proposal 8/31/2015
Legal Predevelopment - Goldfarb & Lipman		\$ 5,000.00	Estimated Expenses not to Exceed
Consultants Predevelopment- Dorman Architects	Kick Off Meeting, Programming, Schematic Design	\$ 10,000.00	Chris Dorman Proposal 8/30/2015
City of San Leandro Permit Fees		\$ 3,000.00	Estimate; Final fees based on planning time for review
Contingency	8.00%	\$ 4,164.00	
Predevelopment Cost Subtotal		\$ 56,214.00	
Direct Construction			
Cannon Constructors - (Cannon Budget 07/22/15)	Scope includes Millwork, Drywalls, Acoustic Ceiling, Flooring, and Appliances	\$ 433,035.00	Cannon Conceptual Budget issued 07/22/15; based on a 2016 -Q1 start date
MEP - (Cannon Budget 07/22/15)	Bidder Designed	\$ 204,745.00	Cannon Conceptual Budget issued 07/22/15
<i>Including Energy Compliance</i>			
Furnishings and Equipment	Indoor/Outdoor Equipment and Materials List	\$ 45,000.00	Davis Street Estimate of Cost 07/13/15
Landscaping	Exterior Play Area, outdoor furnishings and landscaping	\$ 50,000.00	Cannon Conceptual Budget 07/22/15; Based on discussion with Alice 07/13/15
Construction Contingency	10.00%	\$ 73,278.00	
Direct Construction Cost Subtotal		\$ 806,058.00	
Indirect Development			
Ankrom Moisan Professional Fees	Construction Documentation, Administration, Permitting, Site Visits	\$ 36,530.00	AMA proposal issued 8/31/2015
Dorman Construction Admin Costs	Licensing, Design Development, Consulting	\$ 10,000.00	Chris Dorman proposal issued 8/30/2015
Legal - Goldfarb & Lipman		\$ 5,000.00	Estimated Expenses not to Exceed
Contingency	8.00%	\$ 4,122.40	
Indirect Development Cost Subtotal		\$ 55,652.40	
Permits & Other Fees			
City San Leandro Permit Fees	Building and Planning	\$ 12,467.33	Estimate of fees From Melanie Braun City of SL 7/27/15;
	Other City Fees	\$ 5,000.00	
Utilities - EBMUD	Additional fees for final meter connections	\$ 10,000.00	Estimate of fees based on Utility Fee Schedules 07/01/15
PG&E Meters	Energizing Meter and hook-ups	\$ 5,000.00	
Other	Fire, Plumbing, Sewer Connection	\$ 8,000.00	
Licensing and Certification Costs	Operations related cost estimates	\$ 12,000.00	Budget Update from Davis Street; Alice date 07/13/15
Contingency	10.00%	\$ 5,246.73	
Permits and Other Fees Subtotal		\$ 57,714.06	
Grand Total Tenant Improvement Expenses		\$ 975,638.46	

Sources		
San Francisco Foundation Grant to BRIDGE Housing	\$ 50,000.00	Secured Source
City of San Leandro Loan Commitment	\$ 800,000.00	Pending City Council Approval
Davis Street Fundraising Commitment	\$ 125,638.46	Pending Davis Street Fundraising Sources

Exhibit B
Form of Promissory Note

2743881.2

PROMISSORY NOTE

CITY OF SAN LEANDRO
(Child Care Center)

\$800,000

February 6, 2017
San Leandro, California

FOR VALUE RECEIVED, BRIDGE Economic Development Corporation, a California nonprofit public benefit corporation ("**Borrower**"), promises to pay to the City of San Leandro, a California municipal corporation ("**City**") the principal sum of Eight Hundred Thousand Dollars (\$800,000), or so much thereof as may be advanced by City, together with interest as provided herein. The outstanding principal balance of this promissory note (this "**Note**") shall bear interest at a rate of one percent (1%).

1. Loan. This Note is executed pursuant to that certain Loan Agreement dated the same date of this Note and executed by and between Borrower and City (the "**Loan Agreement**"). Capitalized terms used without definition herein shall have the meanings ascribed to such terms in the Loan Agreement. Borrower will use the proceeds of the Loan for costs described in the Loan Agreement.
2. Payments. Payments due under this Note shall be made or forgiven in accordance with Section 1.1 of the Loan Agreement. Payments shall be made in lawful money of the United States to City at 835 East 14th Street, San Leandro, California 94577, Attention: Finance Department. The place of payment may be changed from time to time as the City may from time to time designate in writing. Notwithstanding anything to the contrary in this Note, in the event that Borrower or City terminates the Loan Agreement in accordance with the Loan Agreement, this Note shall also automatically terminate.
3. Prepayment; Forgiveness. Borrower shall have the right to prepay this Note in whole or in part without penalty or premium. The amounts owed under this Note are forgivable as provided in the Loan Agreement.
4. Default. In the Event of Default (as defined in Section 6.1 of the Loan Agreement), and following the expiration of the notice and cure period set forth in Section 6.2 of the Loan Agreement, the City may exercise the rights and remedies set forth in Section 6.3 of the Loan Agreement. In the event the City accelerates the unpaid and unforgiven principal owing on this Note, the acceptance of one or more installments thereafter shall not constitute a waiver of such option with respect to any subsequent event.
5. Waiver. Borrower severally waives presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consents to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without in any way affecting or discharging this liability.

6. Binding on Successors. This Note shall be binding upon Borrower, its successors and assigns.

7. Governing Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

8. Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

BRIDGE Economic Development Corporation,
a California nonprofit public benefit corporation

By: _____
Ann Silverberg, Vice President

2743882.1