

File No. 190767

Committee Item No. 8

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight

Date: Nov. 21, 2019

Board of Supervisors Meeting:

Date: _____

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- DRAFT MOU – July 9, 2019
- US HUD Letter – March 7, 2019
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- _____
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Prepared by: John Carroll

Date: Nov. 15, 2019

Prepared by: John Carroll

Date: _____

1 [Memorandum of Understanding - Reorganization of the Housing Authority of the City and
2 County of San Francisco - Loan Not to Exceed \$20,000,000]

3 **Resolution approving a Memorandum of Understanding between the City and County**
4 **of San Francisco and the Housing Authority of the City and County of San Francisco**
5 **(SFHA) regarding the reorganization of SFHA; ratifying and approving a loan not to**
6 **exceed \$20,000,000 to SFHA and any action heretofore taken in connection with such**
7 **loan to SFHA; and granting general authority to the Mayor and the Mayor's Office of**
8 **Housing and Community Development to take actions necessary to implement this**
9 **Resolution, as defined herein.**

10
11 WHEREAS, The City and County of San Francisco ("City") has approximately 12,000
12 households that depend on housing subsidies from SFHA under the United States
13 Department of Housing and Urban Development's ("HUD") Housing Choice Voucher Program
14 ("HCV"), also known as "Section 8," which is administered by SFHA, provides rental subsidies
15 for individual tenants (tenant-based vouchers) and multiple units in large projects in the form
16 of Section 8 project-based contracts vouchers ("PBVs"); and

17 WHEREAS, SFHA has entered into Housing Assistance Payment ("HAP") contracts
18 with eligible property owners to fund tenant-based vouchers and PBVs; and

19 WHEREAS, SFHA owns in fee (1) an approximately 38-acre site in the Potrero Hill
20 neighborhood improved with 620 units of public housing thereon ("Potrero Site"), and (2) an
21 approximately 50-acre site in the Vistacion Valley neighborhood, known as Sunnydale-
22 Valasco, improved with 785 units of public housing thereon ("Sunnydale Site," and together
23 with the Potrero Site, the "Sites"); and

24 WHEREAS, In order to ensure the long-term preservation of SFHA's public housing,
25 the City and SFHA have engaged in numerous housing preservation, subsidy, and

1 revitalization projects, including HUD’s Rental Assistance Demonstration program that is
2 preserving and rehabilitating 3,480 units of distressed public housing through the long term
3 financial investment by the City and a transfer of ownership of the improvements from SFHA
4 to private entities; and

5 WHEREAS, In order to transform four of SFHA’s most distressed housing sites, the
6 City and SFHA launched the HOPE SF initiative (“HOPE SF”) in 2007, which is the nation’s
7 first large-scale public housing transformation collaborative aimed at disrupting
8 intergenerational poverty, reducing social isolation, and creating vibrant mixed-income
9 communities without mass displacement of current residents; and

10 WHEREAS, HOPE SF is a human and real estate capital commitment by the City, and
11 the City’s signature anti-poverty and equity initiative committed to breaking intergenerational
12 patterns related to the insidious impacts of trauma and poverty, and to creating economic and
13 social opportunities for current public housing residents through deep investments in
14 education, economic mobility, health and safety; and

15 WHEREAS, The City desires to develop and revitalize the Sites as a mixed-use,
16 mixed-income development with several different components: (i) construction of the public
17 infrastructure to support the Sites; (ii) development of private affordable housing on affordable
18 parcels in accordance with an affordable housing plan; (iii) development of private residential
19 projects on market rate parcels; and (iv) development of community improvements (e.g., open
20 space areas, community facilities) throughout the Sites; and

21 WHEREAS, On January 31, 2017, the Board of Supervisors approved of the
22 following: (1) a Development Agreement and Master Development Agreement with SFHA and
23 the Sunnydale Development Co. LLC (the “Sunnydale Developer”) for the development of the
24 Sunnydale HOPE SF master plan consisting of a maximum of 1,770 units (785 are
25 replacement units for existing Sunnydale-Velasco households, approximately 200 are

1 additional affordable housing units, 730 units that will be for market rate homeownership or
2 rental), all new streets and utility infrastructure, 3.6 acres of new open spaces, and
3 approximately 60,000 square feet of new neighborhood serving spaces (“Sunnydale HOPE
4 SF Project”); and (2) a Development Agreement and Master Development Agreement with
5 SFHA and BRIDGE Potrero Community Associates, LLC (the “Potrero Developer,” and
6 together with the Sunnydale Developer, the “Developers”) for development of the Potrero
7 HOPE SF master plan consisting of a maximum of 1,700 units (approximately 800 are
8 replacement units for existing Potrero households and additional affordable housing units, and
9 up to 800 units that will be for market rate homeownership and rental), all new streets and
10 utility infrastructure, 3.5 acres of new open spaces, and approximately 50,000 square feet of
11 new neighborhood serving spaces (the “Potrero HOPE SF Project,” and together with the
12 Sunnydale HOPE SF Project, the “Projects”); and

13 WHEREAS, The City and SFHA have commenced the revitalization of the Potrero Site
14 and the Sunnydale Site, and are nearing the completion of rebuilding the public housing
15 located at Alice Griffith and Hunters View; and

16 WHEREAS, In recognition of limited resources and to assure viability of HOPE SF,
17 SFHA has proposed to HUD the accelerated disposition of on-site public housing units that
18 would be rehabilitated to allow for the commitment of PBVs, and then operated on an interim
19 basis until their phased demolition; and

20 WHEREAS, SFHA will implement a phased transfer of the Sites to the Developers
21 consistent with the respective Development Agreements approved by the Board of
22 Supervisors by Ordinances 18-17 and 15-17, and on file with the Clerk of the Board of
23 Supervisors in File Nos. 161164 and 161161, respectively, and the respective Master
24 Development Agreements approved by the Board of Supervisors by Resolutions 20-17
25

1 and 19-17, and on file with the Clerk of the Board of Supervisors in File Nos. 161356
2 and 161355, respectively; and

3 WHEREAS, On September 6, 2018, the Shortfall Prevention Team of HUD notified
4 SFHA of a shortfall of SFHA's HCV funding, and on October 2, 2018, the HUD Quality
5 Assurance Division conducted onsite review of HCV financials and concluded on
6 October 12, 2018 that SFHA would have a shortfall of funding to meet SFHA's HAP contract
7 obligations for both tenant-based vouchers and PBVs by December 1, 2018, which will result
8 in HAP contract terminations and displacement of thousands of tenants in affordable housing;
9 and

10 WHEREAS, SFHA requested the City through the Mayor's Office of Housing and
11 Community Development ("MOHCD") to provide an emergency, long-term loan of up to \$20
12 million ("Loan") to meet its HAP contractual obligations and prevent displacement of tenants;
13 and

14 WHEREAS, On November 13, 2018, HUD provided \$10,000,000 in shortfall funding to
15 SFHA and required SFHA to take certain actions to remedy the shortfall, and SFHA obtained
16 HUD approval to use \$5,000,000 in cash reserves for the shortfall; and

17 WHEREAS, On November 21, 2018, SFHA's financial consultant, BDO, with which
18 SFHA hired to resolve various accounting and financial issues, delivered a report that SFHA
19 needed immediate funding before December 1, 2018, to alleviate a total shortfall of
20 approximately \$32 million through December 2018; and

21 WHEREAS, MOHCD and SFHA executed an emergency Loan Agreement dated
22 November 26, 2018, a copy of which is on file with the Clerk of the Board in Board File
23 No. 190767 and incorporated in this resolution by reference ("Loan Agreement"), to enable
24 SFHA to maintain its obligations under the HAP contracts and keep the San Francisco
25 residents in their housing; and

1 WHEREAS, By a letter from HUD to SFHA dated March 7, 2019, a copy of which is on
2 file with the Clerk of the Board in Board File No. 190767 and incorporated in this resolution by
3 reference (the "Default Letter"), HUD determined that SFHA was in default under its Housing
4 Choice Voucher Consolidated Annual Contributions Contract ("HCV Contract") and its Low
5 Rent Public Housing ("LRPH") Consolidated Annual Contributions Contract ("LRPH Contract")
6 executed by and between SFHA and HUD on August 12, 1998, and April 29, 1996,
7 respectively (the "SFHA Default"); and

8 WHEREAS, After a determination of default, HUD has the legal authority to take
9 possession of all or a part of SFHA or require SFHA to make other arrangements acceptable
10 to HUD that are in the best interests of the public housing residents and families assisted by
11 HUD; and

12 WHEREAS, Under the Default Letter, HUD has determined that it is in the best
13 interests of SFHA's public housing residents and assisted families to allow SFHA the
14 opportunity to cure the SFHA Default as follows: (i) the City's assumption of oversight of the
15 programmatic and financial functions under the HCV Contract and LRPH Contract, and (ii)
16 outsourcing programmatic and financial administration of the HCV Program and LRPH
17 Program to a third party expert; and

18 WHEREAS, To protect San Francisco residents served by SFHA and continue the
19 revitalization of the Sites, the City desires for SFHA to cure the SFHA Default and enter into a
20 Memorandum of Understanding, a copy of which is on file with the Clerk of the Board in Board
21 File No. 190767 and incorporated in this resolution by reference (the "MOU"), to reorganize
22 SFHA consistent with the Default Letter; now, therefore, be it

23 RESOLVED, That the Board of Supervisors hereby approves the MOU and authorizes
24 the Mayor or her designee to enter into any amendments or modifications to the MOU
25 (including, without limitation, preparation and attachment or, or changes to, any of all of the

1 exhibits and ancillary agreements) and any other documents or instruments necessary in
2 connection therewith that the Mayor determines, in consultation with the City Attorney, are in
3 the best interest of the City, do not materially increase the obligations or liabilities for the City
4 or materially diminish the benefits of the City, are necessary or advisable to effectuate the
5 purposes and intent of this Resolution and are in compliance with all applicable laws; and, be
6 it

7 FURTHER RESOLVED, That the Board of Supervisors approves of the Loan to SFHA,
8 and ratifies execution of the Loan Agreement and any additions, amendments or other
9 modifications to the Loan (including, without limitation, preparation and attachment, or
10 changes to, any of all of the exhibits and ancillary agreements), and any other documents or
11 instruments necessary in connection therewith, that the Director of MOHCD in consultation
12 with the City Attorney, determines when taken as whole, are in the best interests of the City,
13 do not materially decrease the benefits to the City, do not materially increase the obligations
14 or liabilities of the City, or materially decrease the public benefits accruing to the City, and are
15 necessary or advisable to complete the transaction contemplated and effectuate the purpose
16 and intent of this Resolution and are in compliance with all applicable laws; and, be it

17 FURTHER RESOLVED, That all actions heretofore taken by the City with respect to
18 the MOU and the Loan Agreement and the execution and delivery of the MOU and Loan
19 Agreement are hereby approved, confirmed and ratified; and, be it

20 FURTHER RESOLVED, That within 30 days of the execution of the Memorandum of
21 Understanding, the Department shall provide the executed Memorandum of Understanding to
22 the Clerk of the Board for inclusion in the official file.
23
24
25

**Memorandum of Understanding
(Reorganization of the San Francisco Housing Authority)**

This Memorandum of Understanding (this “**MOU**”), dated as of _____, 2019 (the “**Effective Date**”), is entered into by and between the City and County of San Francisco, a municipal corporation (the “**City**”) and the Housing Authority of the City and County of San Francisco, a public body, corporate and politic (the “**Authority**”). The City and the Authority are collectively referred to as the “**Parties**”, and may be referred to individually as a “**Party**”.

RECITALS

A. The City has approximately 12,000 residents that depend on housing subsidies from the Authority under the United States Department of Housing and Urban Development’s (“**HUD**”) Housing Choice Voucher and other voucher programs (“**HCV**”). In addition, the Authority owns in fee (1) an approximately 38-acre site in the Potrero Hill neighborhood, known as Potrero Annex and Terrace, originally improved with 620 units of public housing thereon (“**Potrero Site**”), and (2) an approximately 50-acre site in the Visitacion Valley neighborhood, known as Sunnydale-Velasco, originally improved with 785 units of public housing thereon (“**Sunnydale Site**,” and together with the Potrero Site, the “**Sites**”).

B. By a letter from HUD to the Authority dated March 7, 2019, attached as Exhibit A (the “**Default Letter**”), HUD determined that the Authority was in default under its Housing Choice Voucher Consolidated Annual Contributions Contract (“**HCV Contract**”) and its Low Rent Public Housing (“**LRPH**”) Consolidated Annual Contributions Contract (“**LRPH Contract**”) executed by and between the Authority and HUD on August 12, 1998, as amended, and April 29, 1996, as amended, respectively (the “**SFHA Default**”). In accordance with 42 USC Section 1437d(j)(3)(A)(iv)(v), after a determination of default, HUD has the authority to take possession of all or a part of the Authority or require the Authority to make other arrangements consistent with HUD requirements that are in the best interests of the public housing residents and families assisted by HUD.

C. Under the Default Letter, HUD has determined that it is in the best interests of the Authority’s public housing residents and assisted families to allow the Authority the opportunity to cure the SFHA Default as follows: (i) the City’s assumption of responsibility of the programmatic and financial functions under the HCV Contract and LRPB Contract, including financial management, program management, wait list and admissions, inspections, eligibility determinations, and lease and grievance procedures, and (ii) outsourcing programmatic and financial administration of the HCV Program and LRPB Program, including continued outsourcing of Authority’s financial management.

D. In order to ensure the long-term preservation of the Authority’s LRPB sites, the City and the Authority engaged in the transformation and improvement of Twenty-Nine (29) LRPB sites under HUD’s Rental Assistance Demonstration (“**RAD**”) program and the non-RAD Section 8 Project Based Voucher (“**PBV**”) program. The conversion of the Authority’s public housing units under the RAD program and PBV program involved the long term financial

investment by the City and a transfer of ownership of the improvements from the Authority to private entities, which have commenced or completed the rehabilitation and recapitalization of such former public housing sites. Apart from 70 scattered sites approved by HUD for disposition and 732 units in mixed-finance developments owned and managed by private entities that are planned to be converted to PBV units under RAD, the Sites are the Authority's last remaining public housing sites under the LRPB Program.

E. In order to transform four of SFHA's most distressed housing sites, the City and Authority launched the HOPE SF initiative in 2007. HOPE SF is the nation's first large-scale public housing transformation collaborative aimed at disrupting intergenerational poverty, reducing social isolation, and creating vibrant mixed-income communities without mass displacement of current residents. As the City's signature anti-poverty and equity initiative, is committed to breaking intergenerational patterns related to the insidious impacts of trauma and poverty, and to creating economic and social opportunities for current public housing residents through deep investments in education, economic mobility, health and safety. The Parties have commenced the revitalization of the Potrero Site and the Sunnydale Site, and are nearing the completion of the public housing rebuilding located at Alice Griffith and Hunters View.

F. The Parties desire to develop and revitalize the Sites as mixed-use, mixed-income developments with several different components: (i) construction of the public infrastructure to support the Sites; (ii) development of private affordable housing on affordable parcels in accordance with an affordable housing plan; (iii) development of private residential projects on market rate parcels; and (iv) development of community improvements (e.g., open space areas, community facilities) throughout the Sites.

G. On January 31, 2017, the City's Board of Supervisors approved of the following (1) a Development Agreement and Master Development Agreement with the Authority and the Sunnydale Development Co. LLC (the "**Sunnydale Developer**") for the development of the Sunnydale HOPE SF master plan consisting of a maximum of 1,770 units (785 are replacement units for existing public housing units, approximately 200 are additional affordable housing units, 730 units that will be for market rate homeownership or rental), all new streets and utility infrastructure, 3.6 acres of new open spaces, and approximately 60,000 square feet of new neighborhood serving spaces ("**Sunnydale HOPE SF Project**"); and (2) a Development Agreement and Master Development Agreement with the Authority and BRIDGE Potrero Community Associates, LLC (the "**Potrero Developer**," and together with the Sunnydale Developer, the "**Developers**") for development of the Potrero HOPE SF master plan consisting of a maximum of 1,700 units (approximately 800 are replacement units for existing public housing units and additional affordable housing units, and up to 800 units that will be for market rate homeownership and rental), all new streets and utility infrastructure, 3.5 acres of new open spaces, and approximately 50,000 square feet of new neighborhood serving spaces (the "**Potrero HOPE SF Project**," and together with the Sunnydale HOPE SF Project, the "**Projects**").

H. In recognition of limited off-site relocation options and to assure program viability, the Authority has proposed to HUD the accelerated disposition of on-site public housing units

that would be rehabilitated to allow for the commitment of PBVs and then operated on an interim basis until their demolition.

I. To protect San Francisco residents served by the Authority and continue the revitalization of the Sites, the Parties desire to cure the SFHA Default and enter into this MOU to set forth their respective obligations.

NOW THEREFORE, the Parties agree as follows:

1. Definitions.

“Act” means the United States Housing Act of 1937.

“Board of Supervisors” means the elected Board of Supervisors of the City.

“Board Appointee” has the same meaning set forth in **Section 2.2(a)**.

“Commission” means the Authority’s Board of Commissioners.

“Controller” means the appointed Controller of the City.

“Default Letter” has the same meaning set forth in **Recital B**.

“Developers” has the same meaning set forth in **Recital G**.

“Development Agreements” means, collectively, the Sunnydale Development Agreement and the Potrero Development Agreement.

“Effective Date” means the date first written above.

“Essential Functions” means the programmatic and financial functions under the HCV contract and LRP contract, including financial management, program management, wait list and admissions, housing quality standards inspections, eligibility determinations, and lease and grievance procedures.

“Executive Management” means executive managerial oversight of the Authority for all Essential Functions, including, but not limited to leadership and overall management of the Authority, development of policy and procedure, and compliance with HUD requirements, City procedures, and this MOU.

“Financial Management” means management of the HCV HUD voucher management system reporting, Two Year Tool HCV utilization forecasting, year-end close, audit preparation, budgeting, general accounting, and any other aspects of the Authority’s budget and finances.

“HCV” means the Authority’s Housing Choice Voucher program and other voucher programs, including PBVs, authorized by Section 8(o) of the Act.

“LRPH” means the Authority’s public housing program authorized by Title I of the Act other than by Section 8 of Title I of the Act.

“Master Development Agreements” means, collectively, the Sunnysdale Master Development Agreement and the Potrero Master Development Agreement.

“Mayor” means the elected Mayor of the City, or her designee.

“Mayor Appointee” has the same meaning set forth in **Section 2.2(a)**.

“Non-Housing Asset” has the same meaning set forth in **Section 2.7**.

“Potrero Development Agreement” means the Development Agreement dated March 3, 2017, by and between the City, the Authority, and the Potrero Developer regarding revitalization and development of the Potrero Site approved by the Board of Supervisors under Ordinance 15-17 and on file with the Clerk of the Board of Supervisors in File No. 161161, and approved by the Commission under Resolution 0093-16.

“Potrero HOPE SF Project” has the same meaning set forth in **Recital E**.

“Potrero Master Development Agreement” means the Master Development Agreement dated March 3, 2017, by and between the City, the Authority, and the Potrero Developer regarding disposition, revitalization and development of the Potrero Site approved by the Board of Supervisors under Resolution 19-17 and on file with the Clerk of the Board of Supervisors in File No. 161355, and approved by the Commission under Resolution 0093-16.

“Property Owner” means the Sunnysdale Developer, the Potrero Developer, or other legal entity acceptable to the Parties.

“PBV” has the same meaning set forth in **Recital D**.

“RAD” has the same meaning set forth in **Recital D**.

“SFHA Default” has the same meaning set forth in **Recital B**.

“Sunnysdale Developer” has the same meaning set forth in **Recital G**.

“Sunnysdale Development Agreement” means the Development Agreement dated March 3, 2017, by and between the City, the Authority, and the Sunnysdale Developer regarding revitalization and development of the Sunnysdale Site approved by the Board of Supervisors under Ordinance 18-17 and on file with the Clerk of the Board of Supervisors in File No. 161164, and approved by the Commission under Resolution 0094-16.

“Sunnysdale Master Development Agreement” means the Master Development Agreement dated March 3, 2017, by and between the City, the Authority, and the Sunnysdale

Developer regarding disposition, revitalization and development of the Sunnydale Site approved by the Board of Supervisors under Resolution 20-17 and on file with the Clerk of the Board of Supervisors in File No. 161356, and approved by the Commission under Resolution 0094-16.

“Voucher Shortfall” has the same meaning set forth in **Section 2.10**.

2. Reorganization of the Authority. The City will assume responsibility and oversight of the Authority, including the Essential Functions. The Authority will comply with all aspects of the Default Letter and implement best practices for the overall management of the Authority’s operations under the oversight of the City. All actions by any Party under this MOU are subject to any HUD requirements generally applicable to the Authority.

2.1 City Oversight of the Authority. The Authority agrees that the City will have oversight authority over certain matters governed by the Authority, including the Commission, as follows:

a. Annual Budget. The Authority’s adoption of an annual budget is subject to review and approval by the Mayor and Board of Supervisors, either of which may accept or reject the Commission’s proposed budget. The Authority will work with the Controller and Mayor’s Office of Budget to ensure its budget submission is consistent with City procedures and with HUD timelines and requirements.

b. Contracts. The Authority will approve all contracts and actions related to implementing the obligations in the Default Letter, necessary to adhere to HUD requirements, or related to the disposition of the Sites in accordance with the Development Agreements and Master Development Agreements approved by the Board of Supervisors and the Commission. The Authority will obtain a third-party appraisal regarding the lease or sale of any real property, and if such real property has a fair market value of over \$200,000 related to a sale or \$60 per square foot related to a lease, the Authority will obtain a third-party review of the appraisal; provided however, no appraisal or appraisal review will be required if a sale or lease of real property is consistent with HUD requirements or conveyed at a below market rate for the purpose of developing affordable housing.

c. Issuance of Debt. Any issuance of debt by the Authority must be approved by the Authority and the Board of Supervisors.

d. MOU. Any material amendments or modifications to this MOU are subject to the prior approval of the Board of Supervisors.

Any matter implemented or executed by the Authority without the approval of the Board of Supervisors or Mayor, as applicable, that requires such approval under this MOU, will constitute an Event of Default under this MOU at the City’s election.

2.2 Appointment and Removal of Commissioners.

a. Appointments. The Mayor will appoint the members of the Commission in accordance with Health and Safety Code Section 34270.1, as follows: (i) four (4) members at the sole discretion of the Mayor (“**Mayor Appointees**”); and (ii) three (3) members at the sole discretion and recommendation by motion of the Board of Supervisors (“**Board Appointees**”). In addition, pursuant to Health and Safety Code Section 34270.1, of the four Mayor Appointees, at least one (1) will be a tenant of the Authority, and of the three Board Appointees, at least one (1) will be a tenant of the Authority aged 62 years or older. The Mayor will appoint Board Appointees no later than ten (10) days after a motion for a recommendation is approved by the Board of Supervisors.

b. Initial Appointments. In order to ensure continuity of the Authority’s operations, current members of the Commission may hold over and continue to serve as Mayor Appointees under their existing terms. No later than sixty (60) days after the Effective Date, and in accordance with Section 3.2(a), the Board of Supervisors will recommend for the Mayor’s appointment the Board Appointees, and if there are other vacancies on the Commission, the Mayor will appoint the Mayor Appointees. To stagger the terms of the members, the initial appointments under Section 3.2(a) to the Commission will be as follows: (i) for Board Appointees, the Board of Supervisors will recommend one member to serve a term of four years, one member to serve a term of three years, and one member to serve a term of two years; and (ii) as vacancies occur, for Mayor Appointees, the Mayor will appoint two members to serve terms of four years, one member to serve a term of three years, and one member to serve a term of two years.

c. Removal. The Mayor may remove any Mayor Appointee in his or her sole discretion. The Mayor will not remove any Board Appointee without the prior recommendation of the Board of Supervisors by motion. If the Board of Supervisors recommends by motion to remove a Board Appointee, the Mayor will remove such Board Appointee no later than ten (10) days after such motion is approved by the Board of Supervisors. In accordance with Health and Safety Code Section 34282, any member of the Commission will be removed only after he or she has been given a copy of the charges at least ten (10) days prior to a hearing by the Authority and has had an opportunity to be heard in person or by counsel, and if such member of the Commission is removed, a record of the proceedings and the charges and findings on them will be filed with the Authority.

2.3 Executive Management. Under a services contract between the Parties, the City will provide staff to perform Executive Management, which, at a minimum, will include the functions of chief executive officer (the “**Chief Executive Officer**”). The Chief Executive Officer will report directly to the Mayor or her designee. In accordance with Health & Safety Code Sections 34278 and 34280, the Commission will confirm the appointment of the Chief Executive Officer under the services contract. The Commission will not terminate the services contract or require replacement of the Chief Executive Officer without the prior written consent of the Mayor. The Commission will delegate all personnel decisions to the Chief Executive Officer.

2.4 Essential Functions. Pursuant to the Default Letter, and in accordance with California Health & Safety Code Section 34280, the Authority will outsource the Essential

Functions to third-party contractors with sufficient expertise and selected through a process consistent with HUD requirements.

a. HCV Program. The HCV program outsourcing will be undertaken by contracting with a third party (or parties) expert for programmatic and financial administration. Pursuant to Section 3.5, such third parties will be solicited and selected through the RFP process or other process consistent with HUD requirements. The Authority will assist and cooperate in every respect with implementation of third-party management of the HCV program. The Authority will also maintain daily or weekly, as necessary, communication with the selected HCV program contractor to comply with the requirements of this MOU and ensure that the HCV program is implemented at a high standard.

b. LRPH Program. The LRPH program outsourcing will be undertaken by contracting with a third party (or parties) expert for programmatic and financial administration. The Parties intend for the LRPH program outsourcing to be accomplished substantially through a transfer of the Sites to Property Owners and/or through contracting with a third party (or parties) expert for property management. If required, the Parties intend that any contractor will be solicited through the RFP process pursuant to Section 2.5, or other process consistent with HUD requirements. The Parties and the Developers will implement revitalization of the Sites consistent with the respective Development Agreements approved by the Board of Supervisors by Ordinances 18-17 and 15-17, respectively, and on file with the Clerk of the Board of Supervisors in File Nos. 161164 and 161161, and the Commission by Resolutions 0093 and 0094, respectively, and the respective Master Development Agreements approved by the Board of Supervisors by Resolutions 20-17 and 19-17, respectively, and on file with the Clerk of the Board of Supervisors in File Nos. 161356 and 161355, and the Commission by Resolutions 0093 and 0094, respectively.

c. Financial Management. To the extent required by the City, the Authority's Financial Management will be outsourced to a third-party contractor with sufficient expertise and selected through a process consistent with HUD requirements. The Parties acknowledge that the Authority has outsourced its Financial Management under a contract with BDO USA LLP.

2.5. Procurement and Contract Management. The Authority will work with City staff to procure third-party contractors with sufficient expertise and through a process consistent with HUD requirements. The Authority will ensure that the Mayor's Office of Housing and Community Development, the City Purchaser, and/or the Controller's Office are provided opportunities to participate in procurement processes, as each deems necessary to perform their oversight responsibilities, unless otherwise directed by the Mayor. As directed by the Controller and the City Purchaser, the Authority's will follow the City's practices and procedures over the management of contracts consistent with HUD requirements. Such practices and procedures are subject to review and audit on an as-needed basis determined by the Controller's Office.

2.6. Shared Services. The Authority will transition to a shared services model in which City departments provide the Authority with services and expertise that support the Essential Functions, which may include, but is not limited to, Information Technology, Human

Resources, Purchasing, Real Estate, and Financial Systems & Oversight. In consultation with MOHCD, the Controller's Office, and City's General Services Agency, the Authority intends to develop a specific timeline for integrating systems, processes, and policies with the City by no later than one year after the Effective Date. City will offer technical assistance to the Authority regarding management best practices, including guidance on transitioning to a shared services model with City departments.

2.7 Non-Housing Assets. Pursuant to the restructuring set forth in this Section 2, the Authority will take an inventory of its non-housing real property, vehicles, equipment, and any other non-housing assets used to support its operations ("**Non-Housing Assets**"). In consultation with the City's General Services Agency, the Authority will develop a plan for utilizing any City property for the Authority's restructured operations. By no later than one year after the Effective Date, the Authority intends to develop and submit to the Controller's Office a specific timeline for establishing Non-Housing Assets needed for its restructured operations, disposition of Non-Housing Assets that are no longer needed for the restructured operations, and execution of any agreements needed to utilize the City's property. Upon disposition of any Non-Housing Assets, subject to any HUD requirements, the Authority will repay City loans with any unrestricted surplus funds from such disposition or use such funds as approved by the City.

2.8. Bylaws. By no later than ninety (90) days after the Effective Date, the Authority will approve of an amendment to the Authority Bylaws to reflect the requirements of this Section 2, in a form acceptable to the City.

2.9 Employee Transition. The Authority will provide all legally required notices to affected employees and their exclusive bargaining representatives, and, in collaboration with the City, develop and offer severance packages and assistance in identifying and accessing appropriate job opportunities with the City. The Authority will negotiate with bargaining representatives in a timely manner and will coordinate with the City on job pathways and support to current employees seeking employment with the City. In consultation with the City, the Authority will develop a plan for any necessary operations that are not Essential Functions or a shared service with the City.

2.10 Voucher Shortfall. The Authority will continue to work as needed with HUD's Quality Assurance Division and Shortfall Prevention Team to improve the operations of the Authority. The Authority will take every reasonable action to obtain funding from HUD to address any shortfall of voucher funding under the HCV Program that occurs or is projected to occur ("**Voucher Shortfall**") despite its sound management efforts. The Authority acknowledges and agrees that the City has no obligation under law or this MOU to provide financial assistance for the Authority's financial deficits. Only if necessary, and subject to both the availability of funds appropriated by the Board of Supervisors and prior approval by the Commission, the Authority may request the City to provide financial assistance for a Voucher Shortfall, provided that the following conditions are satisfied:

- (i) MOHCD and the Controller must be satisfied that the Authority has reasonably mitigated any Voucher Shortfall;
- (ii) the Authority must have complied with all aspects of this MOU, including review and approval of the Authority's annual budget by the Board of Supervisors; and

- (iii) the Authority will take any necessary actions so that any such City contribution to cover a Voucher Shortfall will be included in the funding base for future renewal funding calculations by HUD.

3. Default/Remedies.

3.1 Events of Default. Any material breach by a Party of any covenant, agreement, provision or warranty contained in this Agreement that remains uncured upon the expiration of any applicable notice and cure periods will constitute an "Event of Default." Applicable notice and cure periods will be thirty (30) days after the Authority's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, the Authority will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, provided that the Authority commences to cure the default within the 30-day period and diligently pursues the cure to completion.

3.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this MOU or at law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City may perform any of the Authority's obligations in any manner, in the City's reasonable discretion.

(b) the City, either directly or through an agent, may take control of the Authority and enter into contracts and take any other action the City deems appropriate.

(c) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this MOU or for any other remedies or actions necessary or desirable to correct the Authority's noncompliance with this MOU.

4. Miscellaneous Provisions.

4.1 Term. The term of this MOU will begin on the Effective Date and will continue unless and until expressly terminated by the Parties.

4.2 Amendments. The Parties agree that no amendment, modification, alteration or variation of the terms of this MOU shall be valid unless in writing and signed and acknowledged and approved by both Parties. This MOU constitutes the entire agreement of the Parties and no oral understandings or agreement not incorporated herein shall be binding on either party. This MOU supersedes and replaces any prior written materials used by the Parties in negotiating this MOU.

4.3 Severability. Except as otherwise specifically provided in this MOU, a judgment or court order invalidating any provision of this MOU, or its application to any person, will not affect any other provision of this MOU or its application to any other entity or person or circumstance, and the remaining portions of this MOU will continue in full force and effect, unless

July 9, 2019

enforcement of this MOU as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this MOU.

4.4 Compliance with Laws. All transactions described in this MOU are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and other applicable City codes and all transactions on behalf of the Authority must be conducted in accordance with applicable state and/or federal requirements.

4.5 No third-party beneficiaries. There are no third-party beneficiary rights with respect to this Agreement.

SIGNATURES ON THE NEXT PAGE

July 9, 2019

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the date set forth below.

AUTHORITY:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic

By: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Counsel to Authority

Authority Resolution No. _____
Adopted _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

City Resolution No. _____
Adopted _____

Exhibit A follows this page

July 9, 2019

EXHIBIT A

HUD Default Letter

**SFHA's LOAN AGREEMENT
(CITY AND COUNTY OF SAN FRANCISCO
HOUSING TRUST FUND)**

By and Between

THE CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, represented by the Mayor,
acting by and through the Mayor's Office of Housing and Community Development,

and

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO,
a public body, corporate and politic

for the amount of up to

\$20,000,000

Housing Trust Funds

Dated as of November 26, 2018

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- A Governmental Requirements
- B Insurance Requirements
- C Lobbying/Debarment Certification Form
- D Form of Deed of Trust
- E HUD Letter Dated November 13, 2018

LOAN AGREEMENT
(City and County of San Francisco
Housing Trust Fund)

THIS LOAN AGREEMENT (“Agreement”) is entered into as of 11/26, 2018 by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “City”), represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”), and **HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO**, a public body corporate and politic (“Borrower”).

RECITALS

A. In November 2012, the voters of the City approved Proposition C, which established a housing trust fund to provide funds to support creating, acquiring and rehabilitating affordable housing and promoting affordable home ownership programs (the “Housing Trust Fund”) (the “Funds”). Under San Francisco City Charter Section 16.110, the City is authorized to provide Housing Trust Fund funds under this Agreement to Borrower to reduce the risk to current occupants of a loss of housing and/or to help current occupants make their homes safer, more accessible, more energy efficient, and more sustainable.

B. The City and Borrower are partners in numerous housing preservation, subsidy, and revitalization projects, including the United States Department of Housing and Urban Development (“HUD”) Rental Assistance Demonstration (“RAD”) program that is preserving and rehabilitating 3,480 units of distressed public housing, the HOPE SF initiative (“HOPE SF”) that is transforming four of San Francisco’s most distressed public housing sites into vibrant, thriving communities through holistic revitalization, subsidies for permanent supportive housing, and other key initiatives. Two HOPE SF properties are currently under development: Sunnydale –Velasco and Potrero (each “HOPE SF Property”). Following unique guiding principles and working toward its overarching goals, each HOPE SF Property will have a broad impact on individuals, families, and the City and County of San Francisco.

C. HUD’s Housing Choice Voucher (“HCV”) program, also known as “Section 8,” which is administered by Borrower, provides rental subsidies for individual tenants (tenant-based vouchers) and multiple units in large projects in the form of project-based contracts vouchers (“PBVs”). Borrower has entered into Housing Assistance Payment (“HAP”) contracts with eligible property owners to fund tenant-based vouchers and PBVs. On September 6, 2018, the Shortfall Prevention Team (SPT) of the HUD notified Borrower of a shortfall of Borrower’s HCV funding. On October 2, 2018, the HUD Quality Assurance Division (QAD) conducted onsite review of HCV financials and concluded on October 12 that the shortfall would be between \$18 and \$19 million. Borrower’s financial consultant, BDO, with which Borrower has been working to resolve various accounting and financial issues, further advised on [date] that the shortfall will be [\$38] million (the “Shortfall”) by the end of December 2018. In a letter dated November 13, 2018, attached hereto as Exhibit E, HUD committed to providing \$10,000,000 in shortfall funding and required Borrower to take certain actions to remedy the Shortfall. The Shortfall will result in Borrower’s inability to fulfill its funding obligations under existing HAP

contracts for both tenant-based vouchers and PBVs in December 2018, and could result in HAP contract terminations and displacement of thousands of tenants in affordable housing.

D. Borrower requires an immediate, long-term loan of up to \$20,000,000 in order to meet its contractual obligations under the HCV program in December 2018 and fulfill its funding obligations to both tenants and property owners.

E. Borrower and the City have determined that reconstruction of each HOPE SF Property (collectively, the "Project") carries extraordinary, one-time costs including costs related to staff, consultants, vacant unit repair, and other expenses.

F. The City has reviewed Borrower's request for Funds and, in reliance on the accuracy of the statements in that request, has agreed to make a loan of Funds to Borrower (the "Loan") in the amount of Twenty Million and No/100 Dollars (\$20,000,000) (the "Funding Amount") under this Agreement to assist Borrower to meet its HCV obligations.

G. Borrower has or will secured the following additional funding for the Shortfall:

1. unrestricted cash reserves in the amount of \$7,000,000 that can be used for obligations under HAP contracts; and
2. a commitment from HUD in the amount of \$10,000,000 to pay for a portion of the Shortfall.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Applicable Public Housing Requirements" means all requirements applicable to public housing, including the United States Housing Act of 1937, HUD regulations thereunder (including any HUD-approved waivers of such regulations), the Consolidated Annual Contributions Contract and any amendments or riders thereto, the Borrower's standard public housing admissions and occupancy policies adopted in accordance with federal law and described in the Borrower's approved Public Housing Agency Annual Plan, or any approved amendment to the Plan for non-Qualified PHAs, or the Five-Year Action Plan for Qualified PHAs, the RAD program and any HUD notice issued in connection with the RAD program, and

all other pertinent Federal statutory, executive order, and regulatory requirements, as those requirements may be amended from time to time.

“Borrower” means the Housing Authority of the City and County of San Francisco, a public body corporate and politic, and its authorized successors and assigns.

“City” means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

“City Documents” means this Agreement, the Note, the Deed of Trust, and any other documents executed or, delivered in connection with this Agreement.

“Deed of Trust” means the deed of trust executed by Borrower, and approved by HUD, granting the City a lien on the Property to secure Borrower’s performance under this Agreement and the Note, in substantially the form and substance attached hereto as Exhibit D and acceptable to the City.

“Disbursement” means the disbursement of all or a portion of the Funding Amount by the City as described in **Article 4**.

“Environmental Activity” means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on any property owned by Borrower.

“Environmental Laws” means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the “Superfund” law) (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 (“NEPA”) (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the “California Superfund” law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”) (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code.

“Event of Default” has the meaning set forth in **Section 11.1**.

“Funding Amount” has the meaning set forth in **Recital E**.

“Funds” has the meaning set forth in **Recital A**.

“GAAP” means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

“Governmental Agency” means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

“Hazardous Substance” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a “hazardous substance,” “hazardous waste,” “hazardous material,” “pollutant,” “contaminant,” “pesticide” or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as “hazardous” or “toxic” under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the rehabilitation, operation or maintenance of developments similar to the Project will not be deemed “Hazardous Substances” for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

“HUD” means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

“Indemnify” means, whenever any provision of this Agreement requires a person or entity (the “Indemnitor”) to Indemnify any other entity or person (the “Indemnitee”), that the Indemnitor will be obligated to defend, indemnify and protect and hold harmless the Indemnitee, its officers, employees, agent, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; *provided that* no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must Indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors. Any Borrower's indemnification is limited to eligible non-public housing assets or unrestricted assets (assets not subject to HUD's Declaration of Trust and not acquired or merged with assets acquired with funding under the United States Housing Act of 1937).

“Indemnitee” has the specific meaning set forth in **Section 15.1** and the general meaning set forth in the definition of “Indemnify.”

“Indemnitor” has the meaning set forth in the definition of “Indemnify.”

“Laws” means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency.

“Loan” has the meaning set forth in **Recital E**.

“Loss” or “Losses” includes any loss, liability, damage, cost, expense or charge and reasonable attorneys’ fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of the City’s rights or in defense of any action in a bankruptcy proceeding.

“Maturity Date” has the meaning set forth in **Section 3.1**.

“Median Income” means area median income for the San Francisco, CA HUD Metro FMR Area, as published by HUD as the applicable Section 8 HUD Program Income Limits, adjusted solely for household size.

“MOHCD” means the Mayor’s Office of Housing and Community Development or its successor.

“Note” means the secured promissory note executed by Borrower in favor of the City in the original principal amount of the Funding Amount, in form and substance acceptable to the City.

“Project” means the work described in **Recital E**.

“Property” means the real property located at 1815 Egbert Avenue, San Francisco, California and/or 195 Kiska, San Francisco, California.

“SFHA” means the Housing Authority of the City and County of San Francisco.

“Surplus Cash” means Borrower’s receipt of all third-party funds not required for Borrower operations or accrued liabilities or otherwise restricted by HUD (e.g., through Borrower-owned asset sales) for repayment of the loan, plus Borrower’s revenue exceeding expenses after meeting all HCV contract obligations and not otherwise restricted by HUD.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other City Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word “include(s)” means “include(s) without limitation” and “include(s) but not limited to,” and the word “including” means “including without limitation” and “including but not limited to” as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific City Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other City Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the City Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

ARTICLE 2 FUNDING.

2.1 Funding Amount. The City agrees to lend to Borrower a maximum principal amount not to exceed the Funding Amount in order for Borrower to make HCV payments in December 2018 to eligible landlords and property owners under existing HAP contracts as of the Agreement Date and comply with its obligations under the HCV program after the use of committed funding set forth in Recital G. If the maximum principal of the Funding Amount is not needed to cover the Shortfall, then a portion of the Funding Amount may be used for extraordinary staff, consultant, and vacant unit costs related to reconstruction of each HOPE SF Property with the prior written approval of the City in its sole discretion. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower acknowledges that the City's agreement to make the Loan is based on Borrower's agreement to use the Funds solely for the purpose set forth in Section 2.1.

2.3 Records. Borrower must maintain and provide to the City upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures related to the Funds.

ARTICLE 3 TERMS. Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. Borrower must repay all amounts owing under the City Documents on by the fifty-fifth (55th) anniversary of the date of this Agreement the "Maturity Date"). Notwithstanding the foregoing, Borrower may, in its sole discretion, partially or fully prepay the Loan with a lump sum of funds.

3.2 Repayment Requirements. Borrower shall use all Surplus Cash for repayment of the Loan as set forth in full in the Note. The outstanding principal balance of the Loan, together with all accrued and unpaid interest, if any, will be due and payable on the Maturity Date.

3.3 Interest. The outstanding principal balance of the Loan will bear no interest.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Note, with such default interest rate commencing as of the date an Event of Default occurs and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Loan Forgiveness. Provided that no uncured Event of Default exists under any City Document on the Maturity Date, MOHCD may forgive the outstanding principal balance of the Loan if SFHA has no revenue or other assets to repay the Loan in MOHCD's sole discretion.

3.6 Additional City Approvals. Borrower understands and agrees that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by City into this Agreement nor any approvals given by City under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which may have jurisdiction.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, the City will make a Disbursement in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement.

4.2 Closing. In the event Borrower does not satisfy all of the conditions to closing within a reasonable time, as determined by the City in its sole discretion, the City may declare this Agreement to be null and void.

4.3 Conditions Precedent to Closing & Disbursement of Funds. The City will authorize the close of the Loan and the disbursement of the Funding Amount upon satisfaction of the following conditions:

(a) Borrower must have delivered to the City fully executed originals of the following documents, in form and substance satisfactory to the City: (i) the Note; (ii) this Agreement (in duplicate); and (iii) any other City Documents reasonably requested by the City; and Borrower must have delivered to the City insurance endorsements and, if requested by the City, copies of policies for all insurance required under Exhibit B of this Agreement.

(b) Borrower must have delivered a certified report of the Shortfall under its existing HCV contracts from the Agreement Date until December 31, 2018, including a line item breakdown of HCV contracts to be covered by the Loan and copies of such HCV contracts;

(c) Borrower must have delivered evidence that SFHA will satisfy its obligations under existing HAP contracts through December 31, 2018;

(d) Borrower must have delivered to the City satisfactory evidence that Borrower has obtained commitments for the additional funding as set forth in Recital G, that may be required for the Shortfall, in amounts satisfactory to the City in its sole discretion; and

4.4 Disbursement of Funds. Following satisfaction of the conditions in **Section 4.3** and **Section 4.5**, the City will disburse the Funding Amount to Borrower.

4.5 Disbursements. The City's obligation to approve any disbursement or expenditure of Funds after Loan closing is subject to Borrower's satisfaction of the following obligations:

(a) Accounting of Funds. By January 15, 2019, Borrower must provide a complete accounting of amounts and recipients of all Loan funds disbursed, including copies of checks issued to pay HAP contracts covered by the Loan and any other documents MOHCD may need to verify expenditures of the Funding Amount.

(b) Deed of Trust. Subject to HUD's prior approval, Borrower shall must record the Deed of Trust as valid liens against the Property in the official records of the City. Borrower shall make a good faith efforts to obtain HUD approval of recording the Deed of Trust against the Property. If HUD does not approve of the Deed of Trust after Borrower's good faith efforts, City will waive this obligation.

(c) If any Funds will be used for the Project, Borrower to provide updated budget information for administration and operations, including site based budgets and capital budgets, for review by City prior to release of any funds. Borrower must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; and (ii) a line item breakdown of costs to be covered by the Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded,

would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.

(d) Compliance with HUD Letter. Borrower must undertake all actions set forth in the letter dated November 13, 2018, attached hereto as Exhibit E, from HUD regarding shortfall funding.

(e) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

ARTICLE 5 MAINTENANCE AND MANAGEMENT OF THE HOPE SF PROPERTY.

5.1 Borrower's Responsibilities. Unless and until each HOPE SF Property is disposed, Borrower will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with each HOPE SF Property. Borrower must maintain or cause to be maintained each HOPE SF Property in a safe and sanitary manner in accordance with local health, building and housing codes, all applicable federal requirements, and California Health and Safety Code 17920.10.

5.2 Borrower Management. Prior to the disposition of the HOPE SF Properties, Borrower will manage each HOPE SF Property itself. The City will provide written notice to Borrower of any determination that Borrower has failed to operate and manage each HOPE SF Property in accordance with this Agreement, in which case, the City may require Borrower to contract or cause contracting with a management agent to operate each HOPE SF Property, or to make other arrangements the City deems necessary to ensure performance of the functions required in **Section 5.1.**

ARTICLE 6 GOVERNMENTAL REQUIREMENTS.

6.1 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the Shortfall, including those set forth in **Exhibit A.** Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 15.1,** this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 7 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

7.1 Generally.

(a) Borrower understands and agrees that it will be monitored by the City to assure compliance with all terms and conditions in this Agreement, all Laws, and any other requirements by HUD related to the Shortfall. Borrower acknowledges that the City will also conduct periodic on-site inspections of each HOPE SF Property and Borrower's files. Borrower

must cooperate with the monitoring by the City and ensure full access to Borrower's office and all information related to Borrower's operations and finances as reasonably required by the City.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project, if applicable. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement of its executive director, director of housing development and modernization and/or any equivalent position within thirty (30) days after the effective date of such replacement.

7.2 Response to Inquiries. At the request of the City, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, and operations and any other requested information with respect to Borrower or the Project.

7.3 Delivery of Records. At the request of the City, made through its agents, employees, officers or attorneys, Borrower must provide the City with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

(a) all certified financial statements of Borrower, the accuracy of which must be certified by an auditor satisfactory to the City; and

(b) any other records related to Borrower's use of the Funds and the HOPE SF Properties.

7.4 Access to the Project and Other Project Books and Records. In addition to Borrower's obligations under Sections 2.3, 7.1, 7.2, and 7.3 any other obligations to provide reports or maintain records in any City Document, Borrower agrees that duly authorized representatives of the City will have: (a) access to Borrower files to monitor the compliance by Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under Section 7.5.

7.5 Records Retention. Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 8 TRANSFERS.

Borrower will not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Property, or lease or permit a sublease on all or any part of the Property without the City's prior written consent. The City's consent to any specific assignment, encumbrance,

lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

ARTICLE 9 INSURANCE AND BONDS.

Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in **Exhibit B** throughout the Maturity Date at no expense to the City.

ARTICLE 10 GOVERNMENTAL APPROVALS.

Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for the Development. Subject to **Section 15.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 11 DEFAULT.

11.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the City Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any City Document will constitute an "Event of Default," including the following:

(a) Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

(b) Borrower fails to perform or observe any other term, covenant or agreement contained in any City Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Any representation or warranty made by Borrower in any City Document proves to have been incorrect in any material respect when made; or

(d) Borrower is dissolved without the City's prior written approval; or

(e) Without the City's prior written consent, Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under **Article 8**; or

(f) Without the City's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower or of its right, title or interest in any Property except as permitted under **Article 8**; or

(g) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, receivership, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy.

11.2 Remedies. The following remedies are subject to the final proviso of this subsection. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City Document or at law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) The City at its option may terminate all commitments to make Disbursements, or, without waiving the Event of Default, the City may determine to make further Disbursements satisfactory to the City in its sole discretion.

(c) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(d) Upon the occurrence of an Event of Default described in Section 11.1(g), the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, will become due and payable automatically.

(e) All costs, expenses, charges and advances of the City in exercising its remedies or to protect the Development will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless Borrower reimburses the City within ten (10) days of the City's demand for reimbursement.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES.

12.1 Borrower Representations and Warranties. As a further inducement for the City to enter into this Agreement, Borrower represents and warrants as follows:

(a) The execution, delivery and performance of the City Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b) When duly executed, the City Documents will constitute the legal, valid and binding obligations of Borrower. Borrower hereby waives any defense to the enforcement of the City Documents related to alleged invalidity of the City Documents.

(c) No action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

(f) Borrower certifies that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, Borrower will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

ARTICLE 13 NOTICES.

13.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

To the City: Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director

To Borrower: San Francisco Housing Authority
1815 Egbert Avenue
San Francisco, CA 94124
Attn: Acting Executive Director

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section.

13.2 Required Notices. Borrower agrees to provide notice to the City in accordance with Section 13.1 of the occurrence of any change or circumstance that will have a material adverse effect on Borrower's ability to repay the Loan.

ARTICLE 14 HAZARDOUS SUBSTANCES.

14.1 Borrower's Representations. Borrower represents and warrants to the City that, except as otherwise previously disclosed to and approved by the City under the Mitigation and Monitoring Plans drafted in responses to findings of the HOPE SF Properties' Environmental Impact Reports (EIRs), to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct except known by the City or otherwise disclosed in writing to the City: (a) each HOPE SF Property is not in violation of any Environmental Laws; (b) each HOPE SF Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) each HOPE SF Property does not consist of any landfill or contain any underground storage tanks; (d) the improvements on each HOPE SF Property do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on each HOPE SF Property has occurred or in, on, under or about each HOPE SF Property; and (f) each HOPE SF Property is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Development or in, on, under or about each HOPE SF Property, or the migration of Hazardous Substances from or to other real property.

14.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to each HOPE SF Property, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to the City notice of the discovery by Borrower of any event rendering any representation contained in this Section incorrect in any respect promptly following Borrower's discovery.

ARTICLE 15 INDEMNITY.

15.1 Borrower's Obligations. Borrower must Indemnify the City and its respective officers, agents and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of the HOPE SF Property, the Loan and the City Documents, including: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the City Documents; (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Loan, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) any claim related to the Loan of any surety in connection with any bond relating to the construction or rehabilitation of any improvements of Borrower's property or offsite improvements of Borrower's property; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents or the Loan, or any transaction contemplated by, or the relationship between Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, before the Maturity Date, of any Environmental Activity related to the Loan or any failure of Borrower or any other person to comply with all applicable Environmental Laws related to the Loan; (g) the occurrence, after the Maturity Date, of any Environmental Activity resulting directly or indirectly from any Environmental Activity related to the Loan occurring before the Maturity Date; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under this Agreement; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency related to the Loan, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement. Notwithstanding anything to the contrary herein, Borrower's indemnification is limited to eligible non-public housing assets or unrestricted assets (assets not subject to the Declaration of Trust and not acquired or merged with assets acquired with public funding under the United States Housing Act of 1937).

15.2 No Limitation. Borrower's obligations under Section 15.1 are not limited by the insurance requirements under this Agreement.

ARTICLE 16 GENERAL PROVISIONS.

16.1 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower or Borrower's agents, employees or contractors.

16.2 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the City by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project.

16.3 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by the City and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the City or Borrower.

16.4 City Obligations. The City's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents.

16.5 Borrower Solely Responsible. Except for the appointment powers of the Borrower's Board of Commissioners by the City's Mayor, Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and the City and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other City Document and the development and operation of the Development; and (c) all costs and expenses relating to Borrower's performance of obligations under the City Documents, the delivery to the City of documents, information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any City Document or document required under any City Document.

16.6 No Inconsistent Agreements. Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

16.7 Inconsistencies in City Documents. In the event of any conflict between the terms of this Agreement and any other City Document, the terms of this Agreement control unless otherwise stated; *provided, however*, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

16.8 Governing Law. This Agreement is governed by California law without regard to its choice of law rules.

16.9 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the City Documents to obtain the City's prior written consent to any assignment or other transfer of Borrower's interests in the Loan.

16.10 Attorneys' Fees. If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office or who are Borrower's employees will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's or Borrower's employees' services were rendered, who practice in the City of San Francisco in law firms. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

16.11 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

16.12 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

16.13 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by the City from time to time to confirm or otherwise carry out the purpose of this Agreement.

16.14 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any City Document, that party agrees not to withhold or delay its consent or approval unreasonably.

16.15 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

16.16 Borrower's Personnel. The Development shall be implemented only by competent personnel under the direction and supervision of Borrower.

16.17 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

- A Governmental Requirements
- B Insurance Requirements
- C Lobbying/Debarment Certification Form
- D Form of Deed of Trust

16.18 HUD Required Provisions.

(a) This financing is non-recourse to any public housing property or restricted assets (real or personal property including all public housing assets or income), or disposition proceeds approved pursuant to Section 18 of the United States Housing Act of 1937 (unless explicitly permitted by HUD in the Section 18 approval letter).

(b) In the event of a conflict between the City Documents and the Applicable Public Housing Requirements, the Applicable Public Housing Requirements shall prevail.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

THE CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
London N. Breed
Mayor

By: _____
Kate Hartley
Director, Mayor's Office of Housing
and Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

BORROWER:

HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body corporate and politic

By: Barbara T. Smith
Barbara T. Smith
Acting Executive Director

APPROVED AS TO FORM:

Dianne Jackson McLean
Dianne Jackson McLean, Esq.
Goldfarb & Lipman LLP
Special Legal Counsel

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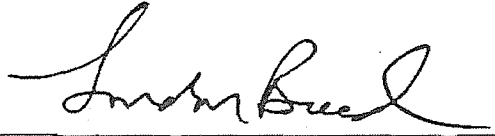
APPROVED AS TO FORM:

Dianne Jackson McLean
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Special Legal Counsel

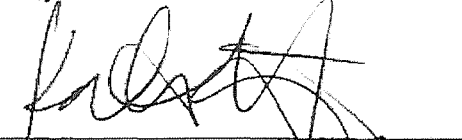
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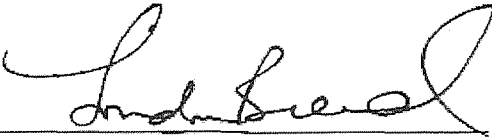
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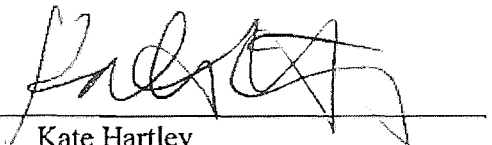
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City Attorney

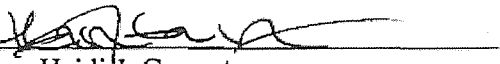
By: 
Heidi J. Gewertz
Deputy City Attorney

EXHIBIT A
Governmental Regulations

1. **Environmental Review.** The Project must meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), related authorities listed at 24 CFR Section 51.100 and parts 50 and 58 and the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.

2. **Conflict of Interest.**

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Borrower or the City who exercises or has exercised any function or responsibilities with respect to activities assisted by 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, may obtain a 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. In order to carry out the purpose of this Section, Borrower must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Borrower will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Borrower represents that it is familiar with the provisions of 24 CFR § 84.42, Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Sections 1090 through 1097 and 87100 *et seq.* of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify the City immediately if Borrower at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Borrower agrees that the City may refuse to consider any future application for funding from Borrower or any entity related to Borrower until the violation has been corrected to the City's satisfaction, in the City's sole discretion.

3. **Disability Access.** Borrower must comply with all applicable disability access Laws, including the Americans With Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Borrower is responsible for determining which disability access Laws apply to the Development, including those applicable due to the use of Funds. In addition, before occupancy of the Development, Borrower must

provide to the City a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in units and common areas of the Development.

4. Lead-Based Paint. Borrower must satisfy the requirements of Chapter 36 of the San Francisco Building Code (“Work Practices for Exterior Lead-Based Paint”) and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Borrower must also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

5. Relocation. Borrower must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code in addition to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601 *et seq.*) and implementing regulations at 49 CFR part 24 and similar Laws.

6. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Borrower Shall Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate against any employee, City and County employee working with Borrower or any subcontractor, applicant for employment with Borrower or any subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Borrower. on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subcontracts. Borrower shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and must require all subcontractors to comply with these provisions. Borrower’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic

partnership has been registered with a Governmental Agency under state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Contract. As a condition to this Agreement, Borrower shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the executed form by the San Francisco Contract Monitoring Division.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B ("Nondiscrimination in Contracts") and 12C ("Nondiscrimination in Property Contracts") of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Borrower shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Borrower understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Borrower and/or deducted from any payments due Borrower.

7. MacBride Principles. The City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

8. Tropical Hardwood & Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, the City urges contractors not to import, purchase, obtain or use for any purpose, any tropical hardwood, virgin redwood or tropical hardwood or virgin redwood wood product.

9. Preservative-Treated Wood Containing Arsenic. Borrower may not purchase preservative-treated wood products containing arsenic unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of Environment under Section 1304. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Borrower may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Borrower from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

10. False Claims. Pursuant to San Francisco Administrative Code Section 6.83, any borrower, grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant:

(a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is the beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

11. Sunshine Ordinance.

(a) Borrower acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Borrower that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request. Further, Borrower specifically agrees to conduct any meeting of its governing board that addresses any matter relating to the Project or to Borrower's performance under this Agreement as a passive meeting.

(b) By executing this Agreement, Borrower agrees to comply with the provisions of Chapter 12L of the San Francisco Administrative Code to the extent applicable.

12. Prohibition on Use of Public Funds for Political Activities. Borrower shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Borrower is subject to the enforcement and penalty provisions in Chapter 12G.

13. Nondisclosure of Private Information. Borrower has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information", and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Borrower agrees that any failure of Borrower to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against Borrower pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Borrower. :

14. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

(a) Borrower shall remove all graffiti from any real property owned or leased by Borrower in the City and County of San Francisco within forty eight (48) hours of the earlier of Borrower's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Borrower to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et

seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

(b) Any failure of Borrower to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

15. Resource-Efficient Building Ordinance. Borrower acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Borrower hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Property.

16. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Borrower agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Borrower's obligations under Chapter 12T is set forth in this Section. Borrower is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Borrower's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Borrower shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Borrower's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(d) Borrower or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a

deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Borrower or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 16.16(d), above. Borrower or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Borrower or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Borrower or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Borrower and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Borrower or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Borrower understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

19. Food Service Waste Reduction Requirements. Borrower agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Borrower agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Borrower agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Borrower's failure to comply with this provision.

20. Bottled Drinking Water. Unless exempt, Borrower agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Agreement as though fully set forth.

EXHIBIT B
Insurance Requirements

Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement throughout the Maturity Date at no expense to the City:

1. Borrower, Contractors.

(a) to the extent Borrower or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident;

(b) commercial general liability insurance, with limits set forth below, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; broad form property damage; explosion, collapse and underground (XCU); products and completed operations, as follows:

(i) not less than One Million Dollars (\$1,000,000) each occurrence before the start of demolition/construction/rehabilitation if the Site is unoccupied;

(ii) not less than Three Million Dollars (\$3,000,000) each occurrence at all times during demolition/construction/rehabilitation and occupancy of the Site/ongoing operations of the Project;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance for all architects employed in connection with the Project, with limits not less than One Million Dollars (\$1,000,000) (or, in the case of any other professionals, \$1,000,000) each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a blanket fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds, in the amount of Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee.

2. Property Insurance. Borrower must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) during the course of any rehabilitation/construction, builders' risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Borrower or its contractor, including coverage in transit and storage off-site, with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees;

(b) property insurance, special form coverage, excluding earthquake and flood, but including vandalism and malicious mischief, for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property of every kind located on or appurtenant to the Site, including coverage for loss of rental income due to an insured peril for twelve (12) months, with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as a named insured;

(c) boiler and machinery insurance, comprehensive form, in the amount of replacement value of all insurable objects, with any deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as a named insured; and

(d) during construction and/or rehabilitation, performance and payment bonds of contractors, each in the amount of one hundred percent (100%) of contract amounts, naming the City and Borrower as dual obligees, or other completion security approved by the City in its sole discretion.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

3. General Requirements.

(a) General and automobile liability policies of Borrower, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Borrower hereby waives all rights of subrogation against the City to the extent of any loss covered by Borrower's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Borrower's insurance by the City will not relieve or decrease the liability of Borrower under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Borrower demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Borrower must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

EXHIBIT C
Lobbying/Debarment Certification Form

The undersigned certifies, to the best of his or her knowledge and belief, that, except for any eligible activities performed by Borrower's staff:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 the awarding of any federal contract, the making of any federal grant, 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.
2. 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

SAN FRANCISCO HOUSING AUTHORITY, a public body, corporate and politic

BY: _____

NAME: Barbara T. Smith

TITLE: Acting Executive Director

DATE: _____

Exhibit C
Page 1

EXHIBIT D
Form of Deed of Trust

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
Mayor's Office of Housing and
Community Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: _____

-----Space Above This Line for Recorder's Use-----

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(Property Address: _____)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of _____, _____, by HOUSING AUTHORITY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic ("Trustor"), whose address is 1815 Egbert Avenue, San Francisco, California 94124, to [NAME OF TITLE INSURANCE COMPANY IN BOLD CAPITAL LETTERS], a _____ ("Trustee"), whose address is _____, San Francisco, California, for the benefit of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, represented by the Mayor, acting through the Mayor's Office of Housing and Community Development ("Beneficiary"). This Deed of Trust is executed pursuant to a Loan Agreement by and between Trustor and Beneficiary dated as of [_____, 20__], as it may be amended from time to time (the "Agreement"), the provisions of which are incorporated herein by reference. Definitions and rules of interpretation set forth in the Agreement apply to this Deed of Trust.

1. Grant in Trust. For valuable consideration, Trustor hereby grants, transfers and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all right, title and interest Trustor now has or may have in the future in the following (all or any part of the following, or any interest in all or any part of it, as the context requires, the "Property"):

(a) that real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto and incorporated herein by reference (the "Land"); and

(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); and

(c) all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions, and any guarantees thereof ("Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases; and

(d) except for personal property and removable fixtures installed by tenants or subtenants, all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; and

(e) all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; and

(f) all Loan funds, whether disbursed or not, and all funds now or in the future on deposit in the Replacement Reserve Account, the Operating Reserve Account and any other account required or authorized for the Project; and

(g) all proceeds, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements; and

(h) all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records relating to the application and allocation of any federal, state or local tax credits or benefits; and

(i) all rents, revenues, issues, royalties, proceeds, profits, income, reimbursements, royalties, receipts and similar items, including prepaid rent and security deposits, in whatever form (including, but not limited to, cash, checks, money orders, credit card receipts or other instruments for the payment of money) paid or payable in connection with the Property ("Rents"), from the Land and the Improvements, subject to: (i) Trustor's

right to collect and retain the same as they become due and payable; and (ii) Beneficiary's rights under **Section 3** below; and

(j) all intangible personal property and rights relating to the Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, deposits for utility services, installations, refunds due Trustor, trade names, trademarks, and service marks; and

(k) all proceeds of, interest accrued on, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

(a) performance of all present and future obligations of Trustor set forth in the Agreement and the Secured Promissory Note dated [_____, 20___], made by Trustor to the order of Beneficiary (as it may be amended from time to time, the "Note") and performance of each agreement incorporated by reference, contained therein, or entered into in connection with the Agreement;

(b) payment of the indebtedness evidenced by the Agreement and the Note in the original principal amount of Twenty Million and No/100 Dollars (\$20,000,000.00), according to the terms of the Agreement and the Note; and together with liquidated damages, following an Event of Default under the Agreement; and

(c) payment of any additional sums Trustor may borrow or receive from Beneficiary, when evidenced by another note (or any other instrument) reciting that payment is secured by this Deed of Trust.

3. Assignment of Rents.

(a) Assignment as Additional Security. Trustor hereby irrevocably grants, transfers, and assigns to Beneficiary all of its right, title, and interest in and to the Rents as additional security for the Secured Obligations. Subject to the provisions of subsection 3(d) below, Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default exists and is continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

(b) Collection and Application of Rents. Subject to the License granted to Trustor under subsection 3(a) above, Beneficiary has the right, power, and authority to collect any and all Rents. Subject to the License granted to Trustor under subsection 3(a) above, Trustor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

1. Demand, receive, and enforce payment of any and all Rents; or
2. Give receipts, releases, and satisfactions for any and all Rents; or
3. Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property. In Beneficiary's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under this Deed of Trust. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder.

(c) Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Real Property and Improvements, Beneficiary is not and shall not be deemed to be:

1. A "mortgagee in possession" for any purpose; or
2. Responsible for performing any of the obligations of the lessor under any lease; or
3. Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or
4. Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

(d) Election by Beneficiary. Upon the occurrence and during the continuance of an Event of Default, Beneficiary, at its option, may exercise its s rights under this Section or otherwise provided under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).

4. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

(a) to perform the Secured Obligations in accordance with their respective terms;

(b) to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; not to remove or demolish any Improvements without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any Improvement constructed, damaged or destroyed on the Land; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;

(c) to provide, maintain and deliver to Beneficiary property and liability insurance as required under the Agreement and apply any insurance proceeds as provided below;

(d) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees and costs incurred in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust following an Event of Default;

(e) to pay in accordance with the Agreement, but in each case prior to delinquency: (i) all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and (ii) all encumbrances, charges and liens, with interest, on the Property or any part thereof that appear to be prior or superior hereto;

(f) should Trustor fail to make any payment or to do any act as herein provided, then, without: (i) obligation to do so; (ii) notice to or demand upon Trustor; or (iii) releasing Trustor from any obligation hereof, Beneficiary or Trustee may: (A) make or do the same in any manner and to the extent as it deems necessary to protect the security hereof; (B) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (C) pay, purchase, contest or compromise any encumbrance, charge or lien that in its judgment appears to be prior or superior hereto; and (D) in exercising these powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs, and Trustor consents to Beneficiary's and/or Trustee's entry upon the Land and Improvements for any purpose set forth in this Subsection, including Beneficiary's exercise of its rights under California Code of Civil Procedure Section 564(c); and

(g) to reimburse within five (5) days of demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest at an annual rate of interest equal to the lesser of: (i) ten percent (10%); or (ii) the maximum lawful rate from date of expenditure to the date of payment.

5. Security Agreement and Fixture Filing.

(a) Grant of Security Interest. Without limiting any of the other provisions of this Deed of Trust, to secure the payment, performance and observance of the Secured Obligations, Trustor, as debtor (referred to in this Section 5 as "Debtor"), expressly grants to Beneficiary, as secured party (referred to in this Section 5 as "Secured Party"), a continuing security interest in all the Property (including now and hereafter existing) to the full extent that any portion of the Property may be subject to the Uniform Commercial Code. For purposes of this Section 5, "Collateral" means the personal property (tangible or intangible) and fixtures included in the Property.

(b) Debtor's Covenants, Representations, and Warranties.

(i) Debtor covenants and agrees with Secured Party that:

(1) In addition to any other remedies granted in this Deed of Trust to Secured Party or Trustee (including specifically, but not limited to, the right to proceed against the Property in accordance with the rights and remedies in respect of the Property that is real property under the Uniform Commercial Code), Secured Party may, if an Event of Defaults occurs and is continuing, proceed under the Uniform Commercial Code as to all or any part of the Collateral, and shall have and may exercise with respect to the Collateral all the rights, remedies, and powers of a secured party under the Uniform Commercial Code.

(2) Without limiting the foregoing, Secured Party shall have the right upon any public sale or sales, and, to the extent permitted by law, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor. Debtor further agrees to allow Secured Party to use or occupy the Property, without charge, for the purpose of effecting any of Secured Party's remedies in respect of the Collateral.

(3) To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention, or sale of the Collateral, except for claims, damages, and demands due to the active gross negligence or willful misconduct of Secured Party in dealing with such Collateral. Trustor agrees that Secured Party need not give more than five (5) days' notice of the time and place of any public sale or of the time at which a private sale will take place and that such notice is reasonable notification of such matters. Secured Party may disclaim any warranties that might arise in connection with the sale, lease, license, or other disposition of the Collateral and have no obligation to provide any warranties at such time. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(4) To the extent permitted by law, Debtor hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any law now existing or hereafter enacted.

(ii) Debtor hereby authorizes Secured Party to file financing and continuation statements with respect to the Collateral as Secured Party may reasonably require.

(iii) Debtor hereby represents and warrants that no financing statement is on file in any public office except as authorized by Secured Party. Debtor will at its own cost and expense, upon demand, furnish to Secured Party such further information and will execute and deliver to Secured Party financing statements and other documents in form reasonably satisfactory to Secured Party and will do all such acts that Secured Party may at any time or from time to time reasonably require to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject only to liens or encumbrances approved by or benefiting Secured Party. Debtor will pay the actual expense of filing or recording such financing statements or other documents, and this instrument, as and where reasonably required by Secured Party.

(iv) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all rents, royalties, issues and profits, and all inventory accounts, accounts receivable and other revenues of the Property.

(c) Fixture Filing. Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code). This Deed of Trust, upon being filed for record in the real estate records of San Francisco County, shall operate also as a financing statement and fixture filing upon such of the Collateral that is or may become fixtures under the Uniform Commercial Code. Debtor's name and type and jurisdiction of entity are set forth in the introductory paragraph hereof. Debtor's address is set forth above. Debtor's EIN Number is _____. Secured Party's name and mailing address are set above.

6. Insurance and Condemnation Proceeds.

(a) Trustor hereby assigns to Beneficiary any award of damages arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property or the Project.

(b) Any condemnation award or insurance proceeds must be paid to Beneficiary or, if Beneficiary has consented to subordinate the lien of this Deed of Trust to the lien of another lender for the Project, according to the provisions in the senior lender's loan documents.

(c) If a condemnation award or insurance proceeds are paid to Beneficiary, Beneficiary will release or authorize the release of funds to Trustor, provided that the funds will be used for the reconstruction of the Project in accordance with: (i) projections demonstrating that reconstruction is economically feasible; and (ii) Trustor's construction budget, each of which must be satisfactory to Beneficiary in its reasonable discretion. In all other cases, Beneficiary may choose in its discretion to apply funds to Trustor's obligations

under the Note and the Agreement or to any senior obligations, in accordance with the respective priorities of the approved lienholders as their interests may appear of record, with the remaining funds, if any, released to Trustor.

(d) Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any City Document unless the default has been cured by the application or release of funds.

7. Further Agreements. Trustor further acknowledges and agrees as follows:

(a) Beneficiary does not waive its right either to require prompt payment when due of all other sums secured by this Deed of Trust or to declare Trustor in default for failure to pay timely by accepting payment of any sum secured hereby after its due date.

(b) Trustee may reconvey any part of the Property at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement without affecting the liability of any entity or person for payment of the indebtedness secured hereby.

(c) Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

(d) Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in violation of the Agreement will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

(e) For the purposes of this Deed of Trust, Beneficiary from time to time may substitute a successor or successors to Trustee named herein or acting hereunder by instrument in writing executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of San Francisco County, which instrument shall be conclusive proof of proper substitution of a successor trustee or trustees. Without conveyance from Trustee, any successor or substitute trustee will succeed to all title, estate, rights, powers, and duties of Trustee. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust and the name and address of the new Trustee.

(f) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, provided that this subsection does not constitute Beneficiary's consent to any transfer

in violation of this Deed of Trust. The term Beneficiary shall mean the holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(g) Trustee accepts this Trust when this duly executed and acknowledged Deed of Trust is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

8. Beneficiary's Rights Following Default. Upon any default by Trustor in performance of the Secured Obligations following expiration of any applicable notice and cure periods ("Event of Default"):

(a) Trustor's license to collect and retain Rents will terminate automatically.

(b) Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

(c) Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property ("Notice of Default"), and:

i. Trustee shall cause the Notice of Default to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

ii. After the lapse of time then required by law following the recordation of a Notice of Default, and notice of sale ("Notice of Sale") having been given as then required by law, Trustee without demand on Trustor may sell the Property at the time and place fixed in the Notice of Sale either as a whole or in separate parcels in any order at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to any purchaser a trustee's deed conveying the property so sold, but without any

covenant or warranty, express or implied. The recitals in the trustee's deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

iii. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (A) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the highest rate allowed by law in effect at the date hereof; (B) all other sums then secured hereby; and (C) the remainder, if any, to the person or persons legally entitled thereto.

9. Notice of Default to Trustor. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth above or any succeeding address given by notice in accordance with the Agreement.

10. HUD's Rights and Subordination. Beneficiary agrees that the City Documents are subject and subordinate to the HUD restrictions until the later to terminate of the term of the HUD restrictions or any period during which HUD holds title to the Land and/or the Property. Beneficiary further agrees that, during any applicable period:

- i. the HUD restriction may be amended, extended, renewed, assigned or superseded without Beneficiary's consent;
- ii. Beneficiary will not declare a default or foreclose without HUD's prior written consent;
- iii. this Deed of Trust will not be amended or assigned without HUD's prior written approval;
- iv. enforcement of the provisions of this Deed of Trust will not result in any claim against the Property, the capital advance proceeds, any reserve or deposit required by HUD in connection with the capital advance, or the rents or other income from the Property other than residual receipts as defined by and authorized for release by HUD; and

Remainder of Page Intentionally Left Blank; Signatures Appear On Following Page

"TRUSTOR:"

Housing Authority of the City and County of San Francisco,
a public body, corporate and politic

By: _____

Name: Barbara Smith

Title: Acting Executive Director

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT A
Legal Description of the Land

[Delete if appropriate: A LEASEHOLD INTEREST IN] THE FOLLOWING LAND
SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Street Address:

EXHIBIT A

EXHIBIT E
HUD Letter Dated November 13, 2018



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

NOV 13 2018

Barbara T. Smith
Acting Executive Director
San Francisco Housing Authority
1815 Egbert Avenue
San Francisco, CA 94124-2519

Dear Ms. Smith:

**Subject: Housing Choice Voucher Programs (HCVP) CY 2018 Renewal Funding Set-Aside
Request Category 1: Shortfall Funds**

The San Francisco Housing Authority (SFHA) has significant on-going financial and reporting issues that have negatively impacted Housing Choice Voucher (HCV) program operations and placed families at risk of losing their voucher assistance. As part of the coordinated effort between the Department of Housing and Urban Development (HUD), the City and SFHA to resolve these dire conditions, City of San Francisco Mayor London Breed sent me a letter dated October 16, 2018 detailing the City's commitment to resolving the San Francisco Housing Authority's (SFHA) 2018 Housing Assistance Payment (HAP) shortfall and plans to achieve the long-term stability of the housing authority's functions. More specifically, Mayor Breed indicated that the City will take, "the necessary steps to transfer City funds to SFHA to cover the shortfall projected to remain after any HUD contribution," and that "once SFHA has satisfied any required meet-and-confer obligations with labor organizations that represent SFHA employees, the City intends to accept and assume all responsibilities for SFHA's essential functions."

During an October 25, 2018 call with Kate Hartley, Director of the City of San Francisco (City) Mayor's Office of Housing and Community Development, Ms. Hartley reaffirmed the City's commitment to provide any gap funding necessary to ensure that families continue to receive rental assistance through the HCV Program. The Department looks forward to working with the San Francisco team to ensure that SFHA's HCV Program will function effectively in the future under the City's leadership.

The Department has received SFHA's request for funding from the calendar year (CY) 2018 renewal funding set-aside, as outlined in PIH Notice 2018-09. SFHA submitted a request under Category 1 Shortfall Funds, which provides adjustment funding to prevent terminations of participating families in the HCV program due to insufficient funding. SFHA has an estimated shortfall of \$25M for its December 2018 HAP obligation, plus approximately \$13M shortfall associated with unpaid retroactive rent increases for FY 18 and previous years costs.

Based on the criteria established in the Notice 2018-09, SFHA has been determined to be eligible for funding under Category 1, Shortfall Funds, and the Department will obligate and disburse funds in the amount of \$10,000,000.00 to SFHA. Please note that these Shortfall Funds will be disbursed to your agency as needed according to cash management rules. The projected shortfall includes the most recent VMS data and the SFHA-provided available leasing and expense data. Shortfall funds shall only be used to cover December 2018 HAP expenses. SFHA must identify an alternate source of funds to cover any portion of the \$13M in retroactive HAP costs incurred prior to calendar year 2018.

Pursuant to Mayor Breed's request in the aforementioned October 16, 2018 letter and confirmed during the October 25, 2018 call with Mrs. Hartley, HUD will, in accordance with PIH Notice 2013-18,

include any gap funding provided by the City and SFHA to support the December 2018 HAP payments as part of SFHA's 2019 HAP renewal calculation. To ensure timely payment of the December HAP, the City shall make gap funding available to the Housing Authority on or before November 26, 2018.

Additionally, as referenced in the October 26, 2018 letter, SFHA will contribute \$7.1 million for the December HAP payment. HUD is working with your staff to identify the sources of those funds and determine whether they are eligible to be utilized as HAP expenditures. The City should be prepared to cover the full remaining balance of the December 2018 HAP payments, less any amount contributed by HUD and SFHA.

SFHA is reminded of the need to continue to comply with the reasonable cost-savings measures as certified on Attachment A of the application for funds under Category 1, including the following actions as follows:

1. The PHA continues to work with the Shortfall Prevention Team (SPT) to aggressively monitor the status of the shortfall through the end of the CY 2018.
2. The PHA has ceased to absorb portable vouchers.
3. The PHA has ceased issuing vouchers to applicants, including participants living in PBV units who are requesting a voluntary move with tenant-based voucher assistance. Please note that this provision does not apply in the following circumstances:
 - a) Participant families were issued a voucher to move to a different unit;
 - b) Program applicants under special-purpose voucher increments awarded in CY 2017 or CY 2018.
 - c) To families moving into Project-Based Voucher (PBV) units to allow the PHA to meet its contractual obligation to fill PBV AHAP units being placed under HAP for the first time; and
 - d) PBV units currently under HAP that are vacated by program participants.

Failure to adhere to the terms of the certification may result in a reduction or cancellation of the funds provided under this category and may result in administrative sanctions, including a reduction in administrative fees. HUD may reduce the shortfall funds if it is determined that funds will exceed the amount necessary to meet the PHA's actual costs.

The Department will work with the San Francisco team to develop appropriate milestones and a corrective action plan that will ensure that SFHA's HCV Program is able to operate effectively and efficiently. This includes taking actions to more accurately project its CY 2019 HAP expenses, prevent a backlog of retroactive actions that affect HAP payment amounts and resolve discrepancies between SFHA's HAP register and the Department's Voucher Management System (VMS).

If you have any questions concerning this letter, please contact Housing Choice Voucher Program Director, Steven Durham at 202.402.5227.

Sincerely,



Dominique Blom
General Deputy Assistant Secretary
For Public and Indian Housing



EXHIBIT A

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

MAR 07 2019

Ms. Barbara T. Smith
Acting Executive Director
San Francisco Housing Authority
1815 Egbert Avenue
San Francisco, CA 94124-2519

Dear Ms. Smith:

Pursuant to my delegated authority, I have determined that the Housing Authority of the City and County of San Francisco (SFHA) is in default of both its Housing Choice Voucher (HCV) Consolidated Annual Contributions Contract (ACC-Section 8) and its Low Rent Public Housing (LRPH) Consolidated Annual Contributions Contract (ACC-LRPH) executed by and between SFHA and the U.S. Department of Housing and Urban Development (HUD) on August 12, 1998, and April 29, 1996, respectively (collectively, ACCs). HUD has determined that SFHA is in substantial default of both its ACCs as a result of material breaches of Paragraphs 10 and 14 of the ACC-Section 8 and Paragraph 5 of the ACC-LRPH. Each breach serves as an independent basis for default and will be discussed in turn.

First, HUD has determined that SFHA is in material breach of Paragraphs 14(a) and (b) of ACC-Section 8, which require SFHA to: (a) maintain complete and accurate books of accounts and records for the HCV program, kept in accordance with HUD requirements, and permit a speedy and effective audit; and (b) furnish HUD such financial and program reports, records, statements and documents . . . in such form and accompanied by such supporting data as required by HUD.^{1,2} HUD makes the foregoing default determination due to SFHA's material breach of Paragraphs 14(a) and (b) of the ACC-Section 8 based on the following:

- i. HUD's Quality Assurance Division (QAD) conducted a Financial Management Review (FMR) and Management and Operations Review (MOR) of SFHA through three on-site visits conducted in October and November 2018 and extensive remote review and analysis of additional supporting documentation. The QAD team specifically sought to determine SFHA's Unrestricted Net Position (UNP) for 2018 and its Restricted Net Position (RNP) for 2016, 2017 and 2018, and to assess SFHA's overall management and operation of the HCV Program, among other objectives. HUD delivered the results of QAD's 2018 review on February 22, 2019, Financial Management Review QAD-FMRMOR-2019-CA0001 Housing Authority of the City and County of San Francisco (2019 QAD Report).

¹ See ACC-Section 8, ¶ 14(a) & (b).

² The requirements of Paragraph 14 of the ACC-Section 8 incorporate HUD's regulatory requirements at 24 C.F.R. § 981.158, which set forth a PHA's record keeping responsibility and obligation to disclose records and data to HUD.

Pursuant to 24 C.F.R. § 5.801(b), SFHA was required to submit financial information in the form and substance required by HUD in accordance with generally accepted accounting principles and HUD supplementary guidance. For the HCV Program, PIH Notices 2012-2 and 2017-10 require participating Public Housing Authorities (PHA) to submit monthly Voucher Management System (VMS) data and annual Financial Assessment Subsystem (FASS) electronic submissions. This data was required to be accurate as ensured by effective internal financial controls.³

In the 2019 QAD Report, Finding 2019-1, QAD found that SFHA “failed to maintain complete and accurate accounting records for the [HCV] program.”⁴ This failure is a repeat finding from QAD’s 2017 on-site review of SFHA and has been repeatedly identified as a source of material weakness in SFHA’s management of its HCV and LRPB Programs.⁵

The QAD team specifically found that “SFHA miscalculated and misreported RNP and UNP balances,”⁶ which fed inaccurate data into VMS and prevented both HUD and SFHA from gaining an accurate financial picture of SFHA’s financial position.⁷ These financial failures resulted in an unexpected HAP shortfall of approximately \$20 million in calendar year 2018.⁸ Overall, SFHA’s failure to “maintain adequate program and financial documentation constitutes a breach of Section 14[(a) of the ACC-Section 8].”⁹

- ii. Additionally, “[d]ue to the difficulties in locating necessary information, a speedy and effective review was not possible and required significant additional follow-up, and as of the date of this report, some issues remain unresolved and may not be resolvable given the lack of adequate and/or audible data.”¹⁰ The 2019 QAD Report specifically states that the team had “no trustworthy data upon which to base an unqualified opinion of SFHA’s financial position.”¹¹ SFHA’s operation of the HCV Program without the capability to “process, track and provide accurate, timely, internally consistent and readily accessible information financial activities” is impermissible

³ See Standards for Internal Control in the Federal Government, GAO-14-704G (Sept. 2014).

⁴ See 2019-QAD Report, Finding No. 2019-1, p. 8.

⁵ See *id.*; see also PHARS Recovery Agreement and Action Plan executed by HUD, SFHA and the City and County of San Francisco effective July 1, 2017 (2017 PHARS Agreement); PHARS Recovery Agreement and Action Plan executed by HUD, SFHA and the City and County of San Francisco effective September 4, 2013 (2013 PHARS Agreement); and Financial Management Review QAD-FMR-2017-CA0001 Housing Authority of the City and County of San Francisco dated July 14, 2017 (2017 QAD Report).

⁶ QAD found that SFHA reported inaccurate RNP and UNP balances due to several concurrent and past data failures, including a lack of internal controls to reconcile financial data between the multiple systems used by SFHA to track HCV, HAP and LRPB funding and participation data. See 2019 QAD Report, Finding No. 2019-2, pp. 14-18.

⁷ See 2019 QAD Report, Finding No. 2019-2, pp. 14-18.

⁸ See *id.*, Finding No. 2019-7, p. 27.

⁹ See *id.*, Finding No. 2019-2, p. 18.

¹⁰ *Id.*, Finding No. 2019-1, p. 12.

¹¹ *Id.*, Finding No. 2019-1, p. 10.

under HUD regulations and the ACC-Section 8.¹² Accordingly, the “un-auditable” condition of SFHA’s financial records over the past several years constitutes a breach of Section 14(b) of the ACC-Section 8.

Second, HUD has determined that SFHA is in material breach of Paragraph 10 of the ACC-Section 8, which requires SFHA to comply with “the requirements of the [United States] Housing Act of 1937 and all HUD regulations and other requirements, including any amendments or changes in law or HUD requirements.”^{13,14} HUD makes the foregoing determination of default for material breach of Paragraph 10 of the ACC-Section 8 based on SFHA’s violations of the regulations at 24 C.F.R. §§ 982.158, 982.156, 5.801(b) and Part 985.

- i. The regulations at 24 C.F.R. § 982.158 are incorporated in Paragraphs 14(a) and (b) of the ACC-Section 8 and state: “The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. The records must be in the form required by HUD, including requirements governing computerized or electronic forms of record-keeping. The PHA must comply with the financial reporting requirements in 24 CFR part 5, subpart H.” As described above, QAD found that SFHA “failed to maintain complete and accurate accounts and other records of the [HCV] program,” which prevented HUD from performing a “speedy and effective review.”¹⁵
- ii. Pursuant to 24 C.F.R. § 982.156, “[t]he PHA may only withdraw deposited program receipts for use in connection with the program in accordance with HUD requirements.” These HUD requirements are detailed in program notices, including without limitation Notice PIH 2014-5 (HA), which states in pertinent part that “HAP and/or HAP RNP shall not under any circumstances be used for any other purpose, such as to cover administrative expenses, be loaned, advanced or transferred . . . to other component units or other programs such as Low Rent Public Housing.” QAD found that SFHA had transferred HCV funds to an unrelated program, the Section 8 New Construction program, in FY 2012 in violation of the regulation.¹⁶
- iii. Pursuant to 24 C.F.R. Part 985 – Section 8 Management Program (SEMAP), SFHA must submit an annual SEMAP Certification, which allows HUD to assess its management capabilities and deficiencies. Failure by a PHA to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan constitutes a default under the ACC.¹⁷ For FY 2017, SFHA received failing scores on three indicators, viz., (i) Selection from the Wait List, (ii) HQS Enforcement, and (iii) Family Self Sufficiency, and was required to submit a corrective action plan to HUD

¹² *Id.*, Finding No. 2019-1, p. 13.

¹³ *See* ACC-Section 8, ¶ 10(a).

¹⁴ The requirements of Paragraph 10 of the ACC incorporate HUD’s regulatory requirements at 24 C.F.R. § 982.153, mandating that a “PHA must comply with the consolidated ACC, the application, HUD regulations and other requirements, and the PHA Administrative plan.” *See also* 24 C.F.R. §§ 982.52(a) and (b).

¹⁵ *See* 2019 QAD Report, Finding 2019-1, pp. 8, 12.

¹⁶ *See id.*, Finding 2019-6, pp. 24-25.

¹⁷ *See* 24 C.F.R. § 985.109.

Family Self Sufficiency, and was required to submit a corrective action plan to HUD to address these deficiencies on or before March 30, 2018.¹⁸ SFHA failed to submit a corrective action plan for these deficiencies, and again received failing scores on Selection from the Wait List and HQS Enforcement for FY 2018.¹⁹ SFHA's failure to first submit a corrective action plan, and continued deficient performance violates Section 985.106, and pursuant to Section 985.109 may constitute a default under the ACC.

Third, HUD has determined that SFHA is in default of its ACCs because it is in material breach of Paragraph 5 of the ACC-LRPH, which requires SFHA to "develop and operate all projects covered by this ACC in compliance with all the provisions of this ACC and all applicable statutes, executive orders, and regulations issued by HUD, as they shall be amended from time to time, including but not limited to those regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, which are hereby incorporated into this ACC by reference as fully set forth here. . . ."²⁰ HUD makes the foregoing determination of default for material breach of Paragraph 5 of the ACC-LRPH based on the following:

- i. Pursuant to the United States Housing Act of 1937, HUD instituted the Public Housing Assessment System (PHAS) to evaluate public housing authorities' annual financial, physical and management performance. Due to failing PHAS performance scores for Fiscal Year 2011, HUD designated SFHA a "Troubled" PHA and required SFHA and the City and County of San Francisco (the City) to enter into the 2013 Public Housing Authority Recovery and Sustainability Initiative (PHARS) Agreement. Due to continued performance deficiencies in 2017, the parties entered into the revised 2017 PHARS Agreement.
- ii. According to the 2017 PHARS Agreement, SFHA did not achieve a passing Financial Assessment Subsystem (FASS) score due to failing ratings on three financial indicators related to financial solvency. SFHA did not achieve acceptable ratings for its Quick Ratio, Months Expendable Net Assets Ratio and Debt Service Coverage Ratio and was required to improve its FASS score and "sustain an acceptable level of performance in managing and operating SFHA's financial systems processes, controls, integrity and capacity." SFHA has failed to improve performance on these three key financial measures since 2017 in violation of HUD regulations at 24 C.F.R. § 903.73.

For all the foregoing breaches, violations and findings, HUD has determined that SFHA is in default of its ACC-Section 8 and ACC-LRPH. In accordance with 42 U.S.C. § 1437d(j)(3)(A)(iv)(v), after a finding of default, HUD has the authority to not only "take possession of all or part of the public housing agency" but to "require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents and families assisted under section 1437f of this title [42 U.S.C.

¹⁸ See SEMAP Scoring Letter from HUD Office of Public Housing Director Gerard Windt to SFHA Executive Director Barbara Smith, dated January 24, 2018 (FY17 SEMAP Notice).

¹⁹ See the FY18 SEMAP Notice.

²⁰ See ACC-LRPH, § 5.

agency or the programs of the agency.” To this end, San Francisco Mayor London Breed informed HUD by letter dated October 26, 2018, that SFHA and the City are actively working to remedy the findings, regulatory violations and breaches of the ACCs by preparing the City to “accept and assume all responsibilities for SFHA’s essential functions” and remediate prior record deficiencies and administer the program.²¹ Therefore, having determined that it is in the best interest of SFHA residents and assisted families, HUD is exercising its discretion to allow SFHA the opportunity to cure its defaults and come into compliance with the program requirements through the City’s assumption of SFHA’s “essential functions.”

To cure the current defaults, SFHA and the City must agree to and complete the following:

1. SFHA and the City must submit to HUD for HUD’s review and approval a Memorandum of Understanding (MOU) outlining a scheduled plan of action for the City’s assumption of all programmatic and financial functions of SFHA’s HCV and LRPH Programs, including but not limited to financial management, program management, wait list and admissions, inspections, eligibility determinations, and lease and grievances procedures. The MOU must also include plans for outsourcing financial and programmatic services for the HCV and LRPH programs to third party experts and implementing all corrective actions from the 2019 QAD Report. The MOU must be received by HUD on or before April 8, 2019, and addressed to:

Ms. Dominique Blom
 General Deputy Assistant Secretary
 Office of Public and Indian Housing
 U.S. Department of Housing and Urban Development
 451 7th Street, SW, Room 4100
 Washington, DC 20410-0001

with a copy to:

Mr. Gerard Windt
 Director, Office of Public Housing
 San Francisco Regional Office
 U.S. Department of Housing and Urban Development
 One Sansome Street, Suite 1200
 San Francisco, CA 94104-4430

2. HUD reserves the right, pursuant to the U.S. Housing Act of 1937 42 U.S.C. § 1437d(j)(3), Paragraph 15 of the ACC-Section 8 and Section 17(e) of the ACC-LRPH, to seek any appropriate remedy, including without limitation taking possession of any or all SFHA properties, SFHA’s rights or interests in connection with the programs, including funds held by a depository, program receipts, and rights or interests under SFHA’s HAP contracts.

²¹ See 42 U.S.C. § 1437d(3)(A) (2018); ACC-Section 8, ¶ 15(a); and ACC-LRPH, § 17(e).

3. Failure to meet any of the scheduled deadlines, unless otherwise agreed to in advance by HUD in writing, shall terminate SFHA's opportunity to cure its default, and HUD will reinstate the default.
4. HUD's exercise of its option to allow SFHA to cure its default does not preclude HUD from mandating that SFHA cure any breach or default of either ACC or finding related to SFHA's HCV (Section 8) Program or Low Rent Public Housing Program (Section 9) as HUD deems appropriate.²²

SFHA has thirty (30) days from the date of this notice to appeal this determination of default or any of the supported findings on the basis that they are not substantially accurate or have been resolved. Should HUD not receive a written response from SFHA within 30 days, HUD will assume that SFHA agrees with the above findings and determination and accepts them as facts.

Should you have any questions, please contact Gerard Windt, Director of Public Housing in HUD's San Francisco office, at 415-489-6444.

Sincerely,



Dominique Blom
General Deputy Assistant Secretary
for Public and Indian Housing

cc: The Honorable London N. Breed, Mayor of the City of San Francisco

²² "HUD's exercise or non-exercise of any right or remedy under the Consolidated ACCs is not a waiver of HUD's right to exercise that or any other right or remedy at any time." See ACC-Section 8, ¶ 15(b); see also ACC-LRPH, ¶ 17.

EXHIBITS

- Exhibit 1. HCV Consolidated Annual Contributions Contract executed by and between SFHA and HUD on August 12, 1998 (ACC-Section 8).
- Exhibit 2. Low Rent Public Housing Consolidated Annual Contributions Contract executed by and between SFHA and HUD on April 29, 1996 (ACC-LRPH).
- Exhibit 3. Financial Management Review QAD-FMRMOR-2019-CA0001 Housing Authority of the City and County of San Francisco, dated February 22, 2019 (2019 QAD Report).
- Exhibit 4. Financial Management Review QAD-FMR-2017-CA0001 Housing Authority of the City and County of San Francisco, dated July 14, 2017 (2017 QAD Report).
- Exhibit 5. SEMAP Scoring Letter from HUD Office of Public Housing Director Gerard Windt to SFHA Executive Director Barbara Smith, dated January 29, 2019 (FY18 SEMAP Notice).
- Exhibit 6. SEMAP Scoring Letter from HUD Office of Public Housing Director Gerard Windt to SFHA Executive Director Barbara Smith, dated January 24, 2018 (FY17 SEMAP Notice).
- Exhibit 7. PHARS Recovery Agreement and Action Plan executed among HUD, SFHA and the City and County of San Francisco, effective July 1, 2017 (2017 PHARS Agreement).
- Exhibit 8. PHARS Recovery Agreement and Action Plan executed among HUD, SFHA and the City and County of San Francisco, effective September 4, 2013 (2013 PHARS Agreement).
- Exhibit 9. Approval and Disapproval of PHARS Deliverables, dated May 22, 2018.
- Exhibit 10. Letter from Mayor London Breed to General Deputy Secretary Dominique Blom, dated October 16, 2018 (SFHA Shortfall Letter).
- Exhibit 11. Response from General Deputy Secretary Dominique Blom to SFHA Acting Executive Director Barbara Smith (HUD Shortfall Response).
- Exhibit 12. SFHA Fiscal Year 2017 Independent Public Accountant Audit (IPA Audit).



A handwritten signature in black ink, appearing to be "SK", located to the right of the memorandum header.

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Sophia Kittler
RE: Memorandum of Understanding – Reorganization of the Housing Authority
of the City and County of San Francisco – Loan not to exceed
\$20,000,000
DATE: 7/9/19

Resolution approving a Memorandum of Understanding between the City and County of San Francisco and the Housing Authority of the City and County of San Francisco (SFHA) regarding the reorganization of SFHA; ratifying and approving a loan not to exceed \$20,000,000 to SFHA and any action heretofore taken in connection with such loan to SFHA; and granting general authority to the Mayor and the Mayor's Office of Housing and Community Development (MOHCD) to take actions necessary to implement this Resolution.

Should you have any questions, please contact Sophia Kittler at 415-554-6153.

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