

File No. 200042

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date February 5, 2020

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER (Use back side if additional space is needed)

- General Plan Referral
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

Completed by: Linda Wong

Date January 31, 2020

Completed by: Linda Wong

Date _____

1 [Acquisition of Real Property - 1939 Market Street - Sheet Metal Workers' International
2 Association, Local Union No. 104 - \$12,000,000]

3 **Resolution approving and authorizing the Director of Property, on behalf of the**
4 **Mayor's Office of Housing and Community Development, to acquire real property,**
5 **located at 1939 Market Street from Sheet Metal Workers' International Association,**
6 **Local Union No. 104, for purchase at \$12,000,000 inclusive of a deposit in the amount**
7 **of \$500,000; placing the property under the jurisdiction of the Mayor's Office of**
8 **Housing and Community Development for use in constructing affordable housing for**
9 **San Franciscans; adopting findings that the conveyance is consistent with the**
10 **General Plan, and the eight priority policies of Planning Code, Section 101.1;**
11 **authorizing the Director of Property to execute documents, make certain**
12 **modifications and take certain actions in furtherance of the purchase agreement and**
13 **this Resolution, as defined herein, including assuming certain leases, entering into a**
14 **leaseback with seller, and assuming certain service contracts; and affirming the**
15 **Planning Department's determination under the California Environmental Quality**
16 **Act.**

17
18 WHEREAS, The Mayor's Office of Housing and Community Development
19 ("MOHCD") is responsible for the funding and development of affordable housing in the City of
20 and County of San Francisco; and

21 WHEREAS, City desires to acquire certain real property (Assessor's Parcel Block
22 No. 3501, Lot Nos. 006 and 007) located at 1939 Market Street (the "Property") for purposes
23 of building affordable housing on the Property; and

24 WHEREAS, Sheet Metal Workers' International Association, Local Union No. 104
25 (the "Seller") and City, through its MOHCD and Real Estate Division, after consultation with

1 the Office of the City Attorney, have negotiated an Agreement of Purchase and Sale for Real
2 Estate, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 200042
3 (the "Purchase Agreement"), for sale of the Property to the City for \$12,000,000, inclusive of a
4 deposit in the amount of \$500,000 (the "Deposit"); and

5 WHEREAS, MOHCD has evaluated the Property and confirmed that it can utilize the
6 Property for development of permanently affordable housing; and

7 WHEREAS, The Director of Property determines the Property to be at or below fair
8 market value; and

9 WHEREAS, The Planning Department, through General Plan Referral letter dated
10 January 13, 2020, found that the acquisition of the Property is not defined as a project under
11 California Environmental Quality Act ("CEQA") Guidelines, Sections 15378 and 15060(c)(2),
12 and is consistent with the General Plan, and the eight priority policies of Planning Code,
13 Section 101.1, which letter is on file with the Clerk of the Board of Supervisors in File No.
14 200042, and incorporated herein by this reference; and

15 WHEREAS, There exists certain leases (the "Leases") between the Seller and other
16 tenants that the City will assume; and

17 WHEREAS, City and Seller have negotiated an Office Lease ("Leaseback") as
18 attached to the Purchase Agreement, and City and Seller (as future tenant) will enter into the
19 Leaseback for a period of 24 months upon City's acquisition of the Property; and

20 WHEREAS, There are certain service contracts (the "Service Contracts") that City
21 may expressly agree to assume related to the operation and security of the Property; and

22 WHEREAS, The Property will be delivered vacant except for the Leases, the
23 Leaseback, and Service Contracts at close of sale; now, therefore, be it
24
25

1 RESOLVED, That MOHCD has legal authority, is willing, and is in a position
2 financially and otherwise to assume immediate care and maintenance of the Property, and, be
3 it

4 FUTHER RESOLVED, This Board affirms the CEQA determination and adopts
5 General Plan Findings, finding that this proposed acquisition is consistent with the General
6 Plan; and, be it

7 FURTHER RESOLVED, That in accordance with the recommendation of the
8 Director of MOHCD and the Director of Property, the Board of Supervisors approves the
9 Purchase Agreement (including the attached Leaseback) in substantially the forms presented
10 to the Board, and authorizes the Director of Property (or the Director's designee, to be applied
11 throughout) to accept the deed to the Property from the Seller upon the closing in accordance
12 with the terms and conditions of the Purchase Agreement, place the Property under the
13 jurisdiction of MOHCD, and to take any and all actions (including, but not limited to, the
14 execution and delivery of any and all certificates, assumption of Leases and Services
15 Contracts, agreements notices, consents, escrow instructions, closing documents and other
16 instruments or documents, including entering into the Leaseback) as the Director of Property,
17 after consultation with the Director of MOHCD and the Office of the City Attorney, deems
18 necessary, or appropriate in order to acquire the Property pursuant to the Purchase
19 Agreement, or to otherwise effectuate the purpose and intent of this Resolution, such
20 determination to be conclusively evidenced by the execution and delivery by the Director of
21 Property of any such documents; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
23 Property and Director of MOHCD (or the Director's designee), in consultation with the City
24 Attorney, to enter into any additions, amendments, or other modifications to the Purchase
25 Agreement and any other documents or instruments necessary in connection therewith, that

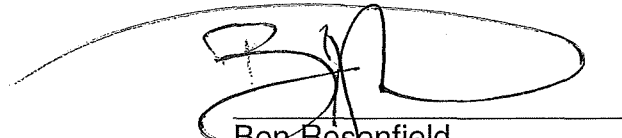
1 the Director of Property and Director of MOHCD determines are in the best interests of the
2 City, do not materially decrease the benefits to the City with respect to the Property, do not
3 materially increase the obligations or liabilities of the City, and are necessary or advisable to
4 complete the transaction contemplated in the Purchase Agreement (and Leaseback) and that
5 effectuate the purpose and intent of this Resolution, such determination to be conclusively
6 evidenced by the execution and delivery by the Director of Property of any such additions,
7 amendments, or other modifications; and, be it

8 FURTHER RESOLVED, That within thirty (30) days of the contract being fully
9 executed by all parties, the MOHCD shall provide the final contract to the Clerk of the Board
10 for inclusion into the official file.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

\$12,000,000 Available

Fund ID: 10581	Fund title: SR OCOH Nov18 PropC GF Advance
Department ID: 232065	Department title: MYR Housing & Community Dev
Project ID: 10035001	Project title: FY20 ERAF - Housing
Authority ID: 20943	Authority title: ERAF MOH AffordableHouseAcqDev
Account ID: 506070	Account title: Programmatic Projects-Budget
Activity ID: 0001	Activity title: FY20 Housing Acquisition & Dev

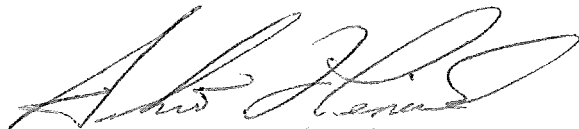


Ben Rosenfield
Controller

RECOMMENDED:



Dan Adams
Acting Director of the Mayor's Office of Housing and Community Development



Andrico Penick *1/13/2020*
Director of Property

<p>Item 1 File 20-0042</p>	<p>Department: Real Estate Division Mayor's Office of Housing and Community Development</p>
--	--

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would (1) allow the City to purchase 1939 Market Street for \$12 million, (2) place the property under the jurisdiction of the Mayor's Office of Housing and Community Development, (3) find that the acquisition is consistent with the City's General Plan and eight priority policies of the Planning Code, (4) authorize the Director of Real Estate to execute documents related to the property acquisition, including a Leaseback Agreement with the seller and assigning the property's other existing leases and contracts to the City, and (5) affirm the Planning Department's determination that the purchase is exempt from review under the California Environmental Quality Act (CEQA).

Key Points

- The property at 1939 Market is a two-story office building and adjacent paved parking area of approximately 12,050 square feet. The Mayor's Office of Housing and Community Development (MOHCD) intends to purchase the property and convert it to affordable housing, though it has not yet finalized the design and target population. The affordable housing project's gap financing and ground lease will be subject to future Board of Supervisors' approval.
- Under the proposed Purchase and Sale Agreement, the City would pay \$12 million to acquire the property at 1939 Market Street. The purchase price is consistent with the appraisal and appraisal review that were completed by independent third-party appraisers contracted by the Real Estate Division. Under the Purchase and Sale Agreement, the City will enter into a Leaseback Agreement with the current owner and assume responsibility for the leases with the three existing tenants through April 2022. The appraisal assumes that the City will receive rents under the Leaseback Agreement and existing leases, which were incorporated into the concluded value in the appraisal report.

Fiscal Impact

- The source of the \$12 million purchase of 1939 Market Street is Excess Education Augmentation Revenue funds (ERAF).
- Estimated net income from the Leaseback Agreement and existing leases for the two-year period from April 2020 to April 2022 is \$221,876. Any net income from the property would accrue to MOHCD.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

Administrative Code Section 23.3 states that the Board of Supervisors must approve acquisitions of real property by resolution. An appraisal of the property is required if the Real Estate Division determines that the fair market value is greater than \$10,000 and an appraisal review if the fair market value is greater than \$200,000.

Administrative Code Section 23.30 states that the Board of Supervisors shall approve all leases on behalf of the City as landlord by resolution for which the term is longer than a year and costs over \$15,000 per month. The Real Estate Division must obtain an appraisal of the fair market rent if the rent exceeds \$45 per square foot per year and appraisal review if the rent exceeds \$60 per square foot per year.

City Administrative Code Section 23.30 states that leases of City-owned property can be for less than market rent if the lease is for a proper public purpose with Board of Supervisors' approval.

BACKGROUND**Current and Intended Use of 1939 Market Street**

The property at 1939 Market is a two-story office building and adjacent paved parking area of approximately 12,050 square feet. The Sheet Metal Workers' International Association Local Union No. 104 ("Sheet Metal Workers Association") is the current owner of 1939 Market Street and one of the building's tenants. The property has three other tenants that lease office space: District Council 16, a labor organization; Dark, Inc., a software company; and The Key PR, a public relations company. The Mayor's Office of Housing and Community Development (MOHCD) intends to purchase the property and convert it to affordable housing, though it has not yet finalized the design and target population. The affordable housing project's gap financing and ground lease will be subject to future Board of Supervisors' approval.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (1) allow the City to purchase 1939 Market Street for \$12 million, (2) place the property under the jurisdiction of the Mayor's Office of Housing and Community Development, (3) find that the acquisition is consistent with the City's General Plan and eight priority policies of the Planning Code¹, (4) authorize the Director of Real Estate to

¹ The eight priority policies of the Planning Code are: (1) That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced; (2) That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods; (3) That the City's supply of affordable housing be preserved and enhanced; (4) That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking; (5) That a diverse economic base be maintained by protecting our industrial and service

executive documents related to the property acquisition, including a Leaseback Agreement with the seller and assigning the property’s other existing leases and contracts to the City, and (5) affirm the Planning Department’s determination that the purchase is exempt from review under the California Environmental Quality Act (CEQA). In January 2020 the Planning Department found that the proposed purchase is exempt from CEQA review and that the project is consistent with the eight priority policies of the Planning Code and the City’s General Plan.

Purchase and Sale Agreement

Under the proposed Purchase and Sale Agreement, the City would pay \$12 million to acquire the property at 1939 Market Street. The purchase price is consistent with the appraisal and appraisal review that were completed by independent third-party appraisers contracted by the Real Estate Division, as required by Administrative Code Section 23.3. The appraisal assumes that the City will enter into a Leaseback Agreement with the current owner at \$5,000 per month for 24 months, described below, and that the other three existing tenants will continue to occupy the space and pay rent (shown in Exhibit 2 below).

Leaseback Agreement

Under the proposed Purchase and Sale Agreement, the City would enter into a separate Leaseback Agreement with the current owner, the Sheet Metal Workers Association. Under the proposed Leaseback Agreement, the City would lease the current owner the space it currently occupies at 1939 Market Street for \$5,000 per month for 24 months, as shown below.

Exhibit 1: Proposed Leaseback Terms for 1939 Market Street

Landlord	City
Tenant	Sheet Metal Workers Association
Lease Term	24 months
Rentable Square feet	6,292 square feet
Rent	\$5,000 per month (approximately \$9.54 per square foot per year)
Annual Rent Increase	None
Options to Extend Term	None
Tenant Improvements	None

Source: Proposed Leaseback Agreement

The leaseback period will allow MOHCD to procure a qualified developer to convert the property 1939 Market Street from office space to affordable housing. No material changes to the property would occur until after the 24 month leaseback period.

sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced; (6) That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake; (7) That landmarks and historic buildings be preserved; and, (8) That our parks and open space and their access to sunlight and vistas be protected from development.

Existing Leases with Current Tenants

Under the proposed Purchase and Sale Agreement, the City will assume responsibility for the existing leases with the current tenants of 1939 Market Street and enter into a Leaseback Agreement with the owner. The estimated annual rent is \$308,231, as shown below in Exhibit 2. The leases would terminate at the end of the leaseback period in April 2022, resulting in lease rent to the City over the two-year leaseback period of \$616,642.

Exhibit 2: The City’s Leases at 1939 Market Street

Tenant	Annual Rent	Square Feet	\$ per Square Foot
Sheet Metal Workers Association	\$60,000	6,292	\$9.54
District Council 16	88,546	1,849	\$47.89
Dark, Inc.	82,830	1,506	\$55.00
The Key PR, LLC	76,855	1,478	\$52.00
Total	\$308,231	11,125	

Source: MOHCD

As shown above, the rent per square foot of the leaseback agreement with the Sheet Metal Workers Association is \$9.54. According to Mr. Joshua Keene, Special Projects and Transactions Manager at the Real Estate Division, the proposed Leaseback Agreement rent, which is below market rate, was negotiated as part of the final sales price for the property.

The three existing leases have expiration dates of December 31, 2019 for District Council 16; May 31, 2021 for Dark, Inc.; and December 31, 2020 for The Key PR, LLC. According to Ms. Joyce Slen, Project Manager at MOHCD, the City is still finalizing the lease provisions for the three leases that it is taking over from the Sheet Metal Works Association for District Council 16, Dark, Inc., and The Key PR, LLC, including extending the lease terms through April 2022. While Administrative Code Section 23.30 requires appraisals for leases with rent above \$45 per square foot, the appraisal conducted for the purchase of 1939 Market Street assumes that the City will receive rents under the Leaseback Agreement and existing leases, which were incorporated into the concluded value in the appraisal report.

Existing Service Contracts

Under Section 5.1(l) of the proposed Purchase and Sale Agreement, the City may be assigned existing contracts for the following services:

1. Property Management
2. Janitorial
3. Roving Engineer
4. Elevator maintenance
5. Fire alarm testing & annual monitoring
6. Fire sprinkler annual monitoring
7. Water Backflow testing
8. Electric Vehicle Charging Maintenance & Management

- 9. HVAC Maintenance
- 10. Security Monitoring system

According to Ms. Slen, the City is still negotiating with providers for the service contracts noted above.

FISCAL IMPACT

The source of the \$12 million purchase of 1939 Market Street is Excess Education Augmentation Revenue funds (ERAF).

Estimated net income to the City over the two-year leaseback period is \$221,876, as shown in Exhibit 3 below.

Exhibit 3: Property Operating Revenue and Costs

Tenant	April 2020 – April 2021	April 2021 – April 2022	Total
Sheet Metal Workers Local Union	\$60,000	\$60,000	\$120,000
District Council 16	88,546	88,546	177,092
Dark, Inc.	82,830	82,830	165,660
The Key PR, LLC	76,855	76,855	153,710
Total Tenant Revenues (estimated)	\$308,231	\$308,231	\$616,462
Utilities	\$21,300	\$22,046	\$43,346
Taxes	10,000	10,350	20,350
Service Contracts*	162,600	168,291	330,891
Total Operating Expenses (estimated)	\$193,900	\$200,687	\$394,587
Net Income	\$114,331	\$107,545	\$221,876

Sources: Proposed Leaseback Agreement; Current leases with District Council 16, Dark, Inc., and the Key PR, LLC.; MOHCD.

Note: Service Contracts includes the ten service contracts listed above as well as trash removal. Utilities refers to electricity, water, and gas.

As shown above, the total expected rent during the two-year leaseback is \$308,231 per year. Operating expenses total an estimated \$193,900 in the first year of the leaseback period and \$200,687 in the second year of the lease back period, leaving an \$114,331 and \$107,545 in estimated net income in years 1 and 2 of the leaseback period, respectively. Any net income from the property would accrue to MOHCD.

RECOMMENDATION

Approve the proposed resolution.

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

Sheet Metal Workers' International Association, Local Union No. 104,
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,
as Buyer

For the purchase and sale of

1939 Market Street
San Francisco, California

January 2, 2020

TABLE OF CONTENTS

	<u>Page</u>
1. PURCHASE AND SALE.....	1
1.1 Property Included in Sale.....	1
1.2 Restrictive Covenant.....	1
2. PURCHASE PRICE.....	2
2.1 Purchase Price.....	2
2.2 Conditional Deposit.....	2
2.3 Deposit.....	2
2.4 Payment.....	2
2.5 Funds.....	3
3. TITLE TO THE PROPERTY.....	3
3.1 Conveyance of Title to the Property.....	3
3.2 Title Insurance.....	3
3.3 Bill of Sale.....	3
3.4 Assignment of Leases and Assumed Contracts.....	3
4. BUYER'S DUE DILIGENCE INVESTIGATIONS.....	4
4.1 Due Diligence and Time for Satisfaction of Conditions.....	4
4.2 Intentionally Deleted.....	4
5. ENTRY.....	4
5.1 City's Conditions to Closing.....	5
5.2 Cooperation with City.....	8
6. ESCROW AND CLOSING.....	9
6.1 Opening of Escrow.....	9
6.2 Closing Date.....	9
6.3 Seller's Delivery of Documents.....	9
6.4 City's Delivery of Documents and Funds.....	10
6.5 Other Documents.....	10
6.6 Title Company as Real Estate Reporting Person.....	10
7. EXPENSES AND TAXES.....	11
7.1 Rent and Other Apportionments.....	11
7.2 Closing Costs.....	12

7.3	Real Estate Taxes and Special Assessments	12
7.4	Preliminary Closing Adjustment.....	12
7.5	Post-Closing Reconciliation.....	12
7.6	Survival	12
8.	REPRESENTATIONS AND WARRANTIES.....	13
8.1	Representations and Warranties of Seller	13
8.2	"As-Is" Purchase	14
8.3	Updates to Representations and Warranties;	15
9.	RISK OF LOSS AND POSSESSION	15
9.1	Risk of Loss	15
9.2	Insurance	16
9.3	Possession	16
10.	MAINTENANCE; CONSENT TO NEW CONTRACTS	16
10.1	Maintenance of the Property by Seller.....	16
10.2	City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts	17
11.	DEFAULT AND REMEDIES.....	17
11.1	Seller Default	17
11.2	Buyer Default.....	18
12.	GENERAL PROVISIONS	18
12.1	Notices	18
12.2	Brokers and Finders	19
12.3	Successors and Assigns.....	20
12.4	Amendments	20
12.5	Continuation and Survival of Representations and Warranties	20
12.6	Governing Law	20
12.7	Merger of Prior Agreements	20
12.8	Parties and Their Agents; Approvals	21
12.9	Interpretation of Agreement.....	21
12.10	Attorneys' Fees.....	21
12.11	Sunshine Ordinance	21
12.12	Conflicts of Interest.....	22
12.13	Notification of Prohibition on Contributions.....	22

12.14	Non-Liability of City Officials, Employees and Agents; Buyer's Related Parties.	22
12.15	Counterparts	22
12.16	Effective Date	23
12.17	Severability	23
12.18	Agreement Not to Market Prior to Effective Date	23
12.19	Acceptance of Agreement by Seller	23
12.20	Cooperative Drafting	23
12.21	Time	23

LIST OF EXHIBITS

- EXHIBIT A – Real Property Description
- EXHIBIT B – Personal Property Description
- EXHIBIT C – Grant Deed
- EXHIBIT D – Bill of Sale
- EXHIBIT E – Seller’s Leaseback
- EXHIBIT F – Assignment of Leases and Assumed Contracts
- EXHIBIT G – Tenant's Estoppel Certificate
- EXHIBIT H – Certificate of Transferor Other Than An Individual (FIRPTA Affidavit)
- EXHIBIT I – Notice to Tenants

SCHEDULE 1

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE
(1939 Market Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "Agreement") dated for reference purposes only as of January 2, 2020 is by and between SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 104 ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City").

Seller and City agree as follows:

1. PURCHASE AND SALE

1.1 Property Included in Sale

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately 11,861 sq. ft. (0.272) acres of land, located in the City and County of San Francisco, commonly known as 1939 Market Street and more particularly described in Exhibit A attached hereto (the "Land");

(b) all improvements and fixtures located on the Land, including, without limitation, (i) that certain 2-story office building containing approximately 13,300 square feet of net rentable area and known as the 1939 Market Street Building, as well as all other buildings and structures located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land and its improvements, such as heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, garbage disposal or other services, and together with all on-site parking (collectively, the "Improvements");

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "Appurtenances");

(d) if any, all personal property owned by Seller located on or in or used in connection with the Land or Improvements as of the date of this Agreement and as of the Closing Date (as defined in Section 6.2, Closing Date) including, without limitation, those items, if any, described in Exhibit B attached hereto (the "Personal Property"); and

All of the items referred to in Subsections (a), (b), (c), and (d) above are collectively referred to as the "Property." Inclusion of square footages is to assist in identification and shall not be construed as a representation.

1.2 Restrictive Covenant.

City agrees to purchase the Property subject to a restrictive covenant that requires City, and any successive owner of the Property, to either: (i) cause all improvement work on the

Property to be performed by signatories to a collective bargaining agreement, or (ii) require that all improvement work on the Property be completed in accordance with City and state prevailing wage requirements. Upon Closing, City will record a Declaration of Restrictive Covenant in the form attached hereto as Exhibit ____ ("Declaration of Restrictions").

2. PURCHASE PRICE

2.1 Purchase Price

The total purchase price for the Property is Twelve Million and 00/100 Dollars (\$12,000,000) (the "Purchase Price").

2.2 Conditional Deposit

Within three (3) business days after execution of this Agreement ("Deposit Date"), City will deliver to Chicago Title Company, One Embarcadero Center, Suite 250, San Francisco, California 94111, Attn: Terina Kung, Escrow Officer, Phone: (415) 291-5128, Email: terina.kung@ctt.com (the "Title Company"), as escrow agent, Five Hundred Thousand and 00/100 Dollars (\$500,000) as an earnest money conditional deposit applicable to the Purchase Price (the "Conditional Deposit"). The Conditional Deposit will remain conditional and be unconditionally, fully refundable to Buyer upon termination of this Agreement until the Effective Date (as defined in Section 12.16, [Effective Date] below). If the Agreement terminates for any reason during the Due Diligence Period, then Seller will pay all title fees and escrow cancellation fees and Buyer will instruct the Title Company to immediately return the Conditional Deposit to Buyer. If the Agreement terminates by either party after the Due Diligence Period (as defined in Section 4.1 [Due Diligence and Time for Satisfaction of Conditions] below) but prior to the Effective Date, then the party that terminates the Agreement will pay all title fees and escrow cancellation fees (except to the extent termination is due to the default of the other party, in which case the defaulting party shall pay all title fees and escrow cancellation fees) and Buyer will instruct the Title Company to immediately return the Conditional Deposit to Buyer. If neither party terminates the Agreement, and the Effective Date has not occurred prior to the Closing Date (as defined below in Section 6.2 [Closing Date] below), including any mutual extension thereof, then the parties will equally share the cost of all title fees and escrow cancellation fees and the Buyer will instruct the Title Company to immediately return the Conditional Deposit to Buyer.

2.3 Deposit

On the Effective Date, the Conditional Deposit will become the "Deposit", removing the unconditionally-refundable nature of the Deposit. If the sale of the Property is not consummated because of a Buyer default, then Buyer will pay all title fees and escrow cancellation fees, and Seller and Buyer will instruct the Title Company to immediately release the Deposit to Seller in accordance with Section 11.2 below. If Buyer terminates this Agreement due to a Seller default, then Seller will pay all title fees and escrow cancellation fees, and Seller and Buyer will instruct the Title Company to immediately return the Deposit to Buyer. If Buyer, at its election, instructed the Title Company to deposit the Conditional Deposit into an interest-bearing account at a bank or financial institution approved by Buyer in writing, the term "Conditional Deposit" or "Deposit" will include any interest earned thereon. Unless this Agreement is terminated and the Conditional Deposit or Deposit disbursed as provided in this Agreement, the Deposit will be applied to the Purchase Price at Closing.

2.4 Payment

On the Closing Date, City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 7 [Expenses and Taxes], and reduced by any credits due City hereunder.

Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under Sections 6.3(h) and 6.3(i) [Seller's Delivery of Documents], City may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), or Section 18662 of the California Revenue and Taxation Code (the "State Tax Code"). Any amount properly so withheld by City shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

2.5 Funds

All payments made by any party hereto shall be in legal tender of the United States of America, paid in cash or by wire transfer of immediately available funds to Title Company (as defined in Section 3.2), as escrow agent.

3. TITLE TO THE PROPERTY

3.1 Conveyance of Title to the Property

At the Closing Seller shall convey to City, or its nominee, fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "Deed"), subject to the Accepted Conditions of Title (as defined in Section 3.2 [Title Insurance]).

3.2 Title Insurance

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of the Title Company to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (Form ALTA 2006 – updated 6/17/2006) (the "Title Policy") in the amount of the Purchase Price, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents or financing statements placed on the Property by Seller, and all other exceptions, liens and encumbrances except solely for the Accepted Conditions of Title pursuant to Section 5.1(a) below. The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property by Seller, and shall contain such other endorsements as City may reasonably request if the Title Company commits to issue such endorsements during the Due Diligence Period. The Title Policy shall also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request. The deeds of trust, mortgages, assignments of rents or financing statements and mechanics liens that Seller is required to remove from title pursuant to the foregoing provisions, are referred to herein as "Required Corrections."

3.3 Bill of Sale

At the Closing Seller shall transfer title to the Personal Property by bill of sale in the form attached hereto as Exhibit D (the "Bill of Sale"), such title to be free of any liens, encumbrances or interests placed on the Personal Property by Seller.]

3.4 Assignment of Leases and Assumed Contracts

At the Closing Seller shall transfer its title to the Assigned Leases by an assignment of leases and contracts in the form attached hereto as Exhibit F (the "Assignment of Leases and Assumed Contracts"), such title to be free of any liens, encumbrances or interests placed thereon by Seller, except for the Accepted Conditions of Title.

4. BUYER'S DUE DILIGENCE INVESTIGATIONS

4.1 Due Diligence and Time for Satisfaction of Conditions

City has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Property, either independently or through agents of City's own choosing, including, without limitation, but subject to the provisions of his Agreement, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. City and its Agents may commence due diligence investigations on the Property on or after the date this Agreement is executed by both parties hereto. The period for completion of all such investigations shall expire at 5:00 pm on January 12, 2020 (the "Due Diligence Period"), subject to the terms and conditions provided hereinbelow. The parties agree that Seller has delivered to City all of the Documents and other items described in Sections 5.1(d), 5.1(e) and 5.1(f). City shall use its best efforts to obtain, as soon as practicable after the date hereof, all City approvals and resolutions that are necessary or required by City Charter, ordinances, regulations, directives, policies or orders in connection with the transactions contemplated herein including without limitation each of the following: (a) regulatory approval of the purchase of the Property from its Planning Department no later than February 25, 2020; (b) obtaining an appraisal and having the same approved by all necessary City action; (c) introducing a resolution for approval of this Agreement and of the transactions contemplated herein by the Board of Supervisors and the Mayor of the City no later than January 14, 2020 and obtaining final approval of the resolution from the Board of Supervisors and signature by the Mayor on such resolution no later than February 25, 2020. City shall keep Seller informed of the status of each such action and of the status of each such approval and resolution with a written weekly report in the form of an E-mail. Seller shall have the right to terminate this Agreement by notice to the City if any of the actions to be taken by the City in obtaining such approvals is not timely taken or obtained or if the City fails to provide Seller with the written weekly status report providing a reasonably detailed report concerning the matters required to be included therein.

Notwithstanding anything in this Agreement to the contrary, City shall have the right to terminate this Agreement at any time during the Due Diligence Period upon written notice to Seller. Upon such termination, neither City nor Seller shall have any further rights or obligations hereunder. This Section is subject to, and shall not serve to modify or limit, any right or remedy of City arising under Section 5.1 [City's Conditions to Closing, of this Agreement].

4.2 Intentionally Deleted

5. ENTRY

During the Due Diligence Period and at all times prior to the Closing Date Seller shall afford City and its Agents reasonable access to the Property and all books and records located therein for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the Conditions Precedent including, without limitation, the drilling of test wells and the taking of soil borings; provided, however,

that any invasive testing shall be subject to Seller's sole but reasonable approval of City's work plan. City shall not alter or damage the Property in more than a de minimus manner as is customary for the type of survey or inspection being undertaken and City shall promptly repair any such damage following the completion of such survey or inspection. City shall not permit any mechanics' liens to be filed against all or any part of the Property. City hereby agrees to indemnify, defend with counsel reasonably selected by Seller, and hold Seller and its Agents, as well as any Agents of the foregoing, harmless from and against any and all loss, damage, injury, claim, lien, liability, suit, cost, including, without limitation, attorneys' fees and costs, or expense (collectively, "Claims") actually incurred by Seller arising out of actions taken by City or its Agents or their respective employees, contractors, consultants, agents or representatives pursuant to this section, except to the extent such Claims arise from the gross negligence or willful misconduct of Seller or any of its Agents. The foregoing Indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Property, including the Improvements. In the event this Agreement is terminated for any reason other than Seller's default hereunder, City shall restore the Property to substantially the condition it was found subject to applicable laws. The indemnity in this Section shall survive Closing and termination of this Agreement.

City agrees that any inspection, test or other study or analysis of the Property shall be performed at City's sole cost and expense, and in accordance with applicable law.

City agrees that City's third-party Agents accessing the Property at City's direction will be covered by not less than \$1,000,000 commercial general liability insurance (with, in the case of such coverage, a contractual liability endorsement, insuring its indemnity obligations under this Agreement) insuring all activity and conduct of City's third-party Agents and such persons while exercising such right of access and naming Seller and McMorgan & Company LLC as additional insured, issued by a licensed insurance company reasonably acceptable to Seller. Seller acknowledges that City is self-insured and self-funded to cover all activity and conduct of City and its employees pursuant to this Section. Neither City nor the insurers of its third party Agents shall have the right to pursue Seller for any claim covered by such insurance or self-insurance.

5.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Property (collectively, "Conditions Precedent"):

(a) City shall have reviewed and approved title to the Property, as follows:

(i) City acknowledges that Seller has delivered to City a current extended coverage preliminary report on the Real Property dated October 25, 2019, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report").

(ii) [Seller shall have delivered to Buyer copies of any existing, unrecorded documents in Seller's possession, that are actually known to Seller's Representative without any review of Seller's files, and which Seller knows: (i) have not been delivered to or obtained by the City; (ii) contain information that will have a material adverse effect on the Property; and that (iii) could not be discovered by the City in the exercise of ordinary due diligence.]

(iii) City may at its option arrange for an "as-built" survey of the Real Property and Improvements prepared by a licensed surveyor (the "Survey"). Such survey shall

be acceptable to, and certified to, City and Title Company and in sufficient detail to provide the basis for and the Title Policy without boundary, encroachment or survey exceptions. If the Survey is delivered to City prior to the BOS Approval Date, then it shall be deemed acceptable to the City. If the Survey is delivered after the BOS Approval Date, then it shall not provide a basis for termination of this Agreement by the City.

City shall advise Seller, within ten (10) days following the end of the Due Diligence period, what exceptions to title, if any, City is willing to accept (the "Accepted Conditions of Title"). City's failure to so advise Seller within such period shall be deemed approval of title. Seller shall have ten (10) days after receipt of City's notice of any objections to title to give City: (A) evidence satisfactory to City of the removal of all objectionable exceptions from title or that such exceptions will be removed or cured on or before the Closing; or (B) notice that Seller elects not to cause such exceptions to be removed other than Required Corrections. If Seller fails to give such notice, Seller shall be deemed to have given notice under clause (B) above. If Seller gives (or is deemed to have given) notice under clause (B), City shall have until the BOS Approval Date to elect to proceed with the purchase or terminate this Agreement. If City gives such notice electing to proceed or if City shall fail to give Seller notice of its election on or before the BOS Approval Date, City shall be deemed to have elected to waive its objections to title and to have accepted title "as is" except for the Required Corrections and all matters affecting title to the Property shall be Accepted Conditions of Title. If Seller gives notice pursuant to clause (A) and fails to remove any such objectionable exceptions from title prior to the Closing Date, and City is unwilling to take title subject thereto, and if such objectionable exceptions are Required Corrections, then Seller shall be in default hereunder and City shall have the rights and remedies provided herein or at law or in equity. If the preceding sentence would apply, but does not, solely because the objectionable exceptions are not Required Corrections, then Seller shall not be in default, this Agreement shall terminate and neither party shall have any further obligations under this Agreement except for those obligations that are intended to survive any termination of this Agreement.

(iv) City's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property, including, without limitation, structural, mechanical, electrical and other physical conditions of the Property. Such review may include an examination for the presence or absence of any Hazardous Material. City shall be responsible for performing or arranging any such reviews at City's expense. As used herein, the term "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

(b) [City's review and approval, on or before the BOS Approval Date, of Schedule 1, which sets a list of reports concerning Hazardous Materials affecting the Property that Seller has delivered to the City prior to the execution of this Agreement.]

(c) City's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(d) City's review and approval, within the Due Diligence Period, of the documents delivered to the City by the Seller prior to the date of this Agreement (collectively, the "Documents"); and (ii) such other information relating to the Property that is specifically requested by City of Seller in writing and, if in Seller's possession, delivered by Seller to City during the Due Diligence Period (collectively, the "Other Information").

(e) City's review and approval, by February 25, 2020 or such earlier date on which the City's Board of Supervisors approves the transaction contemplated herein (the "BOS Approval Date"), utility bills and other information already delivered to City concerning the operating expenses of the Property.

(f) City's review and approval, within the Due Diligence Period, of: (i) all existing and pending leases and other occupancy agreements listed on Schedule 1 of Exhibit F ("Assigned Leases"), (ii) tenant correspondence files, and (iii) a current rent roll for the Property, prepared by Seller in such form as Seller uses in the operation of the Property.

(g) Seller's obtaining and delivering to City, before the Closing Date, tenant estoppel certificates in form and substance reasonably satisfactory to City from any and all tenants occupying any portion of the Property. Such certificates shall be substantially in the form attached hereto as Exhibit G and shall be dated no earlier than thirty (30) days prior to the Closing Date and delivered to the City within two (2) business days after Seller receives each such estoppel certificate as completed by each of such tenants. Each estoppel certificate shall be deemed acceptable to the City if the City does not raise reasonable objections thereto within five (5) days after the estoppel certificate is delivered to the City. Notwithstanding the foregoing, to the extent Seller is unable, despite its commercially reasonable efforts, to obtain estoppel certificates, Seller may, as to each missing estoppel certificate, warrant and represent to City, with respect to such missing estoppel certificate, as of the date represented and warranted, to Seller's current, actual knowledge, except as qualified by Seller, the following information concerning the lease that is the subject of such representation by Seller: (A) that the Assigned Lease for is in full force and effect; (B) the amount of the tenant's security deposit; (C) the date through which rent has been paid; and (D) that neither Seller nor the tenant, is in default under such Assigned Lease. City shall be obligated to accept such a certification in lieu of any such missing estoppel certificate. The representations and warranties in the certificate of Seller shall survive the Closing. [Seller's maximum liability to City in connection with any such certification by Seller, or any failure to obtain such estoppel certificate due to Seller's failure to use commercially reasonable efforts to obtain the same, shall not exceed Five Thousand and No/100 Dollars (\$5,000.00). Seller shall not be in default if any estoppel certificate is not obtained provided that Seller uses commercially reasonable efforts, not including litigation or any threat of litigation, to obtain such estoppel certificates. Seller may extend the Closing Date hereunder to a date which is ten (10) days after estoppel certificates meeting the requirements of this Section are obtained, but in no event shall such extension exceed thirty (30) days.]

(h) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing, Seller shall deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 [Representations and Warranties of Seller] below are true and correct as of the Closing Date except as qualified in the certificate. If such certificate is qualified, such qualification shall (i) be deemed to modify the representations and warranties of Seller and (ii) shall, if material, give City the right to terminate this Agreement, without recourse to the Seller unless the material qualification is due to Seller's intentional fraud, and to receive a return of the Deposit.

(i) The physical condition of the Property shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of: (a) the zoning classification of the Property; or, (b) any building or environmental code requirements applicable to, any of the Property.

(j) Title Company shall be committed at the Closing to issue to City, or its nominee, (i) the Title Policy as provided in Section 3.2 [Title Insurance].

(k) City and Seller, prior to the Effective Date, will have negotiated a lease agreement between Seller as tenant and Buyer as landlord, to be entered into on the Closing Date, a form of which is attached hereto as Exhibit E ("Seller's Leaseback").

(l) City's review and approval, of the Assumed Contracts on Schedule 2 [Assumed Contracts] of Exhibit F, setting forth a list of all of the contracts or agreements that shall be assigned to, and assumed by, City at Closing (the "Assumed Contracts"), together with true and accurate copies of all such documents. City shall be deemed to have approved all such Assumed Contracts, and shall assume them, if the City does not terminate this Agreement on or before the BOS Approval Date. City may request that any of the Assumed Contracts be terminated by Seller on the Closing Date. At or before the Closing, Seller shall terminate any contracts or agreements not to be assumed by City, without liability to City, to the extent that they may be terminated on the Closing Date, without breach, with notice on the Closing Date and if so terminated such contracts shall no longer be Assumed Contracts. Contracts that may not be terminated as of the Closing Date with such notice shall be assumed by the City and terminated by the City after the Closing.

(m) The City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions, on or before one (1) business day before the Closing Date. In the event such enactment is not final and signed by the Mayor on or before such date, Seller shall have the right to terminate this Agreement.

(n) Seller shall have delivered the items described in Section 6.3 below [Seller's Delivery of Documents] on or before the Closing.

(o) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.6 below).

The Conditions Precedent contained in the foregoing Subsections (a) through (n) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Conditions Precedent described in item (m) above may not be waived. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. Any of the Conditions Precedent that are to be satisfied or waived during the Due Diligence period shall be deemed satisfied if the City does not elect to terminate this Agreement during the Due Diligence period. Any of the Conditions Precedent that are to be satisfied or waived by the BOS Approval Date shall be deemed satisfied if the City does not elect to terminate this Agreement on or before such date. In addition, the Closing Date may be extended, at Seller's option, for a reasonable period of time

specified by Seller, to allow any of the other Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Conditions Precedent have not been satisfied.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal and inspection fees incurred by City and any other expenses incurred by City in connection with the performance of its due diligence review of the Property (it being understood that Seller shall not be required to reimburse any such costs or expenses in excess of \$50,000 in the aggregate), and neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending City's action for specific performance of Seller's obligations under Section 6.3 below, provided that any action for specific performance must be initiated no later than ninety (90) days after the date that Closing is otherwise required to occur under this Agreement.

5.2 Cooperation with City

Seller shall cooperate with City and do all commercially reasonable acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any commercially reasonable documents, applications or permits. Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations. Provided, however, no such applications or inquiries will have any material impact upon nor will they be binding upon the Property unless and until City closes upon and is the owner of the Property.

6. ESCROW AND CLOSING

6.1 Opening of Escrow

On or before the Deposit Date (as defined in Article 2 [Purchase Price]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

6.2 Closing Date

The consummation of the purchase and sale contemplated hereby (the "Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at One Embarcadero Center, Suite 250, San Francisco, California 94111, on March 27, 2020, or on such earlier date as City notifies Seller with at least five (5) business days' advance notice (the "Closing Date"), subject to the provisions of Article 5 [Conditions Precedent]. In no event shall the Closing occur before March , 2020. **The Closing shall occur no later than 10:00 A.M., Pacific Standard Time, on the Closing Date.** The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. In the event the

Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

6.3 Seller's Delivery of Documents

At or before the Closing, Seller shall deliver to City, or the Nominee, through escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) duly executed Bill of Sale;
- (c) four (4) duly executed counterparts of the Assignment of Leases and Assumed Contracts;
- (d) duly executed tenant estoppel certificates or Seller certifications for each of the Leases as required pursuant to Section 5.1(g) hereof;
- (e) four (4) duly executed counterparts of the Seller's Leaseback;
- (f) originals, if in Seller's possession or can readily obtain, of the Documents, Assigned Leases, and Assumed Contracts not previously delivered to City;
- (g) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit H, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (h) a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence reasonably satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;
- (i) such resolutions, authorizations, or other documents or agreements relating to Seller as the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (j) closing statement in form and content satisfactory to City and Seller; and
- (k) the duly executed certificate regarding: (i) Seller's representations and warranties contained in Section 8.1 as required by Section 5.1(h), and, (ii) Seller's representations and warranties regarding Assigned Leases contained in Section 5.1(g), if applicable.
- (l) a Notice to Tenants in the form attached hereto as Exhibit I.

6.4 City's Delivery of Documents and Funds

At or before the Closing, City, or the Nominee, shall deliver to Seller through escrow the following:

- (a) an acceptance of the Deed executed by City's Director of Property;
- (b) Declaration of Restrictions executed by the City's Director of Property;
- (c) four (4) duly executed counterparts of the Assignment of Leases and Assumed Contracts;
- (d) four (4) duly executed counterparts of the Seller's Leaseback;
- (e) a closing statement in form and content satisfactory to City and Seller;
- (f) such evidence as may be reasonably required by Title Company with respect to the authority of the person(s) executing the documents required to be executed by or on behalf of City; and
- (g) the Purchase Price, as provided in Article 2 hereof.

6.5 Other Documents

Seller and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

6.6 Title Company as Real Estate Reporting Person

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Closing. Seller and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Seller and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

7. EXPENSES AND TAXES

7.1 Rent and Other Apportionments

The following are to be apportioned through escrow as of the Closing Date with Seller responsible for or entitle to amounts allocable to the period prior to the Closing Date and City being responsible for or entitled to amounts allocable to the Closing Date and periods following the Closing Date:

(a) Rent

Rent under the Assigned Leases shall be apportioned as of the Closing Date, regardless of whether or not such rent has been paid to Seller. With respect to any rent arrearage arising under the Assigned Leases, after the Closing, City shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by City shall be applied first to all unpaid rent accruing on and after the Closing Date, and then to unpaid rent accruing prior to the Closing Date. City shall take reasonable steps to recover any rent arrearage (i.e. including such arrearages in rent invoices sent to the tenants) but shall not be required to bring suit against any tenant. Seller shall be permitted to take reasonable actions to collect unpaid rent allocable to the period prior to the Closing from the tenants.

(b) Leasing Costs

Seller shall pay the leasing commissions and tenant improvement costs accrued in connection with any Lease executed on or before the Closing and listed on Schedule 7.1(b) attached hereto. City shall be entitled to a credit against the Purchase Price for the total sum of all security deposits paid to Seller by tenants under any Assigned Leases, to the extent not utilized by Seller prior to the Closing.

(c) Other Tenant Charges

Where the Assigned Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller shall have collected any portion thereof in excess of amounts owed by Seller for such items for the period prior to the Closing Date, there shall be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City shall apply all such excess amounts to the charges owed by the tenants for such items and, if required by the Assigned Leases, shall rebate or credit tenants with any remainder. If, within ninety (90) days after Closing, it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller shall promptly pay the deficiency to City.

(d) Utility Charges

Seller shall use commercially reasonable efforts to cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. If a meter reading is unavailable, the parties shall close on a reasonable estimate and shall be trued up within ninety (90) days after Closing. All utility deposits paid by Seller shall remain the property of Seller and City shall reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

(e) Other Apportionments

Amounts payable under any contracts assumed pursuant hereto, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date.

7.2 Closing Costs

City shall pay the cost of any Survey, the premium for the Title Policy and the cost of the endorsements thereto, and escrow and recording fees. Seller shall pay the cost of any transfer

taxes applicable to the sale and the sales tax on any Personal Property. Seller shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. [City shall pay for any modifications or upgrades to the Property triggered by the proposed transaction or by any transfer contemplated in this Agreement]. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for the City and County of San Francisco, as determined by Title Company.

7.3 Real Estate Taxes and Special Assessments

General real estate taxes payable for the tax year prior to year of Closing and all prior years shall be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Seller and City as of the Closing Date with City responsible for the Closing Date and periods following the Closing Date. At or before the Closing, Seller shall pay any installments of any special assessments against the Property that are due prior to the Closing, including, without limitation, interest payable thereon, but only to the extent such installments are allocable to the period prior the Closing Date.

7.4 Preliminary Closing Adjustment

Seller and City shall jointly prepare a preliminary Closing adjustment on the basis of the Assigned Leases and, to the extent applicable, the Assumed Contracts, and other sources of income and expenses, and shall deliver such computation to Title Company prior to Closing.

7.5 Post-Closing Reconciliation

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they shall be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations shall promptly pay such sum to the other party. No adjustments to any prorations shall be made later than the date which is 180 days after the Closing Date.

7.6 Survival

The provisions of this Section shall survive the Closing.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of Seller

As used in this Agreement, "Seller's knowledge" or words having the same meaning (e.g., "Seller knows", "to the knowledge of Seller's Representative, etc.) shall mean the present, actual knowledge of Joe Maraccini ("Seller's Representative"), without investigation or review of files relating to the Property. Seller's knowledge does not include logical conclusions from known facts. Such person(s) have no personal liability for any matter set forth in or relating to this Agreement. Seller represents and warrants to and covenants with City as follows:

(a) To Seller's knowledge, there are not now, and at the time of the Closing will not be, any material physical or mechanical defects of the Property, and no violations of any laws, rules or regulations applicable to the Property, except such violations that would be cured by the discontinuation of all business operations within the improvements or the demolition of all remaining improvements on the land.

(b) To Seller's knowledge, the Assigned Leases, Assumed Contracts, Documents and Other Information furnished to City are and at the time of Closing will be true, correct and complete copies of the versions of such documents in Seller's possession.

(c) [Intentionally Omitted].

(d) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(e) To Seller's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are and at the time of Closing will be installed to the property lines of the Property.

(f) To Seller's knowledge and except as otherwise disclosed in the Documents or otherwise obtained by City during the Due Diligence Period, there are no claims or actions pending or threatened in writing involving the location of any fence or boundary.

(g) To Seller's knowledge, there is no litigation pending, threatened in writing, against Seller that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(h) Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

(i) Seller is a limited liability company duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(j) Seller represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Seller has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(k) To Seller's knowledge, Seller knows of no facts that would prevent City from using and operating the Property after Closing in the normal manner of the Property's current use as of the Closing Date.

(l) To Seller's knowledge the Seller's documents listed in Schedule 1 comprise all the Phase I or Phase II environmental reports that Seller has obtained for the Property.

Schedule 1 also includes disclosures regarding asbestos at the Property, the remediation of the same, and a disclosure regarding certain assessments on the Property.

(m) Except for the Assigned Leases and Assumed Contracts and the Seller's Leaseback, at the time of Closing there will be no leases or other occupancy agreements affecting any of the Property. At the time of Closing there will be no outstanding written or oral contracts made by Seller for any work on any of the Improvements that have not been fully paid for.

(n) Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

(o) [Intentionally Omitted]

(p) No brokerage or similar fee is due or unpaid by Seller with respect to any Lease. No brokerage or similar fee shall be due or payable on account of the exercise of, without limitation, any renewal, extension or expansion options arising under any Leases.

(q) [Intentionally Omitted]

8.2 "As-Is" Purchase

EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, INCLUDING SECTION 8.1 ABOVE, SELLER IS CONVEYING, AND CITY IS ACQUIRING, THE PROPERTY "AS IS," "WHERE IS," AND "WITH ALL FAULTS AND DEFECTS," LATENT AND PATENT. EXCEPT FOR THE EXPRESS REPRESENTATIONS, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE IMPROVEMENTS OR THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WATER, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH CITY MAY INTEND TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION INCLUDING, WITHOUT LIMITATION, ALL APPLICABLE ZONING LAWS, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (F) THE ACREAGE, SQUARE FOOTAGE OR VALUATION OF THE PROPERTY, (G) ANY TAX CONSEQUENCES OF THE TRANSACTION CONTEMPLATED HEREBY, OR (H) ANY OTHER MATTER RELATED TO OR CONCERNING THE PROPERTY (COLLECTIVELY, THE "DISCLAIMED MATTERS"), CITY SHALL HAVE NO RIGHT TO SEEK RECOURSE AGAINST SELLER ON ACCOUNT OF ANY LOSS, COST OR EXPENSE SUFFERED OR INCURRED BY CITY WITH REGARD TO ANY OF THE DISCLAIMED MATTERS. BY ITS PROCEEDING TO CLOSING HEREUNDER, CITY ACKNOWLEDGES THAT CITY, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ANY STATEMENT, REPRESENTATION OR

OTHER ASSERTION MADE BY SELLER WITH RESPECT TO THE PROPERTY EXCEPT FOR THE EXPRESS REPRESENTATIONS. CITY HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST SELLER WITH RESPECT TO THE DISCLAIMED MATTERS.

8.3 Updates to Representations and Warranties.

All of Seller's representations that are deemed to be made as of Closing shall be deemed to be revised pursuant to any information discovered by Buyer or disclosed by or on behalf of Seller in any written update prior to or as of the Closing. In the event any such update discloses changes to the representations and warranties set forth in Section 8.1, then it shall not be a default by Seller hereunder. In addition, to the extent City has actual knowledge, or is deemed to have knowledge as set forth below, prior to the BOS Approval Date, that any representations or warranties made by Seller are inaccurate, untrue or incorrect in any way, if City nonetheless proceeds to Closing hereunder, such representations and warranties shall be deemed modified to reflect such actual knowledge (or deemed knowledge) of City and such inaccuracy, untruth or incorrectness shall not constitute a failure of the condition to closing set forth in Section 5.1. For purposes of this Agreement, City shall be deemed to have knowledge of any inaccuracy, untruth or incorrectness in the representations or warranties made by Seller if such inaccuracy, untruth or incorrectness is revealed by (i) any document or information identified on any of the exhibits and/or schedules attached to this Agreement, and/or any Due Diligence activities conducted by City, or (ii) any of the Documents, or (iii) any other document, plat or other writing disclosing information first learned of by Seller after the date hereof that, within five (5) business days after Seller's knowledge of the same, is made available by Seller in writing to City (by any method permitted hereunder). Notwithstanding anything set forth in the foregoing provisions or elsewhere in this Agreement but subject to this Section 8.2, Seller shall not be relieved from any liability for, and City retains all rights and remedies for and in respect of, any fraud or intentional misrepresentation by Seller.

8.4 Remedies.

Seller's obligations respecting Seller's representations and warranties shall continue after the Closing for a period of only six (6) months, and if City fails to notify Seller as to a breach of any of Seller's representations and warranties within six (6) months after the Closing Date, Seller's liability and obligations with respect to Seller's representations and warranties and City's rights and remedies in respect thereto shall be of no further force or effect. The provisions of this Section shall survive beyond the Closing, or any termination of this Agreement for the period specified in this Section.

9. RISK OF LOSS AND POSSESSION

9.1 Risk of Loss

If any of the Property is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any of the Property, then the rights and obligations of Seller and City hereunder shall be as follows:

(a) If such damage or destruction is fully covered by Seller's insurance except for the deductible amount thereunder, and the insurer agrees to timely pay for the entire cost of such repair, and such damage or destruction would cost less than One Million and 00/100 Dollars (\$1,000,000) (the "Threshold Damage Amount") to repair or restore, then this Agreement shall remain in full force and effect and City shall acquire the Property upon the terms and conditions set forth herein. In such event, City shall receive a credit against the Purchase Price equal to such deductible amount, and Seller shall assign to City at Closing all of Seller's right, title and

interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City.

(b) If such damage or destruction is not fully covered by Seller's insurance, other than the deductible amount, and would cost less than the Threshold Damage Amount to repair or restore, then the transaction contemplated by this Agreement shall be consummated with City receiving a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction.

(c) If the cost of such damage or destruction would equal or exceed the Threshold Damage Amount, or if condemnation proceedings are commenced against any of the Property, then, City shall have the right, at its election, either to terminate this Agreement in its entirety, or only as to that portion of the Property damaged or destroyed or subject to condemnation proceedings (in which case there shall be an equitable adjustment to the Purchase Price), or to not terminate this Agreement and purchase the Property (or the portion not damaged or affected by condemnation, as the case may be). City shall have thirty (30) days after Seller notifies City that an event described in this Subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election not to terminate this Agreement. If this Agreement is terminated in its entirety or in part pursuant to this Subsection (c) by City's delivery of notice of termination to Seller, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination. If City elects not to terminate this Agreement, Seller shall notify City of Seller's intention to repair such damage or destruction, in which case this Agreement shall remain in full force and effect, or notify City of Seller's intention to give City a credit against the Purchase Price at the Closing in the amount reasonably determined by City and Seller (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction and, in the event of a result of such condemnation proceeding, the value of any Property taken as a result of such proceeding, in which case this Agreement shall otherwise remain in full force and effect, and Seller shall be entitled to any proceeds of insurance or condemnation awards. Any repairs elected to be made by Seller pursuant to this Subsection shall be made within one hundred eighty (180) days following such damage or destruction and the Closing shall be extended until the repairs are substantially completed. As used in this Section, the cost to repair or restore shall include the cost of lost rental revenue, including additional rent and base rent.

9.2 Insurance

Through the Closing Date, Seller shall continue to maintain, at Seller's sole cost and expense, the insurance it has in place as of the date of this Agreement or any renewal thereof or any new policy with substantially the same coverage. Seller shall furnish City with evidence of such insurance upon request by City.

9.3 Possession

Possession of the Property shall be delivered to City on the Closing Date, subject to the Assigned Leases and the Seller's Leaseback.

10. MAINTENANCE; CONSENT TO NEW CONTRACTS

10.1 Maintenance of the Property by Seller

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain the Property in the condition it is in as of the date hereof, loss by casualty

excepted, shall perform all work required to be done by the landlord under the terms of any Assigned Lease or Assumed Contract, and shall make all repairs, maintenance and replacements of the Improvements and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property; provided, however, that in no case shall Seller be required to make any repair or improvement prior to the Closing Date if the cost of the same would, together with the costs of all other repairs and improvement made by Seller after the date of this Agreement, exceed, in the aggregate, the sum of Ten Thousand and No/100 Dollars (\$10,000.00).

10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts

After the date the Director of Property submits legislation for approval by City's Board of Supervisors of this Agreement/the Effective Date, Seller shall not enter into any Lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property, or waive any rights of Seller under any Assigned Lease or Assumed Contract, without in each instance obtaining City's prior written consent thereto, which consent in the case of any Lease shall include approval of the financial condition of the proposed tenant, the configuration of the space to be leased, and the terms of such Lease or contract. Notwithstanding the foregoing, if any Assumed Lease does not expressly forbid assignment or sublease, then the City shall not have the right to consent to or to approve such assignment or sublease if Seller determines that consent to or approval of the same is reasonable. City agrees that it shall not unreasonably withhold or delay any such consent and shall be deemed to have consented if the City does not reasonably withhold consent or if City fails to consent to the matter in question at least one day before Seller is required to respond to the tenant in question. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management agreements affecting the Property.. [NOTE: TERMINATION OF SERVICE CONTRACTS IS COVERED IN SECTION 5,1(I)]

11. DEFAULT AND REMEDIES

11.1 Seller Default

If the sale of the Property is not consummated because of a Seller default under this Agreement or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, and such default or failure of a Condition Precedent is not cured by Seller within ten (10) days after City's delivery of written notice to Seller, City may, at its sole election (a) terminate this Agreement by delivery of notice of termination to Seller, whereupon (i) City will request Title Company to immediately release to City the Conditional Deposit/Deposit; and (ii) Seller shall pay to City all title and escrow fees and all legal and inspection expenses (as shown in reasonable supporting documentation) incurred by City and any other expenses incurred by City in connection with the performance of its due diligence review of the Property in an amount not to exceed in the aggregate Fifty Thousand and 00/100 Dollars (\$50,000), and neither party shall have any further rights or obligations hereunder, or (b) within 60 days' of Seller's default, continue this Agreement pending City's action for specific performance, but not damages, but, in connection with such an action for specific performance, City may recover from Seller City's reasonable attorneys' fees and court costs (reasonable attorneys' fees of the City's Office of the City Attorney will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the practice in the City of San Francisco in law firms of approximately the same number of attorneys employed by the Office of the City Attorney). City is prohibited from pursuing any claims against the Seller after the Closing Date with respect to: (i) any claim under this Agreement of which the City has knowledge prior to the Closing Date; (ii) any claim under this Agreement in excess of an aggregate of One Hundred Twenty Thousand and 00/100 Dollars

(\$120,000.00); or (iii) any claim which the City had not described in reasonable detail in a written notice to Seller given within the twelve (12) months immediately following the Closing Date. City waives any right it has or may acquire to file a lis pendens against the Property.

11.2 Buyer Default

After the Effective Date, if the sale of the Property contemplated hereby is not consummated because of a default under this Agreement by City, then City agrees to pay to Seller the Deposit as liquidated damages. The parties have agreed that Seller's actual damages, in the event of a material default by City, would be extremely difficult or impracticable to determine. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE DAMAGE REMEDY AGAINST CITY, IN THE EVENT OF A MATERIAL DEFAULT UNDER THIS AGREEMENT ON THE PART OF CITY. SELLER AND CITY HAVE INITIALED THIS SECTION 11.2 AS EVIDENCE OF THEIR EXPRESS INTENT TO SO LIQUIDATE ALL DAMAGES AS PROVIDED IN THIS SECTION. THIS SECTION 11.2 SHALL NOT PREVENT SELLER FROM ENJOINING ANY BREACH OF THIS AGREEMENT BY CITY, FROM ENFORCING ANY INDEMNITY OBLIGATION OF CITY, OR FROM ENFORCING SELLER'S RIGHTS UNDER SECTION 12.10 [ATTORNEY'S FEES].

INITIALS: Seller _____ City _____

12. GENERAL PROVISIONS

12.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) transmission if given by email sent to each email address for each party to whom notices are to be sent for Seller or City, respectively, (ii) hand delivery, against receipt, (iii) one (1) day after being deposited with a reliable overnight courier service, or (iv) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: **1939 Market Street MOHCD**
Email Address: joshua.keene@sfgov.org

And:

Mayor's Office of Housing and Community
Development
City and County of San Francisco
1 S. Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: Director

Re: **1939 Market - MOHCD**
Email Address: joyce.slyn@sfgov.org

with copy to:

Keith Nagayama
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Re: **1939 Market - MOHCD**
Email Address: keith.nagayama@sfcityatty.org

Seller:

c/o McMorgan & Company
One Front Street, Suite 500
San Francisco, California 94111
Attention: Mark Taylor, Partner
Email: mtaylor@mcmorgan.com

c/o McMorgan & Company
One Front Street, Suite 500
San Francisco, California 94111
Attention: Tracy Roshangah
Email: troshangah@mcmorgan.com

c/o McMorgan & Company
One Front Street, Suite 500
San Francisco, California 94111
Attention: Andrew Josef, Esq.
Email: ajosef@mcmorgan.com

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis
LLP
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Attention: Lee Gotshall-Maxon, Esq.
Email: lgotshallmaxon@allenmatkins.com

Allen Matkins Leck Gamble Mallory & Natsis
LLP
Three Embarcadero Center, 12th Floor
San Francisco, California 94111
Attention: Paul Nash, Esq.
Email: pnash@allenmatkins.com

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above.

12.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed

real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein, except for Cushman and Wakefield and Tri Commercial, whose commission not to exceed three percent (3%) of the Purchase Price, if any is due, shall be the sole responsibility of Seller pursuant to a separate written agreement with such broker, and City shall have no liability whatsoever therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

12.3 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. City shall have the right, upon notice to Seller, to assign its right, title and interest in and to this Agreement to the Nominee or one (1) or more assignees at any time before the Closing Date.

12.4 Amendments

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

12.5 Continuation and Survival of Representations and Warranties

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

12.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12.7 Merger of Prior Agreements

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall, on the Effective Date, be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall, upon the Effective Date, constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

12.8 Parties and Their Agents; Approvals

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

12.9 Interpretation of Agreement

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

12.10 Attorneys' Fees

In the event that either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

12.11 Sunshine Ordinance

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

12.12 Conflicts of Interest

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

12.13 Notification of Prohibition on Contributions

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Seller further acknowledges that the (i) prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Seller is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Seller certifies that Seller has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

12.14 Non-Liability of City Officials, Employees and Agents; Buyer's Related Parties.

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement. Notwithstanding anything to the contrary in this Agreement, no board, commission, member, officer, employee or agent of Seller or its advisors or consultants shall be personally liable to City, its successors and assigns, in the event of any default or breach by Seller or for any amount which may become due to City, its successors and assigns, or for any obligation of Seller under this Agreement or for any other claim related to this Agreement.

12.15 Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

12.16 Effective Date

As used herein, the term "Effective Date" shall mean the date on which the City's Board of Supervisors and Mayor enact, and the Mayor signs, a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

12.17 Severability

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

12.18 Agreement Not to Market Prior to Effective Date

Seller agrees that unless and until this Agreement terminates pursuant to its terms, Seller shall not negotiate with any other parties pertaining to the sale of the Property and shall not market the Property to third parties.

12.19 Acceptance of Agreement by Seller

This Agreement shall be null and void unless executed and delivered by the Seller and City's Office of the City Attorney on or before 5:00 p.m. San Francisco Time on January 21, 2020.

12.20 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

12.21 Time

Time is of the essence in the performance of each of the parties' respective obligations contained herein. If any of the dates specified in this Agreement shall fall on a day which is not a "business day" (as described below), such date shall be deemed to have expired at 5:00 p.m. Pacific Standard Time on the next business day. Any action which is to be taken a specified number of days or business days before an identified date shall be timely if taken before 5:00 p.m. (Pacific Standard Time) on the date which is the specified number of days before the identified date, including, in counting the specified number of days, the identified date. For example, if an action is to be taken two (2) business days before a date which falls on a Wednesday during a week when Monday through Wednesday, inclusive, are all business days, then the action shall be timely if taken before 5:00 p.m. (Pacific Standard Time) on the Tuesday in such week. A "business day" is a day, other than a Saturday, Sunday, federal holiday or local holiday where the City Recorder's office in the City and County of San Francisco is closed for walk in recording of documents.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY AND SELLER HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGES]

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:

SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION, LOCAL
UNION NO. 104

By: McMorgan & Company LLC,
a Delaware limited liability company
Its: Real Estate Advisor

By: _____
Mark Taylor, Partner

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
ANDRICO Q. PENICK
Director of Property

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Keith Nagayama
Deputy City Attorney



SAN FRANCISCO PLANNING DEPARTMENT

General Plan Referral

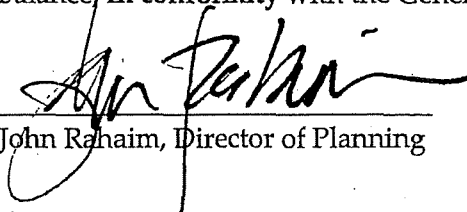
Date: January 13, 2020
Case No. Case No. 2019-023188GPR
Acquisition of 1939 Market Street

Block/Lot No.: 3501-006 & 3501-007
Project Sponsor: Joyce Slen
Mayor's Office of Housing & Community Development
(MOHCD)
1 South Van Ness, 5th Floor
San Francisco, CA 94103

Applicant: Josh Keene
City and County of San Francisco – Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Staff Contact: Reanna Tong, (415) 575-9193
Reanna.tong@sfgov.org

Recommendation: Finding the proposed acquisition of 1939 Market Street, on balance/in conformity with the General Plan.

Recommended
By: 
John Rahaim, Director of Planning

PROJECT DESCRIPTION

The Project is the City's proposed purchase of a parcel located at 1939 Market Street for permanent affordable housing. The parcel is currently owned by the Sheet Metal Workers' International Association Local Union 104 and leased as an administrative office and training facility. The City and County of San Francisco has signed a Letter of Intent with the current parcel owner to purchase the site. Upon the City's acquisition of the parcel, the Sheet Metal Workers' Union will lease the space from the City for 24 months. It is anticipated that the City will secure approval by the Board of Supervisors for site acquisition in late-February 2020 and close on the acquisition in late-March 2020. The Mayor's Office of Housing and Community Development intends to construct affordable housing on the site. The City will select a developer for the site through a Requests for Qualifications process when funding for development becomes available. The submittal is for a General Plan Referral to recommend whether the Project is in conformity

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

ACQUISITION OF 1939 MARKET STREET

with the General Plan, pursuant to Section 4.105 of the Charter, and Section 2A.52 and 2A.53 of the Administrative Code.

ENVIRONMENTAL REVIEW

Real estate transaction only. Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

The Project is the City's proposed acquisition of property containing an existing structure with office and commercial space. The proposed acquisition of 1939 Market Street is consistent with the Eight Priority Policies of Planning Code Section 101.1 as described in the body of this letter and is, on balance, in conformity with the following Objectives and Policies of the General Plan:

Note: General Plan Objectives are shown in **BOLD UPPER CASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

HOUSING ELEMENT

OBJECTIVE 1, IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

POLICY 1.2

Focus housing growth and infrastructure necessary to support growth according to community plans. Complete planning underway in key opportunity areas. Such as Treasure Island, Candlestick Park and Hunter's Point Shipyard.

Comment: The property that is proposed for acquisition and permanent affordable housing sits in the Market Octavia Area Plan boundaries, which encourages infill housing in an area with easy access to transit and services.

POLICY 1.3

Work proactively to identify and secure opportunity sites for permanently affordable housing.

Comment: The acquisition of 1939 Market Street would secure this site for permanently affordable housing.

POLICY 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

ACQUISITION OF 1939 MARKET STREET

Comment: The permanently affordable housing project to be constructed on this property would be easily accessible to major MUNI and bicycle routes, and would enable households to rely on walking, public transportation and bicycling for most trips.

OBJECTIVE 4, FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

POLICY 4.4

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

Comment: The acquisition of 1939 Market Street would secure this site for permanently affordable housing, addressing an unmet housing need in San Francisco.

POLICY 4.5

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

Comment: The acquisition of 1939 Market Street would secure this site for permanently affordable housing in an existing, diverse, mixed-use neighborhood close to amenities like parks, schools and high-frequency transit.

OBJECTIVE 7, SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

POLICY 7.5

Encourage the production of affordable housing through process and zoning accommodations, and prioritize affordable housing in the review and approval processes.

Comment: Once the site is acquired, the affordable housing project constructed on the site will be eligible to take advantage of legislation and zoning that encourages the production of more and affordable housing, including HOME-SF and removal of housing density limits in a Neighborhood Commercial Transit zoning district.

OBJECTIVE 8, BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING.

POLICY 8.1

Support the production and management of permanently affordable housing.

ACQUISITION OF 1939 MARKET STREET

Comment: The acquisition of 1939 Market Street would secure this site for permanently affordable housing.

OBJECTIVE 13, PRIORITIZE SUSTAINABLE DEVELOPMENT IN PLANNING FOR AND CONSTRUCTING NEW HOUSING.**POLICY 13.1**

Support "smart" regional growth that locates new housing close to jobs and transit.

Comment: The acquisition of 1939 Market Street would secure this site for permanently affordable housing in a neighborhood close to high-frequency transit and within proximity and access to jobs.

POLICY 13.3

Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

Comment: The acquisition of 1939 Market Street would secure this site for permanently affordable housing in a neighborhood close to high-frequency transit, protected bicycle infrastructure, and ground floor commercial corridors that encourage pedestrian activity.

COMMERCE AND INDUSTRY ELEMENT**OBJECTIVE 3, PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.****POLICY 3.1**

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Comment: The City could explore retaining space for technical training and associated administrative offices on site after the Sheet Metal Worker's Union's 24-month lease is up in order to provide opportunities for employment improvement to unskilled and semi-skilled workers.

Market and Octavia Area Plan**OBJECTIVE 2.2, ENCOURAGE CONSTRUCTION OF RESIDENTIAL INFILL THROUGHOUT THE PLAN AREA.**

Comment: The acquisition of 1939 Market Street would secure this site for permanently affordable housing. Future infill housing on this site would be built close to transit and services.

ACQUISITION OF 1939 MARKET STREET**PROPOSITION M FINDINGS – PLANNING CODE SECTION 101.1**

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

Eight Priority Policies Findings

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

The proposed project is found to be consistent with the eight priority policies of Planning Code Section 101.1 in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.

The existing uses on the site include an administrative office and training facility. The Sheet Metal Workers' Union's will continue to lease the space for 24 months after the City's purchase, preserving the retail and community-serving job-related uses. It is not yet known whether the project MOHCD intends to construct will preserve these uses on the ground floor, which could provide future opportunities for neighborhood-serving retail uses and employment.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood.

The Project would have no adverse effect on the City's existing housing stock or on neighborhood character. The construction of a 100% affordable housing project on the site is likely to enhance the cultural and economic diversity of the neighborhood.

3. That the City's supply of affordable housing be preserved and enhanced.

The acquisition of this site would allow the construction of permanently affordable housing, enhancing the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposed acquisition of the site would not result in commuter traffic impeding MUNI's transit service, overburdening the streets or altering current neighborhood parking.

ACQUISITION OF 1939 MARKET STREET

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for residential employment and ownership in these sectors be enhanced.

The Project would not adversely affect the City's economic base or future opportunities for employment and/or ownership. The future affordable housing project on the site will increase opportunities for residential employment in our industrial and service sectors by offering permanently affordable housing units for low-income households and families.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project would not adversely affect achieving the greatest possible preparedness against injury and loss of life in an earthquake. The affordable housing project to be constructed on the site would be required to meet all applicable building code seismic standards.

7. That landmarks and historic buildings be preserved.

This Project would not adversely affect any landmarks or buildings of historic significance. Per the Department's Property Information Map and Database, the building that could be demolished or altered to create affordable housing has a Historic Resource Status of "C", indicating that no historic resource is present.

8. That our parks and open space and their access to sunlight and vistas be protected from development.

The acquisition of the site would not adversely affect any parks or open space. The affordable housing project to be constructed on the site would undergo review to ensure it doesn't create a negative impact to sunlight and vistas to our parks and open space.

RECOMMENDATION:

Finding the acquisition of 1939 Market Street, on balance, in-conformity with the General Plan

OFFICE OF THE MAYOR
SAN FRANCISCO



LONDON N. BREED
MAYOR
RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2020 JAN 14 PM 4:49

BY 

TO: Angela Calvillo, Clerk of the Board of Supervisors *Slc*
FROM: Sophia Kittler
RE: Acquisition of Real Property for \$12,000,000 – 1939 Market Street, San Francisco – Sheet Metal Workers' International Association, Local Union No. 104 – Mayor's Office of Housing and Community Development
DATE: Tuesday, January 14, 2020

Resolution 1) approving and authorizing the Director of Property, on behalf of the Mayor's Office of Housing and Community Development, to acquire real property, located at 1939 Market Street from Sheet Metal Workers' International Association, Local Union No. 104, for purchase at \$12,000,000 inclusive of a deposit in the amount of \$500,000; 2) placing the Property under the jurisdiction of the San Francisco Mayor's Office of Housing and Community Development for use in constructing affordable housing for San Franciscans; 3) adopting findings that the conveyance is consistent with the City's General Plan and Eight Priority Policies of City Planning Code Section 101.1; and 4) authorizing the Director of Property to execute documents, make certain modifications and take certain actions in furtherance of the purchase agreement and this resolution, including assuming certain leases, entering into a leaseback with seller, and assuming certain service contracts; and 5) affirming the Planning Department's determination under the California Environmental Quality Act.

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



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
 Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #:
200042

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING <i>(for amendment only)</i>
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Joyce Slen	(415) 701-5577
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
MYR Mayor's Office of Housing and Community	joyce.slen@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Sheet Metal Workers' International Association Local	TELEPHONE NUMBER 925-314-8600
STREET ADDRESS (including City, State and Zip Code) 2610 Crow Canyon #300, San Ramon, CA 94583	EMAIL joe@smw104.org

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 200042
DESCRIPTION OF AMOUNT OF CONTRACT Purchase by city for \$12,000,000; leaseback by seller for 24 months at \$60,000 per year (
NATURE OF THE CONTRACT (Please describe) Purchase of property by MOHCD for future redevelopment as affordable housing.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Mariacaccini	Joe	CFO
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS			
List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.			
#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.		

10. VERIFICATION	
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.	
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	