

File No. 210939

Committee Item No. 10

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 29, 2021

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Linda Wong Date September 22, 2021

Completed by: Linda Wong Date _____

1 [Multifamily Housing Revenue Bonds and Notes - Amendments - Volume Cap Recycling]

2

3 **Resolution authorizing participation in the California Housing Finance Agency private**
4 **activity bond volume cap recycling program; authorizing a memorandum of**
5 **understanding with California Housing Finance Agency regarding such participation;**
6 **authorizing certain amendments to legal documents relating to the City’s multifamily**
7 **housing revenue bonds and notes in order to facilitate such recycling, as defined**
8 **herein; authorizing the collection of certain fees, as defined herein; ratifying and**
9 **approving any action heretofore taken in connection with such recycling, as defined**
10 **herein; granting authority to City officials to take actions necessary to implement this**
11 **Resolution, as defined herein; and related matters, as defined herein.**

12

13 WHEREAS, From time to time, the City and County of San Francisco (the “City”) has
14 issued in the past and will issue in the future its multifamily housing revenue bonds or notes
15 (each, a “Multifamily Issue”) in order to provide for the conduit financing of the acquisition,
16 development, construction, rehabilitation and/or equipping of privately owned multifamily
17 rental housing facilities in the City consisting of, in whole or in part, units which are rented to
18 households of low, very low or extremely low income (each, a “Project”); and

19 WHEREAS, Each Multifamily Issue is a limited obligation of the City, repayable only
20 from the revenues of the Project financed thereby and other collateral pledged by the owner
21 thereof (each, a “Borrower”); and

22 WHEREAS, In order for interest on any Multifamily Issue to be exempt from federal
23 income tax, Section 146 of the Internal Revenue Code requires the California Debt Limit
24 Allocation Committee to grant an allocation of private activity bond volume cap to the City in

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1 the amount of the Multifamily Issue or the portion thereof the interest on which is intended to
2 be so exempt; and

3 WHEREAS, Such private activity bond volume cap is a limited resource, and its
4 scarcity currently limits the production and preservation of affordable rental housing units in
5 the City and throughout California; and

6 WHEREAS, The California Housing Finance Agency ("CalHFA") has proposed a
7 program (the "Program") the purpose of which is to recycle private activity bond volume cap
8 previously granted to California multifamily housing revenue bond and note issuers such as
9 the City, thereby facilitating the financing of additional affordable rental housing in California
10 without obtaining new private activity bond volume cap; and

11 WHEREAS, There has been prepared and presented to this Board of Supervisors (the
12 "Board") for consideration at this meeting a form of memorandum of understanding with
13 CalHFA (the "MOU"), regarding the City's participation in the CalHFA volume cap recycling
14 program, and such document is on file with the Clerk of the Board of Supervisors (the "Clerk
15 of the Board"); and

16 WHEREAS, Such recycling would require the amendment of certain legal documents
17 associated with the applicable Multifamily Issues, including without limitation indentures,
18 funding loan agreements, master pledge and assignment agreements, governmental notes
19 and bonds; and

20 WHEREAS, There has been prepared and presented to the Board for consideration at
21 this meeting the form of Amendment to Funding Loan Agreement and Governmental Notes
22 (the "Form Amendment"), and such document is on file with the Clerk of the Board; and

23 WHEREAS, The Form Amendment is in substantially appropriate form and is an
24 appropriate instrument to be executed and delivered with respect to any Multifamily Issue of
25 the City to accomplish the purposes intended; and

1 WHEREAS, The Board finds that the public interest and necessity require that the City
2 assist in recycling private activity bond volume cap by participating in the Program, executing
3 and delivering the MOU in substantially the form presented to this meeting, and amending
4 certain legal documents associated with one or more Multifamily Issues of the City, including
5 without limitation amendments in substantially the form of the Form Amendment; and

6 RESOLVED, by this Board of Supervisors of the City and County of San Francisco, as
7 follows:

8 Section 1. Approval of Recitals. The Board hereby finds and declares that the above
9 recitals are true and correct.

10 Section 2. Approval of Recycling of Private Activity Bond Volume Cap. The Board
11 hereby authorizes the City, acting through the Mayor’s Office of Housing and Community
12 Development, to participate in the Program and to take such other actions and execute such
13 documents as may be necessary or desirable to recycle private activity bond volume cap
14 associated with the Multifamily Issues of the City. All actions in furtherance thereof heretofore
15 taken by the City and its officers, employees and representatives are hereby approved,
16 ratified and confirmed.

17 Section 3. Approval of MOU. The form of MOU, which has been presented to the Board
18 and a copy of which is on file with the Clerk of the Board, is hereby approved. The Board
19 hereby authorizes the execution and delivery of the MOU, in substantially such form, together
20 with such additions thereto and changes therein as the Mayor, the Director of the Mayor's
21 Office of Housing and Community Development, or the designee of either (each, an
22 “Authorized Representative”) may approve or recommend in accordance with Section 5
23 hereof, in consultation with the City Attorney of the City (the "City Attorney").

24 Section 4. Approval of Amendments. The indentures, funding loan agreements, master
25 pledge agreements, bonds, governmental notes and other legal documents relating to any

1 and all Multifamily Issues of the City, past, present and future, are hereby authorized to be
2 amended (each, an "Amendment") in such manner as may be deemed necessary or desirable
3 by any Authorized Representative, in consultation with the City Attorney, to accomplish the
4 recycling of the private activity bond volume cap associated with such Multifamily Issues,
5 provided that such Amendment does not increase the liability or risk to the City, require the
6 City to spend any resources beyond the reasonable cost of any outside advisors and that
7 which is provided for in the MOU, or otherwise harm the interests of the City. Without implied
8 limitation of the foregoing, the Form Amendment, which has been presented to the Board and
9 a copy of which is on file with the Clerk of the Board, is hereby approved. The Mayor, the
10 Director of the Mayor's Office of Housing and Community Development, or the designee of
11 either (each, an "Authorized Representative"), is hereby authorized to execute any
12 Amendment approved as to form by the City Attorney if it is (i) in substantially the form of the
13 Form Amendment, together with such additions thereto and changes therein as the
14 Authorized Representative may approve or recommend in accordance with Section 5 hereof,
15 or (ii) in any other form meeting the requirements of the first sentence of this Section.

16 Section 5. Issuer Fees. In addition to any other fees permitted to be charged with
17 respect to the Bonds or the Project, the City, acting through the Mayor's Office of Housing and
18 Community Development, is authorized to charge fees provided for in the MOU or otherwise
19 reasonably calculated to recover the internal and third-party administrative costs associated
20 with negotiating the MOU, entering into an Amendment and assisting with the recycling of
21 private activity bond volume cap associated therewith. The Board hereby authorizes the
22 Mayor's Office of Housing and Community Development to charge and collect the fees
23 described in this section.

24 Section 5. Modifications, Changes, Additions. Any Authorized Representative
25 executing the MOU or an Amendment, in consultation with the City Attorney, is hereby

1 authorized to approve and make such additional modifications, changes or additions to the
2 MOU or such Amendment as may be necessary or advisable, provided that such modification,
3 change or addition does not increase the liability or risk to the City, require the City to spend
4 any resources beyond the reasonable cost of any outside advisors and that which is provided
5 for in the MOU, or otherwise harm the interests of the City. The approval of any modification,
6 addition or change to any of the aforementioned documents shall be evidenced conclusively
7 by the execution and delivery of the document in question. Within 90 days of the documents
8 approved by this Resolution being executed by all parties, such final documents (showing
9 marked changes, if any) shall be provided to the Clerk of the Board, for inclusion in the official
10 file, together with a brief explanation of any changes from the date of the adoption of this
11 Resolution.

12 Section 6. Ratification. All actions heretofore taken by the officers and agents of the
13 City with respect to the MOU, any Amendments and the recycling of private activity bond
14 volume cap, as consistent with the documents authorized herein and this Resolution, are
15 hereby approved, confirmed and ratified.

16 Section 7. General Authority. The proper officers of the City are hereby authorized and
17 directed, for and in the name and on behalf of the City, to do any and all things and take any
18 and all actions and approve, and execute and deliver any and all certificates, agreements and
19 other documents, including but not limited to estoppels, tax documents, releases,
20 terminations, consents, assignments, replacement Bonds, acknowledgments, recognitions,
21 notices and those documents described in the MOU or any Amendment, which they, or any of
22 them, may deem necessary or advisable in order to effectuate the purposes of this Resolution
23 in consultation with the City Attorney. Any such actions shall not increase the liability or risk to
24 the City, require the City to spend any resources beyond the reasonable cost of any outside
25 advisors and that which is provided for in the MOU, or otherwise harm the interests of the

1 City, and any such officer shall consult with the City Attorney prior to taking any such action or
2 executing any such document.

3 Section 8. File. All documents referenced herein as being on file with the Clerk of the
4 Board are located in File No. 210939, which is hereby declared to be a part of this
5 Resolution as if set forth fully herein.

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10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA
City Attorney

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13 By: /s/
14 KENNETH D. ROUX
Deputy City Attorney

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding and any appendices or addendums hereto (collectively, the “MOU”) is dated as of _____, 2021 and is entered into by and between the City and County of San Francisco, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California (together with any successor to its rights, duties, and obligations, the “City”), represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”), and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California (“CalHFA”).

RECITALS

WHEREAS, MOHCD and CalHFA are committed to providing and/or facilitating low-cost acquisition, construction, rehabilitation and financing for multifamily housing for very low to moderate income individuals and families in the City and County of San Francisco and the State of California, respectively; and

WHEREAS, MOHCD operates a conduit bond issuance program whereby MOHCD issues tax-exempt and taxable housing bonds to provide construction and permanent financing for projects located or to be located in the City and County of San Francisco; and

WHEREAS, CalHFA has a conduit bond issuance program, a description of which is attached hereto and incorporated herein as Exhibit A (the “CalHFA Conduit Issuer Program”), whereby CalHFA issues tax-exempt and taxable conduit revenue bonds (“CalHFA Conduit Bonds”) to provide construction and permanent financing for projects, including those located or to be located in the City and County of San Francisco; and

WHEREAS, CalHFA has established a program to preserve private activity bond volume cap as described in 26 U.S.C. § 146 (“Volume Cap”) and subsequently recycle this preserved Volume Cap in accordance with 26 U.S.C. § 146(i)(6) (the “CalHFA Volume Cap Recycling Program”); and

WHEREAS, due to the shortage of housing for low and moderate income individuals and families, MOHCD and CalHFA desire to enter into this MOU in order to permit MOHCD to participate in the CalHFA Volume Cap Recycling Program (as implemented with MOHCD, the “Program”) that will enable CalHFA to both preserve a portion of the tax exempt volume cap for bonds initially issued by MOHCD and issue new CalHFA Conduit Bonds, including bonds issued using recycled Volume Cap, for affordable housing; and

WHEREAS, pursuant to the Program, CalHFA will, in coordination with MOHCD, issue taxable refunding obligations to refund portions of conduit revenue bonds previously issued by MOHCD, and will subsequently issue CalHFA Conduit Bonds in part to refund said taxable obligations and to provide financing for projects in accordance with the terms and provisions outlined in this MOU (hereinafter “Projects”), a description of which is attached hereto and incorporated herein as Exhibit B (the “CalHFA Conduit Issuer Program Matrix”).

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, MOHCD and CalHFA hereby agree as follows:

AGREEMENT

1. **PROGRAM DESCRIPTION.**

A. MOHCD shall identify for CalHFA previously-issued MOHCD bonds for which \$10,000,000 or more shall be redeemed at the conversion of a project's construction financing to permanent financing and which are eligible for inclusion in the Program so as to preserve Volume Cap in accordance with 26 U.S.C. § 146(i)(6) ("Preserved Bond Volume Cap"). CalHFA and MOHCD shall each bear its own legal fees associated with initial MOU negotiations.

B. CalHFA shall pay, in advance, any external legal expenses and costs, including those incurred by MOHCD, associated with preserving the Preserved Bond Volume Cap, by the redemption of previously-issued MOHCD bonds.

C. CalHFA shall issue taxable obligations to redeem previously issued MOHCD bonds identified by MOHCD for Volume Cap preservation pursuant to the preceding paragraph.

D. In the event there is no trustee or fiscal agent for the previously issued MOHCD bonds, the parties shall cooperate to ensure a trustee or fiscal agent is engaged at no expense to MOHCD to facilitate the preservation of the Preserved Bond Volume Cap.

E. In connection with each preservation of Volume Cap as described above, MOHCD shall no later than three (3) months following the date on which such Volume Cap was preserved as described above, make a request to CalHFA to issue CalHFA Conduit Bonds using all or a portion of the applicable Preserved Bond Volume Cap for specific Projects within the City and County of San Francisco, and CalHFA shall use its best efforts to issue its CalHFA Conduit Bonds in accordance with any such request. As required by 26 U.S.C. § 146(i)(6), the CalHFA Conduit Bonds must be issued within six (6) months following the date the specific Volume Cap is preserved.

F. If MOHCD does not identify Projects that will use all of the Preserved Bond Volume Cap within the above-mentioned timelines, or otherwise earlier affirmatively transfers the Preserved Bond Volume Cap to CalHFA by written communication, including by email, with the approval of MOHCD, the Preserved Bond Volume Cap shall be placed in the "Statewide Pool" and CalHFA may use the Preserved Bond Volume Cap to issue CalHFA Conduit Bonds for projects located throughout the State of California.

G. For any of the Projects, or other projects using Recycled Bond Volume Cap, CalHFA shall be the conduit bond issuer both for the issuance of CalHFA Conduit Bonds using the Preserved Bond Volume Cap (the "Recycled Bond Volume Cap") as well as for any CalHFA

Conduit Bonds issued using new private activity bond volume cap awarded by the California Debt Limit Allocation Committee (“CDLAC”).

H. For any Projects financed pursuant to the Program as requested by MOHCD pursuant to Paragraph E. of this section, CalHFA shall charge and remit to MOHCD, or allow MOHCD to charge directly, with respect to all CalHFA Conduit Bonds issued to finance the Project, fees equivalent to MOHCD’s regular upfront conduit issuance fees. CalHFA shall additionally charge and retain its upfront Bond Recycling Transaction Fee, in an amount as set forth in its Bond Recycling Program Termsheet, published at <https://www.calhfa.ca.gov/multifamily/programs/forms/termsheet-bondrecycling.pdf>.

I. For any Projects financed pursuant to the Program as requested by MOHCD pursuant to Paragraph E. of this section, CalHFA shall charge each such Project an annual ongoing monitoring fee equal to MOHCD’s standard fee of twelve and one half basis points (12.5bps), but not less than five thousand five hundred and NO/100 dollars (\$5,500.00), per year, with respect to the unpaid principal balance of all CalHFA Conduit Bonds issued to finance the Project, as further described in the MOHCD Multifamily Securities Program Manual, a copy of which has been delivered to CalHFA contemporaneously with this MOU. Of such annual ongoing monitoring fee, CalHFA shall remit to MOHCD and MOHCD shall retain 7.5 basis points of the total 12.5 basis points of the unpaid principal balance amount of the loans funded by the CalHFA Conduit Bonds, but not less than one thousand five hundred and NO/100 dollars (\$1,500.00) per year and CalHFA shall retain an annual fee of five (5) basis points of the unpaid principal balance amount of the loans funded by the CalHFA Conduit Bonds, but not less than Four Thousand and NO/100 dollars (\$4,000.00) per year. The bond trustee or fiscal agent shall be required to calculate the distributions to CalHFA and MOHCD and make such distributions to CalHFA and MOHCD.

J. Except as set forth herein, CalHFA shall have no obligation, monetary or otherwise, to MOHCD for any Preserved Bond Volume Cap that is used for Recycled Bond Volume Cap subject to Section E. above or that expires or otherwise is not used for Recycled Bond Volume Cap.

2. ADDITIONAL RESPONSIBILITIES OF THE PARTIES.

A. MOHCD agrees to:

i. Provide CalHFA with a construction debt conversion pipeline as required to facilitate the management of the Program, updated monthly;

ii. execute a tri-party amendment to existing bond documents, or comparable documents(s), with the consent of applicable lender(s) or MOHCD, and any required trustees, fiscal agents, borrowers or other parties, consistent with Exhibit B, to provide for the following:

a. On the conversion date of initial bonds, the borrower loan prepayment amount shall be delivered to the trustee or fiscal agent for the initial bonds or notes;

- b. An amount equal to the loan prepayment amount shall be drawn from CalHFA's taxable credit facility and applied to refund the initial bonds; and
- c. Instructions to the trustee on the application of funds will be provided prior to the conversion date.
- d. These amendments shall be affected at no cost to MOHCD or applicable project participants.

B. CalHFA agrees to:

- i. Manage the Program, including but not limited to; the taxable credit facility, tax compliance, and transaction tracking;
- ii. coordinate the timing of preservation of MOHCD issued bonds with lenders and MOHCD;
- iii. preserve tax-exempt bond Volume Cap;
- v. coordinate timing of new issuances of CalHFA Conduit Bonds for Projects with lenders and MOHCD;
- vii. monitor and ensure compliance with the affordability, condition of the development, and other local, State (including CDLAC) and federal requirements, consistent with its obligations as a conduit bond issuer, by encumbering each property with a Regulatory Agreement and Declaration of Restrictive Covenants (the "Conduit Bond Regulatory Agreement");
- viii. MOHCD shall be included as a noticed party within the Conduit Bond Regulatory Agreement and CalHFA shall notify MOHCD of any defaults to the Conduit Bond Regulatory Agreement or defaults on the Conduit Bonds; and
- ix. inform MOHCD in writing, within 30 business days of its request for CalHFA to issue CalHFA Conduit Bonds for a specific Project pursuant to this MOU, whether the Project complies with the eligible uses as defined by 26 U.S.C. § 146(i)(6). Notwithstanding the notice requirements of Section 8 of this MOU, notices under this subsection may be made to email addresses provided by MOHCD in writing, as may be amended, to CalHFA.

3. TERM OF THE AGREEMENT.

The term of the MOU shall commence on the date the MOU is fully executed by all parties (the "Effective Date") and shall remain in full force and effect until June 30, 2023 from the Effective Date (the "Termination Date"), provided, however, that the term may be extended for up

to 6 additional months subject to the approval of all parties and executed prior to the Termination Date. This section shall not limit the right of either party to terminate under Section 6.B.

4. INDEMNIFICATION

Pursuant to the provisions of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other parties harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from the indemnifying party's ("Indemnitor") acts or omissions in its performance of this MOU provided however, that the damages be paid first by an indemnified party ("Indemnitee"). In the event of third-party loss caused by negligence, wrongful act or omission of any or all parties, each party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of California Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

5. AMENDMENT.

Unless otherwise stated, this MOU, along with its attachments, appendices or any addendums hereto, may only be amended in writing upon mutual consent of all parties.

6. TERMINATION AND REMEDIES FOR BREACH:

A. If a party fails to perform any of the provisions of this MOU, the other parties may provide written notice of such default with a sixty (60) day period to cure the default. If such default is not cured or a plan provided to cure such default, which is acceptable to the noticing party, within 7 days after receipt of notice, the noticing party may terminate this MOU.

B. Any party shall have the right to terminate this MOU, by delivering written notice of such termination to all parties at least ten (10) days in advance of the termination date.

C. No termination of this MOU shall extend to or affect any party's obligations hereunder with respect to Recycled Bonds previously issued or in the process of being issued in accordance with this MOU, without the approval of MOHCD and CalHFA.

D. The rights and remedies of the parties provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this MOU.

7. NOTICES.

Any notices to be given pursuant to this MOU shall be in writing and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, and addressed to the party for whom intended as follows:

To the City: City and County of San Francisco
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 316
San Francisco, California 94102
Attention: City Controller

With copies to: (None of which copies shall constitute notice)
City and County of San Francisco
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 140
San Francisco, California 94102
Attention: City Treasurer

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

Office of the City Attorney
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, California 94102
Attention: Finance Team

To CalHFA: California Housing Finance Agency
500 Capital Mall, Suite 1400
Sacramento, Ca 95814
Attention: Kevin Brown

With a copy to: California Housing Finance Agency
500 Capital Mall, Suite 1400
Sacramento, Ca 95814
Attention: Office of General Counsel

8. ASSIGNMENTS.

This MOU is personal to CalHFA and MOHCD, and no party shall have the right or ability to transfer or assign any rights or obligations stated herein. In the event that CalHFA or MOHCD shall attempt to assign or transfer the same in whole or in part, all rights of the respective party hereunder shall immediately terminate.

9. WAIVERS.

No waiver of any provision of this MOU shall be deemed, or constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or

subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

10. CONFLICTS

MOHCD and CalHFA each agree that in the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this MOU and the provisions of CalHFA Conduit Issuer Program, the provisions of this MOU will be deemed to be controlling for the issuance of CalHFA Conduit Bonds from the Preserved Bond Volume Cap within the City and County of San Francisco, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the MOU.

11. MISCELLANEOUS.

A. The parties acknowledge and agree that this MOU is solely intended to memorialize the general understandings of the parties and, notwithstanding anything to the contrary, is not a commitment by MOHCD or CalHFA to issue CalHFA Conduit Bonds, make a loan(s) or otherwise be required to participate in any rental housing program. This MOU is intended to be an indication of the good faith intent of the parties hereto to work together with respect to the matters set forth herein.

B. Each party hereto shall bear its own costs and expenses in connection with this MOU and in connection with any eventual CalHFA Conduit Bonds and/or loan originated hereunder except as may be otherwise stated herein or agreed to in writing between the parties.

C. This MOU and any undertakings by MOHCD pursuant hereto are not binding upon any officers, agents, employees, attorneys, trustees of or participants in MOHCD personally; any undertakings by MOHCD pursuant hereto bind only and may only be enforced against MOHCD.

D. This MOU and any undertakings by CalHFA pursuant hereto are not binding upon any of the employees, officers, board members, agents or trustees of or participants in CalHFA personally; any undertakings by CalHFA pursuant hereto bind only and may only be enforced against CalHFA.

E. The parties acknowledge and agree that the CalHFA Conduit Issuer Program is solely the approved program of CalHFA and not of MOHCD. Except with respect to the assessment of MOHCD's fees as describe in Paragraph 1.G. above, CalHFA has the sole and absolute discretion in determining fees, structure, underwriting, and other related terms of its CalHFA Conduit Issuer Program.

F. CalHFA shall require that the borrower shall be in compliance with all applicable statutes, rules, policies, regulations and order of the United States, the State of California ("State"), and MOHCD, including any amendments or revisions thereto.

G. MOHCD acknowledges that CalHFA is entering into this MOU solely for the interest of CalHFA and within the expectations and parameters of the CalHFA Conduit Issuer Program to the extent not inconsistent with the terms and provisions of this MOU.

H. MOHCD acknowledges, subject to the provisions hereof, that CalHFA has statewide authority to approve and issue tax exempt private activity bonds, including CalHFA Conduit Bonds, and CalHFA reserves the right to approve and issue private activity bonds, including CalHFA Conduit Bonds, throughout the State of California for any project, under this statewide authority.

I. Notwithstanding any other provision of this MOU, the parties acknowledge and agree that this MOU does not require exclusivity on the part of either party with respect to recycling private activity bond volume cap. CalHFA may agree with other third party local agencies to provide converting bond volume cap for its recycling program in addition to or instead of converting bond volume cap from MOHCD, and MOHCD may agree to provide its converting bond volume cap to third party agencies conducting their own recycling programs or to its own recycling program in addition to or instead of providing such volume cap to CalHFA. MOHCD agrees that it shall provide notice to CalHFA within 30 days of determining that it will keep, or has entered into an agreement to provide to a third party agency, all or a portion of its converting bond volume cap for their respective recycling programs. Any such notice shall not alone effect a termination of this MOU.

J. As set forth in the CalHFA Conduit Issuer Program Matrix, attached as Exhibit B, Projects that will be financed by CalHFA permanent or subordinate financing shall only use Preserved Bond Volume Cap, including Preserved Bond Volume Cap transferred with MOHCD's approval, from the Statewide Pool.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives.

CITY AND COUNTY OF SAN FRANCISCO acting by and through the Mayor's Office of Housing and Community Development

By: _____
Eric D. Shaw, Director
Mayor's Office of Housing and Community Development

Approved as to Form:
DENNIS J. HERRERA
City Attorney

By: _____
Kenneth D. Roux
Deputy City Attorney

CALIFORNIA HOUSING FINANCE AGENCY, a
Public instrumentality and political subdivision of the
State of California

By: _____

Name:
Title:

EXHIBIT A
MOU - CalHFA Conduit Issuer Program

CALIFORNIA MULTIFAMILY BOND RECYCLING PROGRAM
LOCAL ISSUER PARTNERSHIP INITIATIVE

The CalHFA Multifamily Bond Recycling program provides a new source of tax-exempt debt for multifamily financing, outside of California’s volume cap. As authorized by the Housing and Economic Recovery Act of 2008, Bond Recycling allows CalHFA to preserve the tax-exemption in multifamily private activity bonds being redeemed on the day of permanent conversion, and later deploy new tax exempt bonds for a new multifamily project. CalHFA issued the first recycled bonds in California on July 29th, 2020 and is now seeking partnerships with local issuers in order to increase the size of the program.

Purpose	<p>The Local Issuer Partnership is designed to:</p> <ul style="list-style-type: none"> • Increase the aggregate size of the California’s Multifamily Bond Recycling Program, in order to relieve pressure on the State’s volume cap and increase housing in California. • Facilitate access to recycled bonds to California’s local issuers by providing a new tax exempt debt source for their pipeline projects.
Design of CalHFA-Local Partnership	<ul style="list-style-type: none"> • CalHFA preserves tax exemption on local projects undergoing permanent conversion • The amount of recycling volume generated by local issuers will be reserved for them for deployment at their discretion. CalHFA will be the issuer for recycled bonds. <ul style="list-style-type: none"> ○ CalHFA has designed a tracking mechanism that will ensure that local issuers can track how much recycling volume they have generated, deployed and is available within a given time frame. This system will also allow local issuers and CalHFA to ensure the maximum amount of recycling volume is utilized before it burns off at its 6-month limit. • If local issuer cannot deploy an amount of their available recycling volume within 6-month timeframe (burn-off), the local issuer may make its reserved volume available to CalHFA to deploy as part of the statewide program.
Allowable Projects	<p>Recycling bonds can be deployed on any multifamily housing projects that complies with Private Activity Bond occupancy requirements, including but not limited to the following:</p> <ol style="list-style-type: none"> 1. Projects with CDLAC allocation and 4% LIHTC equity, in need of additional tax-exempt debt. 2. New financing mechanisms with local subsidy but no volume cap. 3. 80/20 deals that do not need tax credit equity.^[1] 4. RAD projects
Eligibility	<p>During the first phase, CalHFA is seeking partnerships with the largest local issuers in the State of California, but the Partnership Initiative is open to all local issuers in California.</p>

Roles and Responsibilities

- CalHFA:
 - Manages recycling program, including warehousing credit facility, tax compliance, and transaction tracking.
 - Coordinates timing of preservation with lenders and issuers
 - Preserves tax-exempt bonds
 - Coordinates timing of new issuances with lenders and issuers
 - Issues recycled bonds + new CDLAC allocation bonds. After careful analysis and consultation with partners and bond counsel, CalHFA has determined that having a single issuer of tax exempt bonds will greatly simplify the execution of the entire transaction.
 - CalHFA will inform local partner when it is deploying recycled bonds from the statewide pool in the local partner's jurisdiction.
- Local Issuer:
 - Provides permanent conversion pipeline to CalHFA in order to facilitate management of recycling program.
 - Executes a tri-party amendment to bond documents: lender, issuer, trustee. Issuer will need to consent to document amendments that provide for the following:
 - On conversion date, Borrower loan prepayment amount will be delivered to custodian/trustee for CalHFA line of credit instead of being applied to redeem like amount of bonds
 - At the same time, equivalent amount of proceeds drawn from CalHFA line of credit will be applied to refund like amount of bonds
 - On the conversion date, Issuer may need to execute direction to trustee/fiscal agent for the construction bonds to effect funds swap described above.
 - Decides where recycling volume it has generate is deployed
 - Can elect to make expected burn-off volume available for statewide deployment.
- Original Construction Lender:
 - Executes a tri-party amendment to bond documents. Will need to consent to document amendments that provide for the following:
 - On conversion date, Borrower loan prepayment amount will be delivered to custodian/trustee for CalHFA line of credit instead of being applied to redeem like amount of bonds
 - At the same time, equivalent amount of proceeds drawn from CalHFA line of credit will be applied to refund like amount of bonds
 - [Taken together, these two steps put construction lender in same position they would have been in absent the amendments]
 - On the conversion date, trustee/fiscal agent for construction bonds will need to cooperate with other parties in effecting funds swap described above
- New Lender:
 - Modified documents to reflect use of recycled proceeds.
 - Receives recycled proceeds to use it to make the new loans.

<p>Rules of Recycling</p>	<ul style="list-style-type: none"> • New loans must be made to an eligible project within 6 months of the effective date of the prepayment. • The bond refunding must occur within 4 years of the issuance of original bond. For this reason, typically preservation of bond cap occurs at permanent conversion. ⁽¹¹⁾_(SEP) • Recycled bonds can only go out a total of 34 years from the initial bond issuance. ⁽¹¹⁾_(SEP) • Recycled bonds are subject to public notice requirements (TEFRA). ⁽¹¹⁾_(SEP) • Recycled bonds cannot generate 4% LIHTC. • Recycled bonds cannot be re-recycled. ⁽¹¹⁾_(SEP) • Recycled bonds can only be used for multifamily housing. ⁽¹¹⁾_(SEP)
<p>Minimum Amount</p>	<p>Only transactions generating a minimum of \$10,000,000 in recycled volume will be eligible for the Local Issuer Partnership Initiative.</p>
<p>Fees</p>	<p>Upfront Fees:</p> <ul style="list-style-type: none"> - CalHFA will charge the local partner's upfront conduit issuance fees for both the recycled + new CDLAC allocation bonds and revert that revenue in its entirety to the local partner. CalHFA will not retain any upfront fees from issuance. <p>Ongoing Fees:</p> <ul style="list-style-type: none"> - CalHFA will charge the local partner's ongoing monitoring/compliance fees for both recycled + new CDLAC allocation bonds. <ul style="list-style-type: none"> o CalHFA will keep 5 bps in order to cover its costs of operating the recycling program and compliance costs. o CalHFA will revert the remaining ongoing fees to the local partner.
<p>Compliance Monitoring</p>	<p>CalHFA will follow the same compliance monitoring protocol for the tax exempts bonds under the local issuer partnership initiative as for the CalHFA conduit program.</p>

Regulatory Requirements

Recycled Bond occupancy requirements mirror those of multifamily private activity bonds:

- Either (A) 20% of the units must be rent restricted and occupied by individuals whose incomes are 50% or less of the area median income as determined by HUD (“AMI”) with adjustments for household size (“20% @ 50% AMI”), or (B) 40% or more of the units must be both rent restricted and occupied by individuals whose income is 60% or less of the AMI, with adjustments for household size (“40% @ 60% AMI”); however in the latter case, a minimum of 10% of the units must be at 50% or less of AMI.
- Borrower will be required to enter into a Regulatory Agreement which will be recorded against the Project for the Qualified Project Period (as defined in the CalHFA Regulatory Agreement). This includes the latter of the federally-required qualified project period, repayment of the Bond funded loan, redemption of the Bonds or the full term of the CDLAC Resolution requirements.

CalHFA’s conduit and recycling program do not include any additional regulatory requirements, however the locality, through its provision of soft/subordinate financing, may impose additional requirements on the project through a separate regulatory agreement.

The information provided in this program description is for guidance only. While we have taken care to provide accurate information, we cannot cover every circumstance nor program nuance. This program description is subject to change from time to time without prior notice. The California Housing Finance Agency does not discriminate on any prohibited basis in employment or in the admission and access to its programs or activities. Not printed at taxpayer expense.

EXHIBIT B
MOU - CalHFA Conduit Issuer Program Matrix

Matrix for CalHFA Recycling Deals located within the City and County of San Francisco

Effective after CalHFA-MOHCD Recycling MOU is executed

	Conduit-Only Deal	MOHCD Lending; <u>No</u> CalHFA financing	CalHFA Perm and/or Subordinate Lending; <u>No</u> MOHCD financing	CalHFA Perm and/or Subordinate Lending <u>with</u> MOHCD financing
San Francisco Recycling Pool <i>generated through MOHCD paydowns.</i>	Local Partnership Issuance <i>Revenue Sharing per MOU</i>	Local Partnership Issuance <i>Revenue Sharing per MOU</i>	<i>N/A. If MOHCD elects to contribute recycling volume to this type of project, it would revert its volume to the statewide pool.</i>	<i>N/A. If MOHCD elects to contribute recycling volume to this type of project, it would revert its volume to the statewide pool.</i>
Statewide Recycling Pool <i>generated through CalHFA paydowns, or through left-over volume reverted from local pools.</i>	CalHFA Statewide Issuance <i>No Revenue Sharing.</i> <i>*Non-Compete Agreement: Prior to proceeding with this type of project CalHFA will confirm with MOHCD that developer has not approached MOHCD first for recycled bonds.</i>	Local Partnership Issuance <i>Revenue Sharing per MOU</i> <i>*subject to statewide pool availability and approval by CalHFA</i>	CalHFA Statewide Issuance* <i>No Revenue Sharing.</i>	CalHFA Statewide Issuance* <i>*CalHFA <u>reverts</u> upfront conduit issuer fee to MOHCD (25bps).</i> <i>*CalHFA retains Annual Administrative Fee, Bond Recycling Transaction Fee, and any other fees associated with the issuance.</i>
Combination of Pools <i>recycled volume deployed is a mix of local pool and statewide pool.</i>	Local Partnership Issuance <i>Revenue Sharing per MOU</i> <i>*subject to statewide pool availability and approval by CalHFA</i>	Local Partnership Issuance <i>Revenue Sharing per MOU</i> <i>*subject to statewide pool availability and approval by CalHFA</i>	<i>N/A. If MOHCD elects to contribute recycling volume to this type of project, it would revert its volume to the statewide pool.</i>	CalHFA Statewide Issuance* <i>*CalHFA <u>reverts</u> upfront conduit issuer fee to MOHCD (25bps).</i> <i>*CalHFA retains Annual Administrative Fee, Bond Recycling Transaction Fee, and any other fees associated with the issuance.</i>

Key:

Local Partnership Issuance <i>MOHCD Fees: Revenue Sharing per MOU with MOHCD retaining 7.5 bps ongoing.</i>
CalHFA Statewide Issuance Fees <i>CalHFA Fees; No Revenue Sharing unless otherwise stated</i>

ADDENDUM TO MEMORANDUM OF UNDERSTANDING

This Addendum (the “Addendum”) modifies the Memorandum of Understanding (the “MOU”) by and between the City and County of San Francisco, a municipal corporation and chartered city and county, duly organized and validly existing under its City Charter and the Constitution and laws of the State of California (together with any successor to its rights, duties, and obligations, the “City”), represented by the Mayor, acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”) and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California (“CalHFA”) and is effective as of _____, 2021.

AGREEMENT

1. CalHFA agrees to the following:

i. For Qualified Residential Rental Projects using recycled private activity bond volume cap pursuant to 26 U.S.C. 146(i)(6), CalHFA shall not apply to CDLAC, without the consent of MOHCD which shall not be unreasonably withheld, under the following set asides and apportionments within the State Ceiling Pools determined by CDLAC: (a) the QRRP New Construction Pool: Bay Area Region Geographic Apportionment, (b) the QRRP New Construction Pool: ELI/VLI Set Aside, or (c) the QRRP New Construction Pool: Homeless Set Aside. Should CDLAC modify the State Ceiling Pools in a way that substantially alters the purpose of this paragraph, CalHFA and MOHCD shall implement a jointly agreed upon amendment to this provision this provision as necessary to effectuate the intent of the limitation set forth above.. This paragraph (i) shall only be in effect as long as Section 5230 (h) of the CDLAC regulations and Section 10325 (C) (9)(A)(v) of the TCAC regulations allow recycled bonds to be fully counted as Leveraged Soft Resources for the purposes of CDLAC scoring.

ii. While projects located in the City and County of San Francisco and receiving funding from each of the following sources: (a) CalHFA mixed-income program financing; (b) CalHFA recycled bonds; and (c) City and County of San Francisco financing, are not subject to the requirements of this MOU, CalHFA shall pay to MOHCD the upfront CalHFA Issuance Fee received pursuant to the requirements of its Conduit Issuer Program.

iii. CalHFA acknowledges and agrees that if CalHFA issues tax-exempt bonds, notes or other evidence of indebtedness (collectively, “Bonds”) using recycled and/or new volume cap for any project located in the City and County of San Francisco, the City intends to be the issuer of any refinancing of such Bonds or tax credit re-syndication of such project if all of the below factors apply to the project:

- a. The project utilizes recycled bond volume cap generated from the preservation of bonds subject to this MOU;
- b. At the time of original issuance, the City and County of San Francisco committed a predevelopment loan, permanent loan, or gap loan of more than \$1,000,000, or a ground lease.

- c. The project will not be utilizing a CalHFA long-term, first lien, permanent loan as part of refinancing or re-syndicating of such project.
- iv. In accordance with section iii. above, CalHFA agrees that:
 - a. CalHFA will not also seek to be the issuer for any refinancing or re-syndication if all three of the conditions outlined above exist;
 - b. in the event that CalHFA is not the issuer, it will cooperate in the termination of any pre-existing CalHFA conduit bond regulatory agreement relating to Bonds previously issued on a project, subject to applicable federal tax laws and CDLAC regulations and requirements concerning the termination of bond regulatory agreements and CalHFA's monitoring and reporting obligations; and
 - c. unless, and to the extent, there is a prepayment prohibition or lockout period for prepayment expressly provided under permanent, first-lien, amortized loan documents related to a loan made by CalHFA with Bonds inclusive of recycled volume cap preserved pursuant to this MOU, CalHFA will not impose any economic penalty on such project for repaying such Bonds or terminating such regulatory agreement in connection with a refinancing or re-syndication where the City is the issuer, including, without limiting the generality of the foregoing, imposing or enforcing any prepayment penalty or redemption premium with respect to such Bonds, or any termination penalty or premium with respect to such regulatory agreements, such as an acceleration of any issuer fees not yet due to CalHFA by the owner of such project. For any projects financed with recycled bonds pursuant to this MOU, sections 1.iii. and iv. of this Addendum shall survive the termination of the MOU.

v. CalHFA acknowledges and agrees that, absent an enforceable contractual provision to the contrary, the City currently has no legal basis for requiring any owner of any project located in the City (each, an "Owner"), the original construction lender of such project, the fiscal agent or trustee, or any new owner or lender to cooperate in the recycling of volume cap associated with such project. Accordingly, CalHFA agrees that any obligation of the City hereunder or otherwise to assist in the recycling of Volume Cap for the CalHFA recycling program shall be conditioned on cooperation by the applicable Owner and such other parties. The City agrees to use good faith efforts to secure such cooperation but shall have no liability to CalHFA if such efforts fail, and the City shall not be obligated to expend its own funds, grant development or land use concessions of any kind, or subject itself to greater economic, administrative or legal burdens or risks in order to secure such cooperation. In the event of any conflict between this paragraph and any other provision of this MOU, the provisions of this paragraph shall prevail.

2. No other terms of the MOU are modified hereby.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives.

CITY AND COUNTY OF SAN FRANCISCO acting by and through the Mayor's Office of Housing and Community Development

By: _____
Eric D. Shaw, Director
Mayor's Office of Housing and Community Development

Approved as to Form:
DENNIS J. HERRERA
City Attorney

By _____
Kenneth D. Roux
Deputy City Attorney

CALIFORNIA HOUSING FINANCE AGENCY, a
Public instrumentality and political subdivision of the
State of California

By: _____

Name:
Title:

**AMENDMENT TO FUNDING LOAN AGREEMENT AND
GOVERNMENTAL LENDER NOTE[S]**

This **AMENDMENT TO FUNDING LOAN AGREEMENT AND GOVERNMENTAL LENDER NOTE[S]**, dated as of _____, 20__ (this "**Amendment**"), by and among the **CITY AND COUNTY OF SAN FRANCISCO** (together with any successor to its rights, duties and obligations hereunder, the "**Governmental Lender**"), _____ (together with any successor to its rights, duties and obligations hereunder, the "**Funding Lender**"), and **[FISCAL AGENT]** (together with any successor to its rights, duties and obligations hereunder, the "**Fiscal Agent**").

A. The Governmental Lender previously issued its \$_____ Note[s] (collectively, the "**Governmental Lender Note[s]**") pursuant to the terms of that certain Funding Loan Agreement related to such Governmental Note[s] (the "**Funding Loan Agreement**"), in each case by and among the Funding Lender, the Governmental Lender, and the Fiscal Agent.

B. The proceeds of the Governmental Lender Note[s] were used to fund a loan (the "**Borrower Loan**", evidenced by the related "**Borrower Note[s]**") from the Governmental Lender to _____ the ("**Borrower**") for the purpose of acquiring, developing and [rehabilitating / constructing] a ___-unit multifamily rental housing facility known as ___ and located at _____, San Francisco, California, [a portion of] the residential units in which are reserved for tenants of low, very low or extremely low income.

C. Interest on the Governmental Lender Note[s] is exempt from gross income for federal income tax purposes in part because the Governmental Lender received and used with respect to the Governmental Lender Note[s] a portion of the "volume cap" allocated to the State of California, and further allocated to the Governmental Lender, pursuant to Section 146 of the Internal Revenue Code of 1986 (the "**Code**").

D. Section 146(i)(6) of the Code allows states to preserve or "recycle" volume cap under certain circumstances to provide additional tax-exempt financing for affordable multifamily rental housing.

E. To effect such volume cap recycling, the Governmental Lender desires from time to time to cause the prepayment of the Borrower Note[s] to be transferred to a trustee or custodian and pledged as security for a taxable borrowing of the Governmental Lender ("the **Taxable Borrowing**"), while simultaneously applying a like amount of proceeds of the Taxable Borrowing to prepay the related Governmental Lender Note[s] (a "**Recycling Transaction**").

F. The Funding Loan Agreement currently provides that any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on a Borrower Note shall be deemed automatically to be passed through as a payment or prepayment of principal, interest and premium, if any, due on the related Governmental Lender Note.

G. The Funding Lender, the Governmental Lender and the Fiscal Agent have agreed to amend the Funding Loan Agreement and the Governmental Lender Note[s] to allow for funds to be transferred as described in Recital E above to permit the Governmental Lender to execute a Recycling Transaction.

H. The Funding Loan Agreement provides, in substantial part, that any of the terms of such Funding Loan Agreement and the related Governmental Lender Note[s] may be amended or waived by an instrument signed by the Funding Lender and the Governmental Lender, provided that no such amendment which materially would materially affect the rights, duties, obligations or other interests of the Borrower may be made without the consent of the Borrower.

I. The Governmental Lender and the Funding Lender have determined that amending the

Funding Loan Agreements and Governmental Lender Notes as described herein does not materially affect

the rights, duties, obligations or other interests of the Borrower may be made without the consent of the Borrower.

J. The Funding Lender is as of this date the sole holder of the Governmental Lender Note[s].

K. The Fiscal Agent has agreed to acknowledge and consent to this Amendment.

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The capitalized words and terms used in this Amendment shall have the meanings as set forth in the Funding Loan Agreement and the Governmental Lender Note[s], unless the context or use indicates a different meaning or intent, or unless a different meaning is ascribed to them herein.

Section 1.2 Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to included correlative words of the plural number and vice versa. This Amendment and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 1.3 Titles and Headings. The title and headings of the articles and sections of this Amendment have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any may modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Amendment or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II

AMENDMENTS

Section 2.1 Amendment to Funding Loan Agreement. A new paragraph is hereby added as the final numbered Section of the Funding Loan Agreement as follows:

Section 12.12 Recycling Transactions. Notwithstanding provisions regarding [“Corresponding Payments”] or any other provision of this Funding Loan Agreement or the Governmental Lender Note[s] to the contrary, the Governmental Lender shall be permitted to direct the Fiscal Agent to transfer Borrower Note prepayments to a custodian or trustee selected by the Governmental Lender, in lieu of application to prepay a like portion of the Governmental Lender Note[s], so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of the Governmental Lender Note[s]. The preceding provisions shall apply only for purposes of preserving or “recycling” private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

Section 2.2 Amendment to Governmental Lender Note[s]. A new paragraph is hereby added as the penultimate paragraph of [the/each] Governmental Lender Note as follows:

Notwithstanding provisions regarding “pass-through obligations” or any other provision of this Governmental Lender Note or the Funding Loan Agreement to the contrary, the Governmental Lender shall be permitted to direct Borrower Note prepayments to be transferred to a custodian or

trustee selected by the Governmental Lender, in lieu of application to prepay a like portion of this Governmental Lender Note[s], so long as the Governmental Lender simultaneously causes other funds to be applied to prepay such portion of this Governmental Lender Note[s]. The preceding provisions shall apply only for purposes of preserving or “recycling” private activity bond volume cap in accordance with Section 146(i)(6) of the Code.

ARTICLE III

MISCELLANEOUS

Section 3.1 Ratification of the Original Funding Loan Agreement. Except as supplemented and amended hereby, the Original Funding Loan Agreement is in all respects ratified and confirmed and the Original Funding Loan Agreement as so supplemented and amended hereby shall be read, taken and construed as one and the same instrument. Except insofar as herein otherwise expressly provided, all the provisions, definitions, terms and conditions of the Original Funding Loan Agreement as supplemented and amended hereby, shall be deemed to be incorporated in, and made a part of, this Amendment, and the Original Funding Loan Agreement as supplemented and amended by this Amendment and as otherwise supplemented and amended is in all respects ratified and confirmed.

Section 3.2 Authorization of Amendment. This Amendment shall be construed as having been authorized, executed and delivered under the provisions of the Original Funding Loan Agreement. The Funding Lender hereby waives applicable provisions of the Original Funding Loan Agreement requiring the delivery of an Opinion of Counsel and a Tax Counsel No Adverse Effect Opinion in connection with the execution of this Amendment.

Section 3.3 Binding Effect. This Amendment shall inure to the benefit of and shall be binding upon the Governmental Lender, the Funding Lender, the Fiscal Agent, any Approved Transferee and their respective successors and assigns.

Section 3.4 Severability. If any provision of this Amendment shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or of unenforceable to any extent whatsoever.

Section 3.5 Governing Law. This Amendment shall be governed exclusively by and construed in accordance with the internal laws of the State applicable to contracts made and performed in the State.

Section 3.6 Inclusion as Part of the Funding Loan Agreement. This Amendment on its delivery shall be a part of the Funding Loan Agreement and all references herein to “Funding Loan Agreement” shall include reference to this Amendment as well as the Original Funding Loan Agreement.

Section 3.7 Governmental Lender Direction of Fiscal Agent; Approval of Funding Lender. By its execution of this Amendment, the Governmental Lender hereby directs the Fiscal Agent to execute this Amendment and the Funding Lender hereby approves the execution of this Amendment by the Fiscal Agent.

Section 3.8 Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Amendment to Funding Loan Agreement, all as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Name:
Title:

_____, as Funding Lender

By: _____
Name:
Title:

[FISCAL AGENT], as Fiscal Agent

By: _____
Name:
Title: