

## FUNDING AGREEMENT

**THIS FUNDING AGREEMENT** (the “Agreement”) is made as of \_\_\_\_\_, 2017, by and among the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”), acting by and through its Recreation and Park Department (“Department”), and **COMMUNITY ARTS STABILIZATION TRUST**, a California nonprofit public benefit corporation (“CAST”), individually and in its capacity as the sole member of \_\_\_\_\_, a California limited liability company (“Managing Member”) that is the managing member of \_\_\_\_\_, a California limited liability company (“QALICB”) and \_\_\_\_\_, a California limited liability company (“Master Tenant”). CAST and the Commission are collectively referred to herein as the “Parties”:

### **RECITALS**

A. The City owns real property located at 2301 San Jose Avenue in San Francisco, California, commonly known as the Geneva Powerhouse Building (“Property”), and the adjacent building commonly known as Geneva Car Barn Office Building (“Office Building”).

B. The Department has jurisdiction over the Property and the Office Building and is responsible for its operation and management. The Department identified both the Property and the Office Building as possible sites for youth and teen arts, community center, and related uses (“Community Arts Activities”) consistent with the Department’s mission.

C. The Department now desires to restore the Property for operation as a center for Community Arts Activities (“Project”) and intends to utilize new market and historic rehabilitation tax credits (“Tax Credit Financing”) to partially finance the costs of the Property’s restoration.

D. The planned rehabilitation and operation of the Office Building for Community Arts Activities (“Phase 2”) will be undertaken subsequent to and separate from the Project (“Phase 1”).

E. CAST, in furtherance of its mission, desires to participate in the Project and oversee the operation of the rehabilitated Property, initially for use by The Performing Arts Workshop, Inc., a California non-profit corporation (“PAW”), or such other entity that is qualified to provide Community Arts Activities, provided that CAST commencing on the execution of this Agreement has a 7-year option to participate in Phase 2.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Incorporation, Capitalized Terms. The above Recitals are hereby incorporated by this reference.

2. Department Actions. The Department agrees to perform the following, and to take such other reasonable actions incidental thereto (collectively, the “Department’s Commitment”):

- a. Enter into a fifty-five year lease of the Property (“Building Lease”) with the QALICB at such time as or prior to the closing date of the Tax Credit Financing, in such form and on such terms as are substantially similar to the terms set forth in the draft Lease attached hereto as Exhibit **A**.
- b. Pay to CAST a grant (“Grant”) in the amount of at least \$6,755,000, or in the City’s sole discretion based on Project costs up to \$9,025,000, subject to the terms of this Agreement and the additional “City Provisions” summarized in Exhibit **B** which is hereby incorporated by reference. The Grant shall be used by CAST to (i) make a loan (“Leverage Loan”) to a to-be-formed single purpose entity (“Investment Fund”) wholly owned by US Bank Community Development Corporation (“Investor”) to fund one or more new markets tax credit qualified equity investments for the benefit of the Project, or (ii) in the event the Grant exceeds the funds required for the Leverage Loan, to fund the Project. The Grant shall be paid to CAST at such time as, or prior to, the closing date of the Tax Credit Financing. In the alternative, if the Tax Credit Financing fails to close through no fault of CAST, the Department will pay to CAST the “Required Payments” as set forth in the Memorandum of Understanding which is attached hereto as Exhibit **C** and which is hereby incorporated by reference.
- c. Enter into a Development Services Agreement with the QALICB, appointing the Department to undertake the restoration and development of the Project on behalf of QALICB, in such form and on such terms as are substantially similar to the terms set forth in the draft Development Services Agreement attached hereto as Exhibit **D**.
- d. Enter into the Building Lease Option Agreement with CAST, providing CAST the option to lease the Office Building, in such form and on such terms as are substantially similar to the terms set forth in the draft Building Lease Option Agreement attached hereto as Exhibit **E**.

3. CAST Actions. In reliance on the Department’s Commitment, CAST will:

- a. Take all reasonable steps to pursue the Tax Credit Financing, including:
  - i. CAST will create a taxable entity (“Managing Member”), controlled by CAST, to be the managing member of the QALICB.
  - ii. CAST will create a taxable entity, controlled by the Managing Member, to be the QALICB.

- iii. CAST will create a taxable entity, controlled by the Managing Member, to be the Master Tenant.
  - b. Use the Grant solely to make the Leverage Loan and, in the event the Grant exceeds the funds required for the Leverage Loan, to fund the Project.
  - c. Contribute \$1,000,000 towards the Project, as set forth in the MOU to be offset by future rent credits as set forth in the Building Lease. This funding shall first be prioritized to cover anticipated construction costs for Phase 1, including, without limitation, the cost for CAST to retain a qualified Construction Manager to help the City manage the construction of the Project, to the extent permitted by law. The Construction Manager and its scope of work shall be subject to City approval which shall not be unreasonably withheld. In addition, CAST's contract with the Construction Manager shall include the Terms attached hereto as Exhibit \_\_ (liability/insurance). Any remaining funds from the \$1,000,000 CAST contribution that are not required for Phase 1 construction costs shall then be prioritized to cover up to 50% of the gap of the cost of mutually agreed upon tenant improvements to the space. Should there exist remaining funds after construction and tenant improvements are completed, CAST agrees to invest the remainder at its discretion either in Phase 1 or in the rehabilitation of the Office Building as part of Phase 2.
  - d. Cause the Managing Member to perform its obligations under the operating agreements for the QALICB and the Master Tenant.
  - e. Oversee compliance of the QALICB and Master Tenant with administrative, audit, accounting, and reporting requirements for each calendar year of the seven-year compliance period for the new markets tax credits.
4. Default. Failure by either Party to perform its obligations under this Agreement shall constitute an event of default and shall entitle the other Party to exercise any right or remedy available at law or in equity which it may have by reason of such default including, but not limited to the right to specific performance to prevent or eliminate such default, and the right to be reimbursed for costs incurred in connection with its participation in the Tax Credit Financing.
5. Authority. Each Party has the authority to enter into this Agreement, and its execution and delivery by each Party has been duly authorized.
6. Binding Effect; No Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their successors. This Agreement may not be assigned without the written consent of the Parties.
7. Counterparts. This Agreement may be executed in counterparts each of which shall constitute an original and all of which shall together constitute one agreement.

8. Further Assurances. CAST and the Department shall execute and deliver any and all documents and shall do any and all acts and things reasonably necessary in connection with the each Party’s obligations hereunder.

9. Governing Law; Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of California and shall be liberally construed so as to carry out the purposes hereof. Any action under this Agreement shall be brought in the State of California.

10. Limitation on Third Party Rights. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than the Parties any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Parties.

11. No Partnership. Nothing contained in this Agreement shall create any partnership, joint venture or other relationship by and among the Department and CAST.

12. Notices. All notices, demands or requests that may or are required to be given by any Party to another under this Agreement shall be given in writing and delivered personally, or sent by U.S. certified mail, postage prepaid, return receipt requested, or nationally recognized overnight air carrier, and addressed to the Department or CAST as follows:

If to the Department: Recreation and Park Department  
501 Stanyan Street  
San Francisco, California 94117  
Attention: General Manager  
Facsimile: [\_\_\_\_\_]

with a copy to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Facsimile: (415) 554-4757

If to CAST: CAST  
70 Otis Street  
San Francisco, California  
Attn: Executive Director  
Facsimile: \_\_\_\_\_

with a copy to:

Kantor Taylor  
901 Fifth Avenue  
Suite 4000  
Seattle, Washington  
Attn: Thomas Nelson  
Facsimile: \_\_\_\_\_

Notices shall be deemed to have been given upon receipt or attempted delivery where delivery is not accepted. Any Party may change its address and/or those receiving copies of notices upon written notice given to the other.

13. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, then such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable, and the remainder of this Agreement shall continue in effect and be enforceable to the fullest extent permitted by law. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

14. Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

15. Amendments. This Agreement may not be amended, changed, modified or altered, except by an instrument in writing duly executed by the Department and CAST (or their successors in interest).

*[Signatures on following pages]*

**Signature Page to Funding Agreement**

IN WITNESS WHEREOF, the City has duly executed this Funding Agreement as of the day and year first above written.

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through its Recreation and Park Department

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By \_\_\_\_\_  
Manu Pradhan, Deputy City Attorney

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**Signature Page to Funding Agreement**

IN WITNESS WHEREOF, CAST has duly executed this Funding Development Agreement as of the day and year first above written.

**CAST:**

[\_\_\_\_\_], a [\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

Form of Lease  
(see attached)



**EXHIBIT B**

Form of Development Services Agreement  
(see attached)

**EXHIBIT C**

Form of Building Lease Option Agreement  
(see attached)