

## COOPERATIVE AGREEMENT

This Cooperative Agreement (the “**Agreement**”), dated for reference purposes as of April 11, 2013, is made by and between the City and County of San Francisco, a municipal corporation, acting by and through the City Administrator (the “**City**”), and the San Francisco Community Investment Fund, a California nonprofit public benefit corporation (“**SFCIF**”).

### RECITALS

A. The Redevelopment Agency of the City and County of San Francisco (the “**Agency**”), in partnership with the City’s Office of Economic and Workforce Development (“**OEWD**”), formed a new corporate entity to apply for a designation as a Community Development Entity (“**CDE**”) for the purpose of applying for a New Markets Tax Credits (“**NMTC**”) allocation from the United States Treasury.

B. On February 2, 2010, the Agency Commission by Resolution No. 10-2010, authorized the Agency’s Executive Director to incorporate the new entity called the San Francisco Community Investment Fund, a California nonprofit public benefit corporation (“**SFCIF**”). The Agency Executive Director caused the SFCIF’s Articles of Incorporation to be filed and the SFCIF was officially created on February 18, 2010.

C. On February 25, 2010, pursuant to California Corporations Code Section 5134, the Agency’s Executive Director, as the sole incorporator of the SFCIF, elected the initial board of directors, consisting of Agency and City employees and officers. On March 18, 2010, at a duly noticed and agenda meeting, the SFCIF Board of Directors adopted the SFCIF Bylaws.

D. The SFCIF has applied for and received allocations of New Markets Tax Credits. The SFCIF has acted, and will continue to act, as a bridge between the capital markets and low-income communities by taking the investment capital it receives and lending it to qualified projects. The SFCIF maintains accountability to residents of low-income communities through community representation on its Advisory Board.

E. Pursuant to its Bylaws, the SFCIF may make investments in qualified low-income communities in the City and County of San Francisco (the “**Service Area**”). Under the NMTC program, low-income communities are those that contain low-income census tracts based upon data from the latest U.S. census.

F. Effective February 1, 2012, the Agency was dissolved under State law (Assembly Bill No. 1X26, Chapter 5, Statutes of 2011-12, First Extraordinary Session, as modified by Assembly Bill No. 1484, Chapter 26, Statutes of 2011-12, Regular Session). Under Board of Supervisor Resolution No. 11-12, adopted January 24, 2012, the Board of Supervisors accepted all of the Agency’s housing and non-housing assets, and gave the Director of Administrative Services the right and power to manage all Agency assets and to exercise all functions that the Agency previously performed with respect to those assets. Under Board of Supervisor Ordinance No. 215-12, adopted on October 2, 2012 after the modifications made in AB 1484, the Board of Supervisors recognized the new successor agency to the Agency (the “**Successor Agency**”) as a separate legal entity, delegated to the Successor Agency the authority to implement the surviving redevelopment projects, and confirmed the transfer of all of the housing assets to the City under the jurisdiction of the Mayor’s Office of Housing. The Board also ratified all prior acts of the staffs of the Successor Agency, the Department of Administrative Services, the Controller and other City employees with respect to the surviving redevelopment projects and other enforceable obligations.

G. Investments in Eligible projects by the SFCIF help to eliminate blight by bringing economic development to the community, reprogramming underutilized properties and help further the City's revitalization efforts. The City recognizes the importance of the work performed by the SFCIF and the Agency under the NMTC Program, and has elected to continue that work following the dissolution of the Agency.

H. The Agency previously entered into a cooperative agreement with the SFCIF. To avoid incurring unnecessary expense and delay associated with the creation of an entire administrative structure to manage the day-to-day operations of the SFCIF, including the expense of hiring, retaining, and managing employees, the City desires to enter into a similar cooperative agreement with the SFCIF. Accordingly, the City will donate staff time and resources as needed to aid the SFCIF in fulfilling its mission to apply for new markets tax credits and to make qualified low-income community investments in the City and County of San Francisco or other activities which qualify for New Markets Tax Credits, in accordance with the terms set forth below.

## **AGREEMENT**

Now, therefore, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the SFCIF hereby agree as follows:

1. **Administrative Policies and Procedures.** The SFCIF shall follow all applicable federal, state and local laws including, but not limited to, the following:

- (a) Section 45D of the U.S. Internal Revenue Code, the Treasure Regulations and Guidance thereunder and any other law, regulation to rule applicable to participation in the New Markets Tax Credit Program, 26 USC 45D, et seq.;
- (b) The Ralph M. Brown Act (public meeting law), Government Code Section 94950 et seq.;
- (c) The Public Records Act, Government Code Section 6250, et. seq.;
- (d) The City's Sunshine Ordinance (Admin. Code Chapter 67):
- (d) The California Environmental Quality Act and implementing regulations; and
- (e) The National Environmental Projection Act and implementing regulations, as applicable.

2. **City Staff Time.**

(a) The City has agreed to lend to SFCIF and the SFCIF has agreed to borrow from the City an amount not to exceed Three Hundred Thousand Dollars (\$300,000) (the "**City Loan**"), which will consist of City staff time to assist the SFCIF in performing the NMTC Program ("**City Staff Time**").

(b) The City Staff Time is loaned by the City to the SFCIF to aid the SFCIF in fulfilling its mission to make qualified low-income community investments in the City and County of San Francisco or other activities, which qualify for New Markets Tax Credits. The City Staff Time will be billed on a time and materials basis, at the City's actual rates (including overhead and administrative expenses). The City Staff Time shall be billed at a rate of 165% of each City employees' salary. The City staff will be performing services for the SFCIF in furtherance of its operations including, but not limited to: project underwriting, administrative services, NMTC compliance and portfolio management. Nothing in this Agreement, however, shall be construed as waiving the City's duty of loyalty for those City officials and employees performing these services.

(c) City employees and SFCIF officers, directors and advisors may utilize City office space, equipment, vehicles and other City property in their provision of services to the SFCIF. The use of such equipment and the providing of “overhead” to the SFCIF shall be treated as an in-kind contribution of the City to the SFCIF (the “**City Contribution**”). The City shall provide to the SFCIF, facilities and organizational resources (such as equipment, vehicles and support services) necessary for the operations of the SFCIF as part of the City Contribution.

(d) City employees and SFCIF Board members and advisory board members shall receive no additional compensation for their work as staff, officers or directors for the SFCIF. The City acknowledges and agrees that the City staff providing services to the SFCIF will be compensated as provided in the City’s salary resolutions.

(e) The management, direction, and supervision of City staff, and all matters incident to the performance of City’s staff and contributions, shall remain in the sole discretion of the applicable City department head.

(f) The SFCIF shall repay the City Loan balances, from time to time, at the time of closings of NTMC projects, or funds become available from continued operations. All payments under the City Loan shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts. All payments shall be made payable to the City at One South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California 94103 or to such other place as the City may from time to time designate in writing.

3. **Term of Agreement.** This Agreement shall start on the date the Board of Supervisors adopts a resolution approving this Agreement, and shall end on June 30, 2016, provided (1) either party may terminate this Agreement on sixty (60) days notice as set forth in Section 4 below, and (2) the parties may agree to extend the term on an annual basis thereafter for so long as the SFCIF continues the NMTC Program, but in no event later than June 30, 2023.

4. **Termination.** Either party may terminate this Agreement upon sixty (60) days written notice to the other party.

(a) For purposes of this Section 4, any notice by the SFCIF terminating this Agreement must first be approved by the SFCIF Board of Directors and shall be delivered to the City Administrator.

(b) The following obligations of SFCIF shall survive the expiration or termination of this Agreement: (i) the duty to repay the City Loan (which, upon any termination, shall become immediately due and payable); and (ii) the duty to indemnify, reimburse, defend and hold harmless the Indemnified Parties (defined below) in accordance with Section 5.

(c) Notwithstanding anything contained herein to the contrary, in the event of any liquidation or dissolution of the SFCIF, this Agreement shall automatically terminate upon the orderly completion of such liquidation or dissolution.

(d) Notwithstanding the above, this Agreement may only be terminated after both parties have determined that the SFCIF has adequate staff and resources to ensure compliance with its (and its subsidiary CDE’s) existing NMTC-related contracts and obligations.

5. **Indemnification.** The SFCIF shall indemnify, reimburse, defend, and hold harmless the City and County of San Francisco and its commissioners, members, officers, agents and employees (collectively, the “**Indemnified Parties**”) from and against any and all claims, losses, damages, injuries, causes of action and liabilities of every kind, nature and description directly or indirectly arising out of or connected with the performance of this Agreement and any of SFCIF’s operations or activities related

thereto, excluding the willful misconduct or the gross negligence of the Indemnified Party seeking to be defended, indemnified or held harmless.

6. **Insurance.**

(a) SFCIF must procure and maintain for the duration of the Agreement, including any extensions (or caused to be procured and maintained by its consultant and vendors, as the case may be from time to time) insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this Agreement by the SFCIF, its agents, representatives, employees or subcontractors.

(b) **Minimum Scope of Insurance.** Coverage must be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).

(2) Directors and Officers Liability Insurance covering the actions taken and omission of the SFCIF, its Board of Directors, Advisory Board and/or Officers in the course and scope of their duties.

(3) Workers' Compensation insurance as required by the State of California and Employers Liability Insurance.

(c) **Minimum Limits of Insurance.** SFCIF must maintain (or cause to be maintained by its consultant and vendors, as the case may be from time to time) limits no less than:

(1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and \$1,000,000 in the aggregate.

(2) Directors and Officers Liability Insurance: \$1,000,000 per occurrence.

(3) Workers' Compensation and Employees Liability: Workers' Compensation limits as required by the State of California and Employer's Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease. (Required only if SFCIF has employees other than those provided by City under this Agreement.)

(d) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City's Risk Manager. At the option of the City's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City and County of San Francisco and their respective commissioners, members, officers, agents and employees; or SFCIF shall provide a financial guarantee satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(e) **Other Insurance Provisions.** The general liability policy is to contain, or be endorsed to contain, the following provisions:

(1) The City and County of San Francisco and its commissioners, members, officers, agents and employees are to be covered as additional insureds as respects to liability arising out of work or operations performed by or on behalf of the SFCIF.

(2) For any claims related to this Agreement, the SFCIF's insurance coverage must be primary insurance as respects the City and County of San Francisco and its commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the City and

County of San Francisco and its commissioners, members officers, agents or employees shall be excess of the SFCIF's insurance and shall not contribute with it.

(3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and County of San Francisco and its commissioners, members, officers, agents or employees.

(4) If available, each insurance policy required by this clause must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by mail, to the City, except for cancellation for nonpayment of premium which may be given upon ten (10) days' prior written notice by mail to the City.

(f) Waiver of Subrogation Rights Under General Liability, Workers' Compensation and Employers Liability Coverage. Insurers shall agree to waive all rights of subrogation against the City and County of San Francisco and its commissioners, members, officers, agents and employees for losses arising from work performed by SFCIF or City employees.

(g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A(-):VIII.

(h) Verification of Coverage. SFCIF must furnish the City upon request with certificates of insurance and with original endorsements evidencing coverage required by this Agreement. The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies including endorsements demonstrating the coverage required by these specifications at any time.

(i) Contractors. SFCIF shall include all contractors, consultants, subcontractors or subconsultants ("**Contractors**") as insureds under its policies or shall furnish separate certificates and endorsements for each Contractor. All coverages for Contractors shall be subject to all the requirements stated herein.

7. Notices. All notices, demands, consents or approvals required under this Agreement shall be in writing and shall be deemed given when delivered personally or by facsimile transmission or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

If to the City  
City Administrator's Office  
City Hall, Room 362  
San Francisco, CA 94102  
Attention: City Administrator

If to the SFCIF:  
San Francisco Community Investment Fund  
c/o Mayor's Office of Public Finance  
City Hall, Room 336  
San Francisco, CA 94102  
Attention: Anthony Ababon

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

8. **Conflict of Interest.** Except for approved, eligible, administrative or personnel costs, no employee, agent, consultant, officer or official of the SFCIF or the City who exercises or has exercised any functions or responsibilities with respect to activities or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this section, the SFCIF shall incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this section. The SFCIF shall be responsible for obtaining compliance with such provisions by the parties with whom it contracts and, in the event of a breach, shall take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

9. **Inspection of Books and Records.** In addition to the right to inspect public documents under the Public Records Act, Government Code Section 6250, et. seq. and the Sunshine Ordinance, the City, including its agents, shall have the right at all reasonable times and from time to time to inspect the books and records of the SFCIF pertaining to the SFCIF's compliance with its obligations under this Agreement. Promptly (but in no event exceeding ten (10) days following a written request from the City), the SFCIF shall make such books and records (or copies thereof) available for inspection and copying by the City, during customary business hours.

10. **Assignment of Agreement.** The SFCIF shall not assign this Agreement, or any part thereof, without the prior express written consent of the City.

11. **Modification, Waiver and Amendments.** Neither this Agreement nor any of its terms may be terminated, amended, modified or waived except by a written instrument executed by the parties.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of California. It is the responsibility of the SFCIF to be informed of local, state and federal laws and requirements applicable to this Agreement and to perform all work in compliance with those laws and requirements.

13. **Attorneys' Fees.** In any action or proceeding arising out of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

14. **Severability.** If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all the circumstances, or would frustrate the fundamental purposes of this Agreement.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

16. **Appropriation of Funds.** Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by the City under this Agreement unless there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year sufficient funds for the payment of any payments required under this Agreement are not appropriated for any reason, then the City may terminate this Agreement, without penalty, liability or expense of any kind to the City, as of the last date on which sufficient funds are

appropriated. The City shall use its reasonable efforts to give the SFCIF reasonable advance notice of such termination.

17. **Discretion.** Each party, including their respective employees, officials and boards, shall exercise its sole discretion over all matters relating to the NMTC Program and over each project or decision over which it has jurisdiction consistent with legal requirements. No commitment to any specific project shall be made by SFCIF until after environmental review, as and to the extent required by the California Environmental Quality Act (CEQA).

18. **No Joint Venture.** Nothing in this Agreement shall be construed as creating the right or ability of one party to bind the other and nothing in this Agreement shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by either party, their employees, officers and/or agents, to implement this Agreement. All employees, officers and/or agents of each party shall remain employees, officers and/or agents of that party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between the City and the SFCIF. Each party shall conduct all of its activities under this Agreement in accordance with all applicable laws and regulations.

20. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of this Agreement. The parties acknowledge and agree that this Agreement is entered into for their mutual benefit and not for the benefit of any other party.

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

22. **Limitations on Contributions.** Through execution of this Agreement, the SFCIF acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**THE  
CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

By: \_\_\_\_\_  
Naomi Kelly  
City Administrator

**SAN FRANCISCO  
COMMUNITY INVESTMENT FUND,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
President

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Charles Sullivan  
Deputy City Attorney



