

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated as of July 18, 2014 (the "**Agreement Date**"), is by and among the City and County of San Francisco Recreation and Park Department ("**RPD**"), the City and County of San Francisco Mayor's Office of Public Finance ("**OPF**"), and City and County of San Francisco General Services Agency, through its Real Estate Division ("**RED**").

RECITALS

A. The City and County of San Francisco ("**City**") intends to acquire that certain property (the "**Site**") depicted in the attached Exhibit A (the "**Project Map**") from Tenderloin Housing Clinic, Inc., a California nonprofit public benefit corporation ("**Owner**").

B. On the date that City acquires fee ownership of the Site ("**Acquisition Date**"), scheduled for August 1, 2014, RED will have jurisdiction over the Site, and RPD wishes to eventually obtain jurisdiction over some or all of the Site for the development and operation of a park (the "**Park Project**").

C. OPF will use Commercial Paper Certificates of Participation ("**CP Notes**") to finance City's acquisition of the Site, provided that the CP Notes are repaid no later than the second anniversary of the Acquisition Date from RPD's Open Space Fund or other RPD funds and, if applicable, the proceeds of a Third Party Sale (as defined in Section 3).

D. Upon full repayment of the CP Notes, jurisdiction to the Site, less any portion transferred through a Third Party Sale, will automatically transfer from RED to RPD for the Park Project, pursuant to the legislation in Board of Supervisors File No. 14-0780.

E. The parties have agreed that while the Site is in RED's jurisdiction, RED shall properly maintain the Site and shall, collaboratively with RPD, investigate the efficacy of any non-park use for a portion of the Site, and RPD shall refine the scope of the Park Project.

F. The parties wish to enter into this MOU to set forth their agreement with regards to the Site and Park Project.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Initial Jurisdiction and Maintenance. Upon the Acquisition Date, RED shall accept jurisdiction of the Site and maintain the Site in its current condition, using commercially reasonable property management standards and complying with all applicable laws; provided, however, that RED shall not obtain third party insurance for the Site. If RED reasonably determines that any Site changes are needed to meet such standards and laws, RED shall obtain RPD's prior written consent before making any such changes. RED's estimated costs to

maintain the Site, coordinate an alternative park use analysis of portions of the Site, sell any portion of the Site that RPD does not want for park purposes, and perform related real estate activities would be \$95,000.00 over the twenty-four (24) month period following the Acquisition Date. The approved budget for such activities is attached as Exhibit B, and RED shall obtain RPD's prior written consent before spending more for any line item in such budget than as set forth in such budget. RPD agrees to provide the necessary funding for the RED activities, and for the amounts, described in the attached budget from the Open Space Acquisition Fund or other department funds. Such amounts shall be provided within 30 days of RPD's approval of RED's written request of such amounts, which approval shall not be unreasonably withheld.

3. Third Party Sale. If RPD determines that any portion of the Site is not needed for the Park Project, and RPD or RED identify a party that will purchase such portion for no less than Fair Market Value (defined as follows) prior to the second anniversary of the Acquisition Date, RPD and RED shall cooperate to facilitate the sale of such portion of the Site to such party for the Fair Market Value and on terms mutually agreeable to RPD and RED (a "**Third Party Sale**"). "**Fair Market Value**" shall mean the greater of the fair market value of such portion of the Site and the Acquisition Cost allocated to such portion on a pro rata basis, plus any closing costs incurred by City in connection with the Third Party Sale. If a third party sale generates proceeds in excess of the CP Notes acquisition cost for such portion, determined by dividing the Acquisition Cost (as defined below) by the square footage of the Site, and multiplying such amount by the square footage of such sold portion, such excess amount shall reduce the remaining Acquisition Cost to be paid by RPD pursuant to Section 4 below.

4. Payment for Site; Jurisdictional Transfer. The acquisition of the Site from the Owner, once approved by the Board of Supervisors and Mayor, shall be accomplished through the use of CP Notes and pursuant to the purchase and sale agreement between City and Owner, dated _____ (the "**Purchase Agreement**"). RED shall obtain RPD's consent to any modifications to the Purchase Agreement. RPD shall submit a resolution in the form attached to this MOU as Exhibit C to the Board of Supervisors to obtain approval of such acquisition (Board of Supervisors File No. 14-0780). The "**Purchase Price**" shall be \$2,975,000 plus the miscellaneous closing costs specified in the Purchase Agreement (not to exceed \$1,500). The "**Acquisition Cost**" shall mean the Purchase Price, together with interest, which shall accrue at the rate of 2.5% per year, compounded annually.

RPD shall notify RED and OPF of the date that it will repay the Acquisition Cost, which repayment shall occur no later than the second anniversary of the Acquisition Date. Repayment shall be made by RPD's appropriation of sufficient Open Space Acquisition funds (or any other funds identified by RPD) and/or the proceeds of any Third Party Sale. Once the CP Notes are fully repaid from RPD funds and the proceeds of any Third Party Sale, jurisdiction of the Site shall automatically transfer from RED to RPD.

5. Remediation Issues. RPD intends to secure funds sufficient to mitigate any environmental hazards located upon the Site if required by any applicable local, state and federal laws and regulations. Said remediation may be performed by RPD prior to the jurisdictional transfer from RED to RPD with RED's prior written consent, or performed by RPD at RPD's discretion once RPD has jurisdiction of the Site.

6. Approval Contingency. This MOU shall only be effective as of the date that all of the following conditions are met: (i) RPD's Commission, acting in its sole discretion, approves a

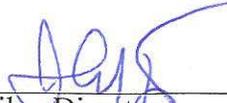
advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all parties (subject to any necessary approvals). Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed jurisdictional transfers or the Park Project. In addition to any conditions described in this MOU, the parties' obligations are expressly subject to the receipt of all legally required approvals following environmental review.

12. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the Director of RED, or his or her designee, the Director of the OPF, or his or her designee, and the General Manager of RPD, or his or her designee. (b) No waiver by any party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver. (c) This MOU (including all exhibits) contains the entire understanding between the parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) Notwithstanding anything to the contrary set forth herein, no officer, director, or employee of RED, RPD, or OPF has the authority to bind his or her department to take any action to be performed by his or her department under this MOU unless and until the Board of Supervisors or the Mayor, as applicable, approves of the action. (e) All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first written above.

RED: REAL ESTATE DIVISION of the General Services Agency

By: 
John Updike, Director

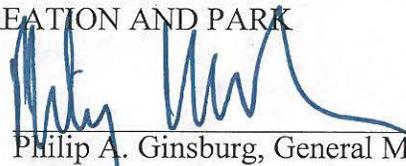
Date: July 18, 2014

OPF: MAYOR'S OFFICE OF PUBLIC FINANCE

By: 
Nadia Sesay, Director

Date: July 21, 2014

RPD: RECREATION AND PARK

By: 
Philip A. Ginsburg, General Manager

Date: July 21, 2014

APPROVED BY:

RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. 1407-008

DATED: 7/17/14

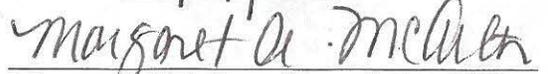

Margaret McArthur, Commission Liaison

EXHIBIT B

Budget of Approved Costs – Real Estate Division

Maintenance/Security:	\$20,000
Consultant for Private Sale Facilitation:	\$50,000
Closing costs, negotiations:	\$10,000
Surveying/Lot Line Adjustment:	\$15,000

EXHIBIT C

FORM OF ACQUISITION RESOLUTION

[Real Property Acquisition - 900 Innes Avenue - Not to Exceed \$2,975,000]

Resolution authorizing: 1) the acquisition of real property at 900 Innes Avenue (Lot Nos. 1-5 and 24, Assessor’s Block No. 4605, Lot No. 10, Assessor’s Block No. 4629A, Lot No. 2, Assessor’s Block No. 4630, and Lot Nos. 1-3, 3A, 19 and 20, Assessor’s Block No. 4646) from the Tenderloin Housing Clinic, Inc.; and 2) the issuance of Commercial Paper (CP) Notes in an aggregate principal amount not to exceed \$2,975,000; 3) the subsequent jurisdictional transfer of the Property to the Recreation and Park Department upon repayment of the CP Notes; and 4) finding the proposed transaction in conformance with the City’s General Plan, and the eight priority policies of Planning Code, Section 101.1.

WHEREAS, The Tenderloin Housing Clinic, Inc., a California nonprofit public benefit corporation, owns the real property located at 900 Innes Avenue (Lot Nos. 1-5 and 24, Assessor’s Block No. 4605, Lot No. 10, Assessor’s Block No. 4629A, Lot No. 2, Assessor’s Block No. 4630, and Lot Nos. 1-3, 3A, 19 and 20, Assessor’s Block No. 4646), located along the north side of Innes Avenue, at the intersection of Griffith Street (the “Property”), which is comprised of 137,500 square feet of land improved with five structures totaling approximately 7,760 square feet; and

WHEREAS, The Property is located between two existing parks under the jurisdiction of City’s Recreation and Parks Commission, India Basin Shoreline Park and India Basin Shoreline Open Space, and has the potential to accommodate both passive recreation (such

1 as seating, sunbathing and picnicking) and active recreation (such as walking, bicycling,
2 sports courts, birdwatching, boating, kayaking and other water-based recreational activities);
3 and

4 WHEREAS, The Property has been identified by the Recreation and Park Department
5 (“RPD”) as a possible future public open space which would further RPD’s mission to provide
6 enriching recreational activities, maintain beautiful parks and preserve the environment for the
7 well-being of the San Francisco community; and

8 WHEREAS, RPD has not yet undertaken planning, design or environmental review of
9 the Property for potential park purposes; and

10 WHEREAS, a portion of the Property may also be sold or exchanged to optimize the
11 size, configuration and continuity of potential future public open space; and

12 WHEREAS, on June 19, 2014, the Recreation and Park Commission approved
13 Resolution 1406-010 affirming the value of the Property as potential public open space and
14 urging the Board of Supervisors to take steps necessary to purchase the Property; and

15 WHEREAS, The Director of Property, in consultation with RPD, negotiated a proposed
16 Purchase and Sale Agreement for the Property, which is on file with the Clerk of the Board of
17 Supervisors under File No. _____ (the “Purchase Agreement”), with a purchase price of
18 \$3,500,000, but with a price reduction (credit) of \$525,000 to be retained by the City to
19 perform anticipated environmental remediation; and

20 WHEREAS, The City obtained an independent, third party appraisal to confirm that the
21 proposed purchase price does not exceed the fair market value of the Property based on the
22 highest and best use of the Property and the anticipated costs of environmental remediation;
23 and

24 WHEREAS, The Director of Property has determined that the proposed sales price is
25 reasonable and represents fair market value for the Property; and

1 WHEREAS, Pursuant to Charter, Section 9.113(e), the Board of Supervisors has the
2 authority to borrow money on an interim basis through the issuance from time to time of its
3 commercial paper notes (the "CP Notes"); and

4 WHEREAS, On March 17, 2009, the Board of Supervisors adopted Resolution 85-09,
5 and on April 6, 2010, the Board of Supervisors adopted Resolution 135-06 (collectively the
6 "Program Resolutions") to establish a general fund backed commercial paper program with an
7 initial authorization of not to exceed \$150,000,000 in aggregate principal amount of tax-
8 exempt or taxable CP Notes (the "Program") to provide interim financing of the acquisition,
9 construction and rehabilitation of capital improvements within or owned by the City, and the
10 financing of vehicles and equipment; and

11 WHEREAS, On July 16, 2013, the Board adopted Resolution 247-13 to, among other
12 purposes, increase the authorization of the Program to \$250,000,000 from \$150,000,000; and

13 WHEREAS, In order to pay the costs of the Property, the Board now desires to
14 authorize the use of the CP Program to effect the purchase of the Property in an amount not
15 to exceed \$2,975,000, and, consistent with applicable law, anticipates repayment of such CP
16 Notes from Open Space Acquisition Fund resources; and

17 WHEREAS, The Property shall be placed in the jurisdiction of the Real Estate Division
18 upon acquisition to allow RPD to undertake planning, design and environmental review of the
19 Property to determine whether development of public open space on all or a portion of the
20 Property is feasible and desirable; and

21 WHEREAS, Recreation and Park Commission Resolution 1406-010 supports the
22 possible use of up to \$2,975,000 plus interest from the Open Space Acquisition Fund to repay
23 some or all of any CP Notes that may be issued to purchase the Property to the extent that full
24 or partial use of the Property to develop a park is deemed feasible and desirable after review
25 under the California Environmental Quality Act; and

1 WHEREAS, The Director of Property and General Manager of Recreation and Park
2 Department report that there would be no further advantage derived from Real Estate
3 retaining jurisdiction to the Property upon repayment of the CP Notes and therefore
4 recommend that the jurisdiction of the Property be transferred from Real Estate to Recreation
5 and Park upon said repayment without additional consideration; and

6 WHEREAS, The Planning Department, through General Plan Referral Letter dated
7 December 11, 2013 (“Planning Letter”), which is on file with the Clerk of the Board of
8 Supervisors under File No. _____, has verified that the City’s acquisition of the Property is
9 consistent with the General Plan, and the eight priority policies under the Planning Code,
10 Section 101.1; and

11 WHEREAS, In the Planning Letter, the Environmental Planning Section of the
12 Department erroneously stated that the acquisition of the Property is a nonphysical project
13 (Class 8; Acquisition of urban open space & Class 16 (b) – acquisition of land to establish a
14 park where the land contains a historical resource that will be preserved) and therefore
15 categorically exempt from environmental review under CEQA; and

16 WHEREAS, By letter dated February 7, 2014, from Rick Cooper of the Planning
17 Department’s Environmental Planning Section to Stacy Bradley of the Recreation and Park
18 Department, Environmental Planning clarified that the acquisition of the Property is correctly
19 considered not a project under CEQA; and

20 WHEREAS, Under the Purchase Agreement, The Tenderloin Housing Clinic shall
21 deliver the Property to the City at the close of escrow, anticipated to occur in August, 2014,
22 with no occupants or tenants on the Property; now, therefore, be it

23 RESOLVED, That the Board of Supervisors hereby finds that the acquisition of the
24 Property is consistent with the City’s General Plan, and the eight priority policies of Planning
25

1 Code, Section 101.1, and hereby incorporates such findings by reference as though fully set
2 forth in this Resolution; and, be it

3 FURTHER RESOLVED, That in accordance with the recommendations of the Director
4 of Property and Recreation and Park Commission, the Board of Supervisors hereby approves
5 the Purchase Agreement, in substantially the form presented to this Board, and authorizes
6 City staff to take all actions necessary to acquire the Property consistent with the Purchase
7 Agreement; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
9 Property to complete the purchase of the Property and, working with and through the Director
10 of Public Works, remediate the Property, using grant funds or other sources of funds, as they
11 may be available as contemplated herein; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
13 Property, in consultation with the City Attorney, to enter into any additions, amendments or
14 other modifications to the Purchase Agreement that the Director of Property determines are
15 in the best interests of the City, do not materially increase the obligations or liabilities of the
16 City or materially decrease the benefits to the City, and are in compliance with all applicable
17 laws, including the City's Charter; and, be it

18 FURTHER RESOLVED, That the Director of Property is hereby authorized and urged,
19 in the name and on behalf of the City and County, to accept the Deed to the Property from the
20 Tenderloin Housing Clinic in accordance with the Purchase Agreement, place the Property
21 under the jurisdiction of Real Estate, and to take any and all steps (including, but not limited
22 to, the execution and delivery of any and all certificates, agreements, notices, consents,
23 escrow instructions, closing documents and other instruments or documents) as the Director
24 of Property deems necessary or appropriate in order to consummate the purchase of the
25 Property pursuant to the Purchase Agreement, or to otherwise effectuate the purpose and

1 intent of this Resolution, such determination to be conclusively evidenced by the execution
2 and delivery by the Director of Property of any such documents; and be it

3 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City
4 with respect to the Purchase Agreement, or authorized and directed by this Resolution, are
5 hereby ratified, approved and confirmed by this Board of Supervisors; and be it

6 FURTHER RESOLVED, That the Board hereby authorizes the Controller or the
7 Director of the Office of Public Finance to issue CP Notes in an aggregate principal amount
8 not to exceed \$2,975,000 to provide financing for the acquisition of the Property and to pay
9 costs incurred in connection with the sale and delivery of the CP Notes; provided that the
10 interest rate on any CP Notes shall not exceed the maximum rate permitted by law and the
11 CP Notes shall mature not later than 270 days from the date of issuance although each
12 certificate may be remarketed for a subsequent period(s) also not to exceed 270 days; and be
13 it

14 FURTHER RESOLVED, That the CP Notes will be executed and delivered under the
15 financing and security documents approved by the Program Resolutions, and, consistent with
16 applicable law, be repaid from Open Space Acquisition Funds; and be it

17 FURTHER RESOLVED, That upon such time as the CP Notes are fully repaid, the
18 jurisdiction of the Property shall be transferred from Real Estate to the Recreation and Park
19 Department; and be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the
21 Clerk of the Board of Supervisors, the Director of Property, the General Manager of the
22 Recreation and Park Department, and any other officer of the City involved in the jurisdictional
23 transfer to take all action necessary or appropriate to effectuate the purpose of this
24 Resolution; and be it

25

1 FURTHER RESOLVED, That within thirty (30) days of the Purchase Agreement being
2 fully executed by all parties, the Director of Property shall provide the final Purchase
3 Agreement to the Clerk of the Board for inclusion into the official file

4

5

\$2,975,000 available
Index Code:

6

7

8

Controller

RECOMMENDED:

9

10

Director of Property
n:\govern\as2014\1400390\00940554.doc

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25