

File No. 17/206

Committee Item No. 9
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date December 7, 2017

Board of Supervisors Meeting Date _____

Cmte Board

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Completed by: Victor Young Date December 1, 2017
Completed by: _____ Date _____

1 [Development Services Agreement - Community Arts Stabilization Trust - Renovation of the
2 Powerhouse Building]

3 **Resolution authorizing a Development Services Agreement with an affiliate of the**
4 **Community Arts Stabilization Trust for the payment of City's construction costs and**
5 **related expenses, as defined herein, for the renovation of the Powerhouse building of**
6 **the Geneva Car Barn and Powerhouse.**

7
8 WHEREAS, The City and County of San Francisco ("City") owns certain real property
9 located at 2301 San Jose Avenue on a portion of Assessor's Parcel Block No. 6972, Lot No.
10 036, commonly known as the Geneva Car Barn and Powerhouse ("GCB"); the GCB is under
11 the jurisdiction of the Recreation and Park Commission, managed by the Recreation and Park
12 Department ("RPD"), and adjacent to Cameron Beach Yard, which is a rail yard under the
13 jurisdiction of the San Francisco Municipal Transportation Agency ("SFMTA"); and

14 WHEREAS, The GCB is the last physical reminder of the City's first electric railway
15 system and has been vacant since approximately 1989, RPD, in partnership with the
16 community, has developed a vision to renovate the GCB's Powerhouse building (the
17 "Powerhouse") into a community arts center (the "Project"); and

18 WHEREAS, Because the Project will require significant investment, RPD desires to use
19 New Market Tax Credits ("NMTCs") and Historic Rehabilitation Tax Credits ("HRTCs") to help
20 finance the Project; and

21 WHEREAS, The NMTC program (U.S. Internal Revenue Code, Section 45D et seq.)
22 was designed to attract investors into underserved communities and to provide private capital
23 investment into qualified projects that may not otherwise be completed by allowing investors
24 to receive federal tax credits for seven years following the date of their initial investment (the
25 "Tax Credit Period"); and

1 WHEREAS, The San Francisco Community Investment Fund ("SFCIF"), a California
2 nonprofit public benefit corporation, serves as a community development entity ("CDE") to
3 apply for NMTC allocations from the U.S. Treasury; SFCIF has received an allocation of
4 NMTC from the Community Development Financial Institution Fund of the U.S. Treasury and
5 has allocated \$13,000,000 in NMTCs to the Project; and

6 WHEREAS, The HRTC program (U.S. Internal Revenue Code, Section 47 et seq.) was
7 designed to encourage private sector investment in the rehabilitation and re-use of historic
8 buildings by allowing investors to receive a 20% tax credit for the certified rehabilitation of
9 certified historic structures; the National Park Service administers the HRTC program with the
10 Internal Revenue Service in partnership with State Historic Preservation Offices; and

11 WHEREAS, The Powerhouse is on the National Register of Historic Places and as
12 such is eligible for HRTCs; based on current projections, the Project is expected to generate
13 approximately \$2,464,353 in HRTCs; and

14 WHEREAS, NMTCs and HRTCs are used to offset amounts that would otherwise be
15 due and owing to the federal government, and do not affect or limit any taxes payable to the
16 State of California or to the City; and

17 WHEREAS, U.S. Bancorp Community Development Corporation ("USB"), a Minnesota
18 corporation, has expressed a desire to invest a total of up to \$6,454,900 in the Project, in
19 return for the NMTCs and HRTCs generated by the Project; and

20 WHEREAS, RPD has performed a search for additional funding partners for the Project
21 and has determined that it is essential to work with the Community Arts Stabilization Trust
22 ("CAST"); CAST is a nonprofit public benefit corporation with a mission of creating stable
23 physical spaces for arts and cultural organizations, has previously secured NMTC tax credit
24 financing, and has committed to providing \$1,000,000 to the Project and monitoring the
25 Project's compliance with NMTC requirements during the Tax Credit Period; and

1 WHEREAS, On June 15, 2017, the Recreation and Park Commission approved of RPD
2 entering into negotiations with CAST for Project financing and the lease and recreational use
3 of the Powerhouse; and

4 WHEREAS, To secure the NMTCs, CAST will create an affiliate entity known as CAST
5 Powerhouse LLC, which will be a qualified active low income community business ("QALICB")
6 that can receive NMTC funding; and

7 WHEREAS, The City and CAST desire to enter into a "Funding Agreement" in order to
8 bridge the gap between the USB investments and the total Project costs and to outline their
9 participation in the Tax Credit Financing and the treatment of certain fees and expenses;
10 among other things, the Funding Agreement will require the City to provide a \$6,800,000 grant
11 to CAST for the Project, and will require CAST to contribute \$1,000,000 of its own funds to the
12 Project; and

13 WHEREAS, CAST will contribute these funds to the QALICB, either directly or
14 indirectly via an investment fund created for the Project by USB, the QALICB will receive and
15 administer these funds, as well as the foregoing USB investments, in order to complete the
16 Project; the Recreation and Park Commission authorized RPD to enter into the Funding
17 Agreement on _____, and a copy of the draft Funding Agreement is on file with the
18 Clerk of the Board under File No. ____; and

19 WHEREAS, The City and the QALICB desire to enter into a "Development Services
20 Agreement" in order to ensure the proper and timely disbursement of Project funds by the
21 QALICB, and to authorize RPD (with assistance from San Francisco Public Works) to manage
22 the Project on the QALICB's behalf; the Recreation and Park Commission authorized RPD to
23 enter into the Development Services Agreement on _____, and a copy of the draft
24 Development Services Agreement is on file with the Clerk of the Board under File No. ____;
25 now, therefore, be it

1 RESOLVED, That the Board of Supervisors approves the Development Services
2 Agreement with the QALICB substantially in the form that is on file with the Clerk of the Board
3 of Supervisors, and authorizes the RPD General Manager and San Francisco Public Works to
4 perform all acts required of the City thereunder; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes the RPD General
6 Manager to enter into any modifications and amendments to the Development Services
7 Agreement, including to any of its exhibits, and authorizes the RPD General Manager to
8 execute further agreements related to the Project financing, that the RPD General Manager
9 determines, in consultation with the City Attorney, are in the best interests of the City and do
10 not materially increase the obligations or liabilities of the City, are necessary or advisable to
11 effectuate the purposes of the Project or this Resolution, and are in compliance with all
12 applicable laws, including the City's Charter; and, be it

13 FURTHER RESOLVED, That within thirty (30) days of the full execution of the
14 Development Services Agreement, RPD shall provide such final document to the Clerk of the
15 Board of Supervisors for inclusion into the Board's file.

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<p>Items 8, 9, 10, 11 and 12 Files 17-1205, 17-1206, 17-1207, 17-1208, 17-1209</p>	<p>Department: Recreation and Parks Department (RPD)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<p>The five proposed resolutions related to the renovation and use of the Geneva Powerhouse and Car Barn would approve: (1) the Recreation and Park Department to accept and expend a \$3,500,000 State grant (File 17-1205); (2) a Development Services Agreement between the City and CAST Powerhouse, LLC, an affiliate of the Community Arts Stabilization Trust (File 17-1206); (3) a Funding Agreement between the City and the Community Arts Stabilization Trust (File 17-1207); (4) a 55-year lease between the City and CAST Powerhouse, LLC for the Powerhouse (File 17-1208); and (5) an Indemnification Agreement (File 17-1209).</p>	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • The Geneva Car Barn and Powerhouse are two buildings located at Geneva and San Jose Avenues near Balboa Park BART Station. The Phase 1 Powerhouse Project consists of the design, restoration and improvement of the Powerhouse only. The City will fund and develop the Project with assistance from the non-profit Community Arts Stabilization Trust. The Community Arts Stabilization Trust created a taxable entity, the CAST Powerhouse LLC, to be the qualified low-income business, in order for the Project to qualify for the New Market and Historic Rehabilitation Tax Credits. • The City and the Community Arts Stabilization Trust will enter into a Funding Agreement, in which the Community Arts Stabilization Trust will contribute \$1 million and the City will contribute \$6.8 million (and may contribute up to \$9.0 million) to the Project. The City will enter into a 55-year lease with CAST Powerhouse LLC for the Powerhouse in which the rent will be abated for 15 years in consideration of the Community Arts Stabilization Trust's \$1 million contribution. The City and CAST Powerhouse LLC will enter into a Development Services Agreement in which the City develops and manages the Project and is reimbursed for expenses. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • The Project budget is \$13 million, of which \$8.1 million are City funds and \$4.8 million are tax credit financing and Community Arts Stabilization Trust contribution. 	
<p style="text-align: center;">Policy Consideration</p>	
<ul style="list-style-type: none"> • As the writing of this report, the City does not have a finalized Indemnification Agreement (File 17-1209) with the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund. • The current House bill on tax reform eliminates two Federal tax credits utilized in this project: the New Markets Tax Credit and the Historical Tax Credit. In order to utilize these Federal tax credits, the lease agreement must be approved by the end of the calendar year. 	
<p style="text-align: center;">Recommendations</p>	
<ul style="list-style-type: none"> • Approve Files 17-1205, 17-1206, 17-1207 and 17-1208. • Approval of File 17-1209 is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT

City Charter Section 9.118(c) requires Board of Supervisors approval for any lease that has an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more.

City Administrative Code Section 10.170 requires Board of Supervisors to accept grants in the amount of \$100,000 or more.

BACKGROUND

The Geneva Car Barn and Powerhouse are two buildings located at Geneva and San Jose Avenues across from the Balboa Park BART Station, adjacent to a vehicle storage facility owned by the San Francisco Municipal Transportation Agency (SFMTA). In 1998, the Geneva Car Barn and Powerhouse were saved from demolition by the Friends of the Geneva Car Barn and Powerhouse (Friends), a nonprofit neighborhood organization. In 2004, the SFMTA transferred jurisdiction of the vacant Geneva Car Barn and Powerhouse to the Recreation and Park Department (Department) (File No. 04-0320) at no cost, with the intent that the Department would form a partnership with the Friends to renovate the Geneva Car Barn and Powerhouse. Between 2004 and 2015, the Department and the Friends spent \$3,983,000 on the Car Barn from various sources, for roof repairs, preliminary seismic stabilization, planning, design, program administration, historic preservation architect and environmental testing.

In October 2014, the Board of Supervisors approved a Lease Disposition and Development Agreement between the Recreation and Park Department and the Friends (File 14-0920) specifying the Friend's obligations to fundraise, rehabilitate and operate the Car Barn as a community center. However, the Friends were unable to meet the funding requirements and in October 2015, the Board of Supervisors terminated the Lease Disposition and Development Agreement with the Friends (File 15-0890).

When the Lease Disposition and Development Agreement terminated in October 2015, the Recreation and Park Department recommended a two-phase Geneva Car Barn and Powerhouse Project, managed by the Department.

- Phase 1: Design, restoration, and improvement of the Powerhouse building only, including installation of a modern utility system, restoration of historic features, seismic stabilization, hazardous material remediation, new circulation systems to accommodate ADA (Americans with Disabilities Act) access, streetscape improvements, improved entrances, a new roof, and a new floor plan with radiant heating; and
- Phase 2: Design, restoration, and improvement of the Car Barn building to be used as office space and completion of more extensive improvements to the Powerhouse building.

According to Ms. Nicole Avril, Recreation and Park Project Director, Phase 1 is a stand-alone project and does not depend on agreements or funding for the Phase 2 Car Barn renovation.

The Board of Supervisors appropriated \$2,500,000 from the General Fund Reserve in March 2016 to partially fund the Phase 1 renovation of the Powerhouse. The Board of Supervisors placed these funds on Budget and Finance Committee Reserve pending identification of remaining funding sources for the Phase 1 Powerhouse renovation. In July 2017, the Department identified the sources and uses for Phase 1, totaling \$11,863,804, and the Budget and Finance Committee approved the release of reserves.

DETAILS OF PROPOSED LEGISLATION

File 17-1205 is resolution authorizing the Recreation and Park Department to accept and expend a grant from the California Department of Parks and Recreation in the amount of \$3,500,000 for the Geneva Car Barn and Powerhouse.

File 17-1206 is a resolution authorizing a Development Services Agreement between the City and CAST Powerhouse, LLC,¹ an affiliate of the Community Arts Stabilization Trust, a nonprofit public benefit corporation, for the payment of the City's construction costs and related expenses for the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse

File 17-1207 is a resolution authorizing a Funding Agreement between the City and the Community Arts Stabilization Trust to finance the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.

File 17-1208 is a resolution authorizing a 55-year lease between the City and CAST Powerhouse, LLC, an affiliate of the Community Arts Stabilization Trust, for the Powerhouse building of the Geneva Car Barn and Powerhouse and a portion of adjacent City property; affirming the Planning Department's determination under the California Environmental Quality Act; and finding the lease is in conformance with the General Plan and the eight priority policies of Planning Code Section 101.1.

File 17-1209 is a resolution authorizing an Indemnification Agreement in favor of the parties financing the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.

Project Overview

According to the proposed legislation, the City will fund and develop the Phase 1 Powerhouse Project with assistance from Community Arts Stabilization Trust (CAST). The Community Arts Stabilization Trust is a non-profit corporation that secures space and works with community arts organizations to develop and strengthen their financial and organizational capacity to purchase permanent facilities and navigate complex real estate issues. The City has worked with the Community Arts Stabilization Trust in the past to secure New Market Tax Credits for the community and arts space at 80 Turk Street and the art gallery at 1007 Market Street.

After the termination of the lease with the Friends of the Geneva Car Barn and Powerhouse, the Recreation and Park Department informally sought a new partner to develop the buildings.

¹ According to Mr. Manu Pradhan, Deputy City Attorney, the name of the organization in the proposed resolutions may be subject to change.

In 2015, the Office of Economic Workforce Development proposed to the Park and Recreation Department the Community Arts Stabilization Trust as a partner for the development of the Geneva Powerhouse and Car Barn. According to Ms. Avril, the General Manager approved partnering with the Community Arts Stabilization Trust due to their agreement to contribute \$1,000,000 to the project, previous experience in developing tax credits, interest in becoming partners with the City and their mission in rehabilitating arts spaces. It was not a competitive process.

The Phase 1 Powerhouse Project budget is \$13 million, as shown in the Table below. Funding comes from several sources, including General Fund monies previously appropriated by the Board of Supervisors, the California Department of Parks and Recreation grant (File 17-1205); other City funds, a contribution from the Community Arts Stabilization Trust (File 17-1206), and federal New Market and Historic Rehabilitation Tax Credits.

The Community Arts Stabilization Trust created a taxable entity, the CAST Powerhouse LLC, to be the qualified low-income business, in order for the Phase 1 Powerhouse Project to qualify for the New Market and Historic Rehabilitation Tax Credits.^{2,3} The Phase 1 Powerhouse Project has been awarded an allocation of New Market Tax Credits by the San Francisco Community Investment Fund⁴. The Powerhouse is on the National Register of Historic Places and therefore the Phase 1 Powerhouse Project qualifies for Historic Rehabilitation Tax Credits.⁵

The City will enter into a:

- 55-year lease (File 17-1208) with the CAST Powerhouse LLC for the Powerhouse. Under the terms of the draft lease,⁶ the City will construct the Phase 1 Powerhouse Project improvements, subject to reimbursement from CAST Powerhouse LLC. CAST Powerhouse LLC will sublease the Powerhouse to the taxable entity, created by the Community Arts Stabilization Trust, who will serve as the master tenant. The master tenant will in turn sublease the Powerhouse to the non-profit corporation – Performing Arts Workshop, Inc. (PAW).
- Funding Agreement (File 17-1207) with the Community Arts Stabilization Trust in which the Community Arts Stabilization Trust will allocate \$1,000,000 to the Phase 1 Powerhouse Project and the City will allocate \$6,800,000 to the Phase 1 Powerhouse

² The New Market Tax Credit program provides a tax incentive to private investors to invest in low-income communities. Under the Internal Revenue Code, New Market Tax Credits are made available to qualified active low-income community businesses or QALICB.

³ In order to qualify for tax credits, the Community Arts and Stabilization Trust will form a (1) taxable entity that will serve as the managing member (of which the Community Arts and Stabilization Trust is the sole member) of the CAST Powerhouse LLC; and (2) a taxable entity that will serve as the master tenant for the sublease of the Powerhouse, which will be controlled by the managing member of the CAST Powerhouse LLC.

⁴ San Francisco Community Investment Fund is a Community Development Entity that serves as the intermediary vehicle for allocation of New Market Tax Credits.

⁵ The federal Historic Rehabilitation Tax Credit program provides a 20 percent tax credit to projects that rehabilitate certified historic structures. The federal New Market Tax Credit program provides tax credits to qualified low-income investment businesses. Historic Preservation and New Market Tax Credits require the formation of a for-profit subsidiary to qualify for the tax credits.

⁶ At the time of writing this, the Budget and Legislative Analysts' Office has only been offered a draft lease.

Project (see the Table below). According to Ms. Avril, the Recreation and Park Department is submitting revised legislation to the December 7, 2017 Budget and Finance Committee that provides for the City to allocate up to \$9,025,000 to the Phase 1 Powerhouse Project. According to Ms. Avril, the additional allocation would be used in the event that the project's construction costs exceed the current construction budget, including the construction contingency. Ms. Avril states that the Community Opportunity Fund has sufficient funds to meet this additional obligation if necessary.

- Development Services Agreement (File 17-1206) with the CAST Powerhouse LLC that provides for the City to (1) serve as the Phase 1 Powerhouse Project developer; and (2) be paid a developer fee and for all project costs.
- Indemnification Agreement (File 17-1209) with Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund to provide certain indemnities in order to complete the Phase 1 Powerhouse Project.

Phase 2 Option

As mentioned previously, the Department divided the Geneva Car Barn and Powerhouse project into Phase 1 and Phase 2, allowing the City to approve a proposal for a set of construction documentation, bid and permit work and construction administration for the Phase 1 Powerhouse Project from the architect and engineering consultants. The budget for Phase 2 is estimated to be \$38,500,000, with construction to begin in 2020. The City has not yet identified the funds for Phase 2.

According to Ms. Avril, the City will enter into a separate Office Building Option Agreement with the Community Arts Stabilization Trust for rehabilitation of the Geneva Car Barn under Phase 2 of the project, in which the City would award the Community Arts Stabilization Trust a ten-year exclusive option to lease and develop the Car Barn building into an office space as well as space to deliver arts related classes and community services. The form of the ten-year lease has not yet been developed and is subject to future negotiation if the Community Arts Stabilization Trust exercises the option. According to Ms. Avril, the ten-year exclusive option is to incentive the Community Arts Stabilization Trust to invest \$1,000,000 in Phase 1 of the project, but also desired by the Department as key to the development of Phase 2. If the Community Arts Stabilization Trust chooses not to fund the development of Phase 2 by year ten of the Phase 1 Powerhouse Project, the Department will still be able to engage with another private partner to help develop the building.

Draft lease Provisions (File 17-1208)

As noted above, the proposed draft lease is between the City and CAST Powerhouse LLC, who will sublease the Powerhouse to a master tenant created by the Community Arts Stabilization Trust.

- The lease premises consist of the approximately 3,000 square foot Powerhouse located at 2301 San Jose Avenue.
- The lease term is for 55 years from approximately January 1, 2019 (the estimated date of completion of the Phase 1 Powerhouse Project) through December 31, 2074.

- The lease sets base rent at \$5,213 per month (equal to approximately \$21 per square foot per year), which increases annually by the Consumer Price Index but abates rent for the first 15 years of the lease in consideration of the Community Stabilization and Trust's \$1 million contribution to the project.⁷ Therefore, the City does not expect to receive rent under the proposed lease for the first 15 years. The City has the one-time right to increase the rent to fair market value after any dissolution of the tax credit financing structure.

Sublease between the Master Tenant and Performing Arts Workshop

In December 2016, the Department issued a request for proposals for arts related programming. By February 2017, the Department received three responses. A panel consisting of the Director of the San Francisco Arts Commission, Recreation and Park Department Director of Permits and Property Management, and one Friends of the Geneva Car Barn and Powerhouse Board Member based on the following metrics:

1. Compatibility with the desired programming at the Powerhouse
2. Meaningful public access
3. Program feasibility
4. Financial capacity

Performing Arts Workshop⁸ was selected as the highest rated non-profit and will enter into a ten-year sublease with the Powerhouse master tenant, commencing on the completion date of the Powerhouse. Performing Arts Workshop will pay rent to the master tenant, subject to approval by the Department. The amount of rent to be paid by Performing Arts Workshop is determined by a required return on equity for the Historic Rehabilitation Tax Credits to be paid to the tax credit investor, as well as possessory interest tax to the City.

Funding Agreement (File 17-1207)

The funding agreement between the City and the Community Arts Stabilization Trust provides for the City to enter into a 55-year lease for the Powerhouse and the taxable entity formed by the Community Arts Stabilization Trust, who serves as the master tenant. According to the funding agreement:

- The Community Arts Stabilization Trust will invest \$1,000,000 into the Phase 1 Powerhouse Project, the contribution of which will be recognized through abatement of rent, as noted above. The \$1,000,000 investment will be used exclusively for construction costs for Phase 1.
- The City will invest \$6,800,000 as shown in the Table below.

⁷ The rent abatement will end early if there is dissolution of the tax credit financing structure.

⁸ Public Arts Workshop has worked for 40 years in the City bringing sequential arts instruction to students ages 3-18. The Workshop has been a partner, collaborator and contractor with public agencies including Department of Children, Youth & their Families (DCYF) and the County of San Francisco's First 5 Preschool for All (PFA) program for low-income families. The Workshop participates in the City's internal and external audits yearly.

As noted above, the Recreation and Park Department is submitting revised legislation to the December 7, 2017 Budget and Finance Committee that provides for the City to allocate up to \$9,025,000 to the Phase 1 Powerhouse Project to be used in the event that the project's construction costs exceed the current construction budget, including the construction contingency. Ms. Avril states that available funds from the Community Opportunity Fund, previously appropriated by the Board of Supervisors, are sufficient funds to meet this additional obligation if necessary.

Development Services Agreement and Construction Project (File 17-1206)

The Development Services Agreement between the City and CAST Powerhouse LLC sets the terms for the City to develop and manage the Phase 1 Powerhouse Project. These services would include acting on behalf of the CAST Powerhouse LLC to (1) work with project funders and government agencies, (2) select project contractors and negotiate project contracts, (3) monitor and administer disbursement of project funds, and (4) oversee the project. In exchange, the City, as the developer, will be paid a developer fee and be reimbursed for all project costs, including the cost of the actual construction contract. According to Ms. Avril, the Department expects to begin construction on Phase 1 in February 2018 and complete the Powerhouse in ten months by December 2018. The Recreation and Park Commission authorized the Department to enter into the construction contract.

Indemnification Agreement (File 17-1209)

The proposed resolution approves the indemnification agreement between the City and the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund. As of the writing of this report, the Recreation and Park Department has not completed indemnification agreements in which the City will indemnify the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund against the following project risks:

1. Environmental/Construction: in the case of unknown environmental conditions at the premises and against claims of construction delays and cost over-runs.
2. Closing: in the event that the tax credit financing does not close and therefore the tax credits are not delivered. The City will reimburse only for up-front costs.
3. Recapture: in the event of the U.S. Treasury disallowing the Tax Credits due to the project falling out of compliance with Federal Law.

According to the resolution, "it is a normal business practice to provide these indemnities, which are consistent with New Market Tax Credit and Historic Rehabilitation Tax Credit transactions generally." According to Ms. Avril, these indemnities are in exchange for the indemnified parties' investment and participation in the project, and these transactions cannot proceed without the Indemnification Agreement.

As of the writing of this report, the City does not have a finalized Indemnification Agreement with the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund. Because the proposed resolution authorizes the Indemnification Agreement which has not yet been

finalized, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors. The Recreation and Park Department will negotiate the Indemnification Agreement in consultation with its tax credit consultant, the City Attorney’s Office and the City Risk Manager.

FISCAL IMPACT

The Phase 1 Powerhouse renovation budget is \$13,003,379, as shown in the table below.

Table: Phase 1 Powerhouse Renovation Budget

Sources of Funds	
<u>City Contribution</u>	
California Department of Parks and Recreation Grant (File 17-1205)	\$3,500,000
<i>Previously Appropriated:</i>	
Previously released Budget and Finance Committee Reserve	2,500,000
2000 Neighborhood Park General Obligation Bonds	838,000
Community Opportunity Funds	600,000
Recreation and Park Department FY 2015-16 Capital Budget	210,612
Neighborhood Asset Activation	306,000
Recreation and Park Department FY 2017-18 Budget	200,000
Subtotal City Contribution	\$8,154,612
<u>Other Funds</u>	
Community Arts Stabilization Trust (CAST) (File 17-1207)	\$1,000,000
Net Historic Preservation Tax Credits*	1,826,767
Net New Market Tax Credits*	2,022,000
Subtotal Other	\$4,848,767
Total Sources	\$13,003,379
Uses of Funds	
Contractor construction cost	\$8,279,900
Contractor construction Contingency (10% of Construction)	827,990
Subtotal, Contractor Construction	9,107,890
Other Miscellaneous Construction	1,544,191
Planning, Permitting, Design, Engineering, Environmental	1,517,681
Other Consultant Fees	937,687
Total Uses	\$13,003,379

*The Historic Preservation Tax Credits and New Market Tax Credits are federally required to flow through an investment fund which in turn is invested in the SCIF, which then lends funds to the qualified active low income community business (which in this case is the CAST Powerhouse, LLC). Therefore some of the proceeds of the original amount of the credit will be used to pay for these transaction fees. Only net funds are shown.

The City's total project contribution is \$8,154,612, of which approximately \$1,300,000 has been spent to date on planning, design, permitting and other project related-expenses. The balance of approximately \$6,854,612 will meet the City's obligation under the funding agreement (File 17-1207)

The Department estimates the total cost of Phase 1 to be \$13,003,379, as shown in the Table above. According to Ms. Avril, the Department only received one bid for the construction for Phase 1 on the Powerhouse. The bid, from Roebuck and Company, is \$8,279,900, or \$1,530,000 higher than the Department's cost estimate. The Department was able to offset some of the additional costs through additional Historic Tax Credits (File 17-1205).

POLICY CONSIDERATION

The current House bill on tax reform eliminates two Federal tax credits utilized in this project: the New Markets Tax Credit and the Historical Tax Credit. In order to utilize these Federal tax credits, the lease agreement must be approved by the end of the calendar year.

RECOMMENDATIONS

1. Approve Files 17-1205, 17-1206, 17-1207 and 17-1208.
2. Approval of File 17-1209 is a policy matter for the Board of Supervisors because the proposed resolution authorizes the Indemnification Agreement which has not yet been finalized.

DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT ("Agreement") is made and entered into as of _____, 2017, by and between CAST Powerhouse LLC, a California limited liability company ("QALICB"), and **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting by and through its Recreation and Park Department ("Developer").

RECITALS

WHEREAS, Developer owns real property located at 2301 San Jose Avenue, in San Francisco, California, 94112, legally described on Exhibit A attached hereto and incorporated herein by reference ("Property");

WHEREAS, Developer and QALICB have entered into a long-term lease as of the date hereof under which QALICB holds a leasehold estate in the Property ("Long-Term Lease");

WHEREAS, QALICB was formed to enter into the Long-Term Lease, facilitate the financing, restoration and development of the historic Geneva Powerhouse Building located on the Property ("Project"), and to master lease ("Master Lease") the improved Property to CAST Powerhouse Master Tenant, LLC, a California limited liability company ("Master Tenant") that will sub-sublease the improved Property for operation as a center for performing arts classes, performances, and other community programming;

WHEREAS, the Project will help ensure the preservation and protection of the historic building through its restoration which qualifies as a "certified rehabilitation" of a "certified historic structure" for purposes of the historic rehabilitation tax credit ("HRTC") pursuant to Sections 47 and 50 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law ("Code");

WHEREAS, U.S. Bancorp Community Development Corporation ("HRTC Investor") desires to obtain a 99% member's interest in the Master Tenant and claim 99% of the Project's HRTCs;

WHEREAS, QALICB desires to utilize new markets tax credit financing pursuant to Code Section 45D from [_____], a California limited liability company and controlled affiliate of the San Francisco Community Investment Fund ("NMTC Lender"), as set forth in that certain Loan Agreement, of even date herewith, and related documents, including any project funding agreement, loan agreement, mortgage encumbering the Property ("NMTC Documents");

WHEREAS, the Project must satisfy all requirements of any agreements executed by QALICB or Developer in connection with the acquisition or financing of the Property or the Project or like agreement which may provide for funding for any portion of the Project, including without limitation the NMTC Documents, the HRTC investment, and any governmental agency grant or funding agreement (collectively, the "Financing Documents"), which set forth the terms and conditions under which the NMTC Lender, the HRTC Investor, and any governmental agency or authority that provides any Project funding (collectively, the "Funders"), will commit their funding ("Project Funding"); and

WHEREAS, QALICB desires to appoint Developer exclusively to undertake the restoration and development of the Project on behalf of QALICB in accordance with this Agreement, the Financing Documents, HRTC renovation standards, and all applicable laws.

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. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Financing Documents.

2. Appointment. QALICB hereby appoints Developer to provide the Development Services (as defined below), and confirms and ratifies the appointment of Developer with regard to any Development Services rendered by Developer prior to and as of the date hereof with respect to the rehabilitation and development of the Project.

3. Authority and Obligations. QALICB and Developer acknowledge and agree that pursuant to this Agreement, Developer shall have the authority and the obligation to undertake the following services for the benefit of QALICB and the Project (collectively as set forth below, the "Development Services"):

(a) act on behalf of QALICB in its relation with the Funders and any governmental agency or authority with respect to all matters relating to the restoration and development of the Project;

(b) select the architect, contractor, engineer, project manager, and any other necessary third party consultants in connection with preparation of the renderings, design, drawings, plans and specifications for the development and construction of the Project ("Plans and Specs"), and enter into contracts with each in Developer's name;

(c) negotiate all necessary contracts (including the Construction Contract) for the Project;

(d) choose the products and materials necessary to equip the Project in a manner which satisfies all requirements of the Plans and Specs;

(e) monitor for reimbursement purposes the disbursement and payment of amounts owed to the architect, contractor, engineers, and any third party consultants selected to complete the Project;

(f) undertake alternative solutions within the scope of the approved budget ("Project Budget") whenever design details affect construction feasibility or schedules, provided that the Plans and Specs shall not be amended by Developer without the consent of QALICB and any Funders, to the extent approval is required by the terms of any Financing Documents, and,

unless QALICB otherwise consents, the Project shall be constructed without substantial deviation from approved Plans and Specs;

(g) prepare pre-qualification criteria for bidders interested in the Project, establish bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques with any special systems, materials or methods;

(h) receive bids, prepare bid analyses and report outcomes, conclusions, and actions taken to QALICB with regard to Developer award of contracts or rejection of bids;

(i) select the preservation consultant for the historical components of the development and rehabilitation, if necessary;

(j) complete and submit all forms necessary for the HRTC Part 1 and Part 2 designations, and incorporate all recommendations from the National Park Service in the plans and specifications as they relate to the Project;

(k) assist with the documentation of the pre-rehabilitation conditions of the interior and exterior of the Project;

(l) coordinate and consult with the State Historic Preservation Office to fulfill the eligibility requirements of the Project rehabilitation;

(m) coordinate the work of the architect to complete the Project rehabilitation in accordance with the objectives as to cost, time and quality, and provide sufficient personnel at the Property with authority to achieve such objectives;

(n) prepare a detailed schedule of realistic activity sequences and durations, allocation of labor and materials and processing of shop drawings and samples; perform regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and probable completion dates, review the schedule for work not started or incomplete; and on request of QALICB, provide QALICB documentation regarding the monitoring of the schedule and regarding any scheduling adjustments affecting the probable completion date for the Project;

(o) revise and refine the approved estimate of Project cost, incorporate changes as they occur, and develop cash flow reports and forecasts as needed;

(p) provide regular monitoring of the approved estimate of Project cost, show actual costs for activities in process and estimates for uncompleted tasks, identify variances between actual and budgeted or estimated costs and advise QALICB whenever projected costs exceed budgeted or estimated costs;

(q) develop and implement a system for review and processing of change orders as to the Project;

(r) develop and implement a procedure for the review and processing of applications by contractors for progress and final payments;

(s) establish and implement procedures for expediting the processing and approval of shop drawings and samples;

(t) record the progress of the Project and submit written progress reports to QALICB upon request, including the percentage of completion and the number and amounts of change orders

(u) be cognizant of and advise QALICB as needed with respect to any and all rules or regulations, city ordinances, including health and fire safety regulations, or any other requirements of law or governmental authorities applicable to the development and construction of the Project and to coordinate the services of professionals in connection therewith;

(v) ensure contractor obtains all necessary permits and approvals for and in connection with the development and construction of the Project, including but not limited to securing all Project code approvals and obtain certificates of occupancy for the Project, and in obtaining a contractor payment and performance bond;

(w) provide, and periodically update Project construction time schedule which coordinates and integrates the architect's services with construction schedules;

(x) cause the Project to be completed in a prompt and expeditious manner, consistent with good workmanship, and in compliance with the following:

(i) the Plans and Specs as they may be amended by the agreement of the parties hereto, satisfying the construction related reporting requirements of all Funders which are imposed upon QALICB or the Project and otherwise assist QALICB in meeting those and related requirements;

(ii) any and all applicable requirements set forth in the Financing Documents including the obligations to cause the contractor to obtain and maintain insurance and/or bonding as set forth therein, and Developer hereby covenants that, notwithstanding any provision to the contrary in this Agreement and except as specifically permitted by the Financing Documents, it shall not approve any change or the use of any savings in any line item of the Project Budget to fund an actual or potential shortfall in any other line item thereof except in full compliance with the terms of the Financing Documents and with the consent of QALICB; and

(iii) any and all zoning regulations, county ordinances, including health, fire and safety regulations, and any other requirements of federal, state and local laws, rules, regulations and ordinances applicable to construction of the Project, and in performance of its responsibilities hereunder, Developer covenants and agrees to observe and perform all of the terms, covenants, conditions, provisions and agreements to be performed by QALICB or Developer under the Financing Documents with respect to the performance and completion of the Project and further covenants and agrees not to do or suffer or permit anything to be done which would result in a default by QALICB or Developer under or cause any of the Financing Documents to be terminated;

(y) cause to be performed in a diligent and efficient manner the following:

- and
- (i) development of the Project, including any required off-site work;
 - (ii) general administration and supervision of the Project, including but not limited to activities of contractors, and others employed as to the Project in a manner which complies in all respects with the Plans and Specs;
 - (z) keep, or cause to be kept, accounts and cost records as to the Project;
 - (aa) maintain, or cause to be maintained, at its expense, all accounting facilities and equipment necessary to adequately perform the foregoing functions;
 - (bb) make available to QALICB, during normal business hours and upon QALICB's written request, copies of all contracts;
 - (cc) characterize the Development Fee (as defined in Section 4 of this Agreement) and all reimburseable items hereunder as such in its books or tax returns;
 - (dd) maintain sufficient, reasonable and adequate documentation that provides objective evidence that details the time, effort and money spent by Developer on any of the services (e.g., time records or memoranda recounting meetings or other efforts as to such services);
 - (ee) issue a Notice of Substantial Completion when the Project is substantially complete; and
 - (ff) upon completion of the Project, assign and transfer to QALICB all warranties, including, without limitation, any construction warranties, in any way related to the Project.

4. Development Fee. For Development Services performed and to be performed under this Agreement, the QALICB agrees to pay the Developer a development fee in the aggregate amount of \$ [] (the "Development Fee"), _____ percent (___%) of which constitutes QREs, based on the schedule of construction management services attached as Exhibit ###. The QALICB shall pay the City for its services within 14 calendar days following delivery of an invoice for such reimbursement from Developer and any and all other materials required to be submitted by QALICB to Funders pursuant to the Financing Documents as a condition precedent to the disbursement or release of Project Funding proceeds. The entire Development Fee shall be deemed to have been earned upon placement in service, as defined in Section 47(b) of the Code ("Placement in Service"), of the Project. For purposes of this Agreement, Placement in Service shall mean the issuance of (a) written notice of substantial completion by the architect to QALICB, and (b) a temporary certificate of occupancy by the City of San Francisco related to the Project. \$[] of the Development Fee shall be paid as of the date hereof. Notwithstanding the foregoing, the Developer hereby agrees that the Development Fee may be assumed by _____ ("Managing Member") as contemplated by the Operating Agreement by and between Managing Member and Master Tenant dated the date hereof ("QALICB Operating Agreement"). The Developer hereby agrees that following such assumption, (i) the Developer shall look solely to the Managing Member for payment of the assumed Development Fee, (ii) the payment of the assumed Development Fee shall be subject to

the provisions of the QALICB Operating Agreement, and (iii) upon request of the QALICB, the Developer shall execute and deliver a satisfactory release to the QALICB with respect to payment of the assumed Development Fee. Notwithstanding the foregoing, the entire unpaid balance of the Development Fee shall be paid by the Managing Member not later than 2023.

5. Reimbursements.

(a) Developer, in addition to the Development Fee, shall be reimbursed by QALICB for actual costs incurred by Developer in performing the Development Services solely in an amount up to but not in excess of, the amounts provided in the Project Budget, including any amounts paid by Developer under any agreements entered into by Developer for the purpose of completing the Project, including without limitation the construction contract and architect contract (collectively, "Project Costs"). Such reimbursement shall be made by QALICB within 14 calendar days following delivery of an invoice for such reimbursement from Developer and any and all other materials required to be submitted by QALICB to Funders pursuant to the Financing Documents as a condition precedent to the disbursement or release of Project Funding proceeds. Alternatively, at Developer's request, QALICB shall pay Project Costs directly to any third party identified in writing by Developer within five (5) business days following delivery of an invoice for such reimbursement from Developer and any and all other materials required to be submitted by QALICB to Funders pursuant to the Financing Documents as a condition precedent to the disbursement or release of Project Funding proceeds. Developer shall remain solely responsible for the prompt payment of any Project Costs in excess of the Project Budget. QALICB acknowledges and agrees that it may not disburse or release any Project Funding except as authorized by the Financing Documents. Notwithstanding anything to the contrary set forth herein, in no event shall the Funders, upon succeeding to the rights of QALICB under this Agreement after an Event of Default under the Financing Documents, have any obligation to reimburse Developer from any source other than the undisbursed balance of the Project Funding at the time of such exercise or succession, and such amounts to be reimbursed shall be limited to those amounts set forth in the Project Budget approved by Funders. In addition, any portion of the "Grant" as defined in Section 2(b) of the Funding Agreement that is not needed for the Leverage Loan and that has not been spent before the Project has been placed in service shall be reimbursed to the Developer.

(b) In the event that the Community Arts Stabilization Trust ("CAST") elects to retain a Construction Manager to assist Developer in performing the Development Services pursuant to Section 2(b) of the Funding Agreement, CAST may seek reimbursement from QALICB for actual costs incurred in retaining the Construction Manager, in accordance with the procedures set forth above in Section 5(a) of this Agreement. The QALICB shall pay such reimbursements entirely out of the proceeds of the CAST Contribution, and in no case shall the Construction Manager be paid with any City funds.

(c) Until the payment in full of all amounts owed by QALICB to Funders under the Financing Documents, Developer agrees that it will not exercise any right of subrogation, or any right to enforce any remedy Funders may have against QALICB or any other person or any collateral for the Project Funding.

6. Default. Developer acknowledges that the terms of the Financing Documents evidencing, governing and securing the Project Funding impose covenants and obligations upon

QALICB, the performance and observance of which will (in whole or in part) be dependent on Developer's actions and inactions as the developer of the Project. QALICB has provided to Developer copies of the Financing Documents, and Developer has reviewed and is familiar with the provisions of such Financing Documents. Developer hereby covenants and agrees that Developer shall not violate or cause a violation of any of the Financing Documents, and that Developer shall take such actions, on a prompt and timely basis, as shall be necessary to enable QALICB to comply with such Financing Documents. Any failure by Developer to observe or comply with the foregoing provisions that is not cured by (i) the end of the applicable cure period set forth in this Agreement, if any, or (ii) the applicable cure period afforded to QALICB under the provisions of the Financing Documents (whichever is the shorter period) shall constitute a default under this Agreement.

7. Withholding of Fee Payments. In the event that the Developer shall not have substantially complied with any material provisions under this Agreement, then the Developer shall be in default of this Agreement. In the event that the Developer shall remain in default of this Agreement after Notice and a thirty (30) day opportunity to cure such default, the QALICB may terminate this Agreement and/or withhold any payments due hereunder. All amounts so withheld by the QALICB under this Section 7 shall be promptly released to the Developer only after the Developer has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the QALICB.

8. Indemnification. In consideration for the Development Fee and other benefits described in Section 4 above, Developer agrees to protect, defend, indemnify and hold harmless Funders for, from and against, any and all losses, damages, liabilities, costs, expenses or other obligations incurred by Funders arising out of or in connection with its performance of the Development Services, including the following:

(a) fraud by Developer in connection with the construction, leasing or operation of the Project, the making or disbursement of the Project Funding, or any certificates or documents provided by Developer in connection therewith;

(b) material misrepresentation or breach of warranty by Developer hereunder known to be false when made in connection with the construction, leasing or operation of the Property, the making or disbursement of the Project Funding, or any certificates or documents provided by Guarantor in connection therewith;

(c) any waste committed by Developer with respect to the Project or the wrongful removal or disposal of any portion of the Project in violation of the Financing Documents;

(d) Developer's application of Project Funding proceeds for purposes not permitted by the Financing Documents;

(e) damage or destruction to the Project caused by the willful misconduct of Developer or any of their respective affiliates, agents or employees; and

(f) any filing by Developer of a bankruptcy petition, or the making by Developer of an assignment for the benefit of creditors, or the appointment of a receiver.

9. Accounts and Records.

(a) The Developer, on behalf of the QALICB, shall keep such books of account and other records as may be required and approved by the Managing Member, including, but not limited to, records relating to the costs of construction advances. The Developer shall keep vouchers, statements, receipted bills and invoices and all other records, in the form approved by the Managing Member, covering all collections, if any, disbursements and other data in connection with the Property prior to final completion of construction and rehabilitation. All accounts and records relating to the Property, including all correspondence, shall be surrendered to the QALICB, upon demand without charge therefore.

(b) All books and records prepared or maintained by the Developer shall be kept and maintained at all times at the place or places approved by the Managing Member, and shall be available for and subject to audit, inspection and copying by the Managing Member or any representative or auditor thereof or supervisory or regulatory authority, at the times and in the manner set forth in the Operating Agreement.

10. Security Interest/Collateral Assignment of Development Fee. To secure the performance by the Developer of its obligations to the QALICB and the Master Tenant under this Agreement, the Developer hereby collaterally assigns to the Master Tenant all amounts payable to the Developer under this Agreement, which assignment shall be deemed a grant of a security interest. The Developer hereby represents and warrants to the Master Tenant that the security interest granted hereunder is and shall remain a security interest in the Development Fee. At the request of the Master Tenant, the Developer shall execute such documents and take such other actions as may be necessary or appropriate in the discretion of the Master Tenant to further evidence and perfect the security interest granted hereby. Notwithstanding any of the foregoing, unless and until there occurs an event of default with respect to a material obligation of the Developer hereunder, the Master Tenant agrees to forebear exercising any rights to the Development Fee, and the Developer shall have the right to receive all payments of the Development Fee as such payments become due and payable pursuant to the provisions of this Agreement.

11. Construction Warranty.

(a) The Developer shall cause the Contractor to warrant to the Master Tenant and to the QALICB, or any member thereof, that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the work will be free from defects, and that the work will conform with the requirements of the Plans and Specs. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If requested by the QALICB or any member thereof, the Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in the construction and rehabilitation of the Project.

(b) If, within one (1) year after Placement in Service, any of the structural or non-structural work performed to construct the Project is found to be materially defective or not in accordance in all material respects with the Plans and Specs and with all applicable building codes, laws, rules and regulations, the Developer shall correct or cause the contractor to correct such defect(s) promptly after receipt of written notice from the Master Tenant, the QALICB or

any member thereof to do so. With respect to portions of the work first performed after Placement in Service, such one (1) year period shall be extended by the period of time between the date of Placement in Service and the actual performance of the work. The obligation under this Section shall survive acceptance of the work performed to construct the Project. The Master Tenant and the QALICB or any member thereof shall give such notice promptly after discovery of the condition. If a material defect is discovered more than one (1) year after the date of Placement in Service, as such period may be extended under this Section, and such defect was known to the Developer and was not disclosed to the Master Tenant and the QALICB or any member thereof or was intentionally concealed by the Developer, then the Developer shall promptly take such action as may be necessary, at the Developer's sole expense, to correct such defective work to the satisfaction of the QALICB or any member thereof. The Master Tenant and/or the QALICB, as applicable, shall report to the Developer any defective condition discovered more than one (1) year after the date of Placement in Service, as such period may be extended under this Section.

12. Termination.

(a) This Agreement may be terminated, at the election of QALICB, if (A) any action by Developer identified in Section 7 of this Agreement shall have occurred; (B) (i) Developer defaults under this Agreement, (ii) the default remains uncured within 90 days following delivery by QALICB of written notice identifying the default, and (iii) continuation of the default without cure will have a material adverse effect on the Project or QALICB; or (C) completion of the Project has not occurred by [_____]. Developer shall provide notice to all Funders at least 30 days prior to termination of this Agreement. Otherwise, this Agreement may not be terminated prior to completion of all Development Services by Developer except with the written mutual consent and approval of the parties hereto.

(b) If the Managing Member withdraws from the QALICB for any reason whatsoever, including the removal of the Managing Member, this Agreement shall terminate effective on the date of such withdrawal ("Early Termination") unless the QALICB and the Master Tenant otherwise elect in writing. If an Early Termination occurs on or after the date on which all of the Project has been placed-in-service, the Developer shall be entitled to receive payments of the Development Fee to the extent earned when and as specified under this Agreement; provided, however, that the QALICB and the Master Tenant shall be entitled to exercise any remedies available to them at law or in equity, including any remedies in connection with any lien, pledge or right of offset available to them with respect to the repayment of Development Fees. If an Early Termination occurs, the Developer shall remain liable for all damages, liabilities and claims ("Claims") arising under or in connection with this Agreement which are based on acts or omissions prior to the date of such termination, including Claims which do not become manifest until after the date of such termination. The Developer shall have no right to terminate this Agreement without the Consent of the QALICB and the Master Tenant, which Consent may be withheld in the sole discretion of either party.

13. Successors and Assigns. This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns. Except as expressly set forth herein, this Agreement may not be assigned by either party without the written consent of the other.

14. Separability of Provisions. Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic

purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

16. No Continuing Waiver. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

17. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY PRESENT OR FUTURE AMENDMENT THEREOF, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE DEVELOPMENT AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.

18. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

19. Third Party Beneficiaries. Unless otherwise evidenced in writing signed by both parties, QALICB and Developer do not intend to benefit any party that is not a party to this Agreement and no such party shall be deemed to be a third party beneficiary of this Agreement or any provision hereof except for (i) the Funders who are expressly intended as a third party beneficiary of this Agreement with the right to enforce the same against Developer in accordance with the terms and conditions of such Sections, and (ii) Master Tenant who is a third party beneficiary of this Agreement. The QALICB and the Developer hereby expressly agree that any amendment to this Agreement shall not be effective unless and until the same is consented to by the Master Tenant.

[Signatures on following page]

Signature Page to Development Services Agreement

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

Developer:

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 Development Services Agreement

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

QALICB:

[_____] , a
[_____]

By: _____
Name: _____
Title: _____

**EXHIBIT A
LEGAL DESCRIPTION**

Member, Board of Supervisors
District 11



City and County of San Francisco

AHSHA SAFAI

November 14, 2017

Angela Calvillo, Clerk of the Board
City and County of San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find an original and two copies of a proposed resolution submitted for the Board of Supervisors approval, which will authorize a Development Services Agreement with an affiliate of the Community Arts Stabilization Trust for the payment of City's construction costs and related expenses for the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.

The following is a list of accompanying documents (three sets):

- Proposed Resolution

Special Timeline Requirement: The legislation is scheduled for introduction to The City and County of San Francisco Board of Supervisors on November 14, 2017 with final adoption by the Board of Supervisors during the December 12, 2017 meeting to meet qualifying deadlines.

The following person may be contacted regarding this matter:

Manu Pradhan, Deputy City Attorney
Office of the City Attorney
1 Dr. Carlton B. Goodlett Place, City Hall, Room 234
San Francisco, CA 94102-4682
tel: (415) 554-4658, fax: (415) 554-4699
email: manu.pradhan@sfgov.org

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ahsha Safai".

Ahsha Safai
District 11 Supervisor

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2017 NOV 14 PM 3:56

Time stamp
BY _____ or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

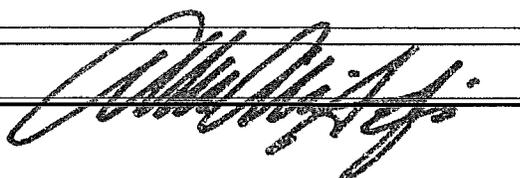
District 11 Supervisor Ahsha Safai

Subject:

Geneva Car Barn and Powerhouse - CAST Powerhouse LLC - Development Services Agreement

The text is listed:

Resolution authorizing a Development Services Agreement with an affiliate of the Community Arts Stabilization Trust for the payment of City's construction costs and related expenses for the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only