

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
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## MEMORANDUM

### LAND USE AND TRANSPORTATION COMMITTEE

#### SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Mark Farrell, Chair  
Land Use and Transportation Committee

FROM: Alisa Somera, Legislative Deputy Director

DATE: May 1, 2017

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**  
Tuesday, May 2, 2017

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, May 2, 2017. This item was acted upon at the Committee Meeting on Monday, May 1, 2017, at 1:30 p.m., by the votes indicated.

**Item No. 20                      File No. 170467**

Ordinance approving an agreement between the City and LMC San Francisco I Holdings, LLC, to allow the City to use the property at 1515 South Van Ness Avenue to utilize and operate a facility to provide temporary housing and services to homeless persons; directing the City Administrator, Public Works, Department of Homelessness and Supportive Housing, Department of Building Inspection, and other City departments to make repairs or improvements, consistent with health and safety standards, to use the property for temporary housing to address encampments in the Mission District; authorizing Public Works, Department of Homelessness and Supportive Housing, and Department of Public Health to enter into contracts without adhering to competitive bidding and other requirements for construction work, procurement, and personal services at the facility; and affirming the Planning Department's determination under the California Environmental Quality Act.

#### **RECOMMENDED AS A COMMITTEE REPORT**

Vote: Supervisor Mark Farrell - Aye  
Supervisor Aaron Peskin - Aye  
Supervisor Katy Tang - Aye

c: Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Jon Givner, Deputy City Attorney

File No. 170467

Committee Item No. 5

Board Item No. 20

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date May 1, 2017

Board of Supervisors Meeting

Date May 2, 2017

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Memorandum of Understanding (MOU)            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 - Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 700                                     |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Vacancy Notice                               |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Information Sheet                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | CEQA Determination |
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Completed by: Alisa Somera

Date April 28, 2017

Completed by: Alisa Somera

Date May 1, 2017

[Temporary Housing for Homeless People During Shelter Crisis - LMC San Francisco I Holdings, LLC - 1515 South Van Ness Avenue]

**Ordinance approving an agreement between the City and LMC San Francisco I Holdings, LLC, to allow the City to use the property at 1515 South Van Ness Avenue to utilize and operate a facility to provide temporary housing and services to homeless persons; directing the City Administrator, Public Works, Department of Homelessness and Supportive Housing, Department of Building Inspection, and other City departments to make repairs or improvements, consistent with health and safety standards, to use the property for temporary housing to address encampments in the Mission District; authorizing Public Works, Department of Homelessness and Supportive Housing, and Department of Public Health to enter into contracts without adhering to competitive bidding and other requirements for construction work, procurement, and personal services at the facility; and affirming the Planning Department's determination under the California Environmental Quality Act.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in *single-underline italics Times New Roman font*.  
**Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~strikethrough Arial font~~.  
**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public

1 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the  
2 Board of Supervisors in File No. 170467 and is incorporated herein by reference. The Board  
3 affirms this determination.

4 Section 2. Background.

5 (a) California Government Code Sections 8698 through 8698.2 authorize the  
6 governing body of a political subdivision, including the Board of Supervisors, to declare the  
7 existence of a shelter crisis upon a finding by the governing body that a significant number of  
8 persons within the jurisdiction are without the ability to obtain shelter, and that the situation  
9 has resulted in a threat to the health and safety of those persons. These Government Code  
10 provisions authorize the City to suspend state or local statutes, ordinances, and regulations  
11 setting housing, health, or safety standards for new public facilities opened to homeless  
12 persons in response to the shelter crisis, to the extent that strict compliance would prevent,  
13 hinder, or delay the mitigation of the shelter crisis, and allow the City to enact its own  
14 standards for the shelters that ensure basic public health and safety.

15 (b) In Ordinance No. 57-16, enacted on April 22, 2016, the Board of Supervisors  
16 found that a significant number of persons within the City are without the ability to obtain  
17 shelter, and that the situation has resulted in a threat to the health and safety of those  
18 persons. For that reason, and based on factual findings set forth in that ordinance, the Board  
19 of Supervisors declared the existence of a shelter crisis in the City and County of San  
20 Francisco in accordance with California Government Code Sections 8698 through 8698.2.

21 (c) LMC San Francisco I Holdings, LLC, an affiliate of Lennar Multifamily  
22 Communities ("Lennar") owns the improved property located at 1515 South Van Ness Avenue  
23 (the "Property"). The Property currently contains a one-story warehouse building, which  
24 Lennar intends to demolish and replace with a new project on the Property, including a mix of  
25 residential housing and commercial shops. Lennar intends to begin demolition and

1 construction on or around January 15, 2018. Lennar has offered as a gift, subject to the terms  
2 of the gift agreement described in Section 3 of this Ordinance, to allow the City to use the  
3 Property temporarily to provide temporary housing for homeless persons before Lennar  
4 begins construction work on its new project.

5 (d) In light of the ongoing shelter crisis, the tent encampment crisis in the Mission,  
6 the encampment directly outside the Property, and the need of people living on the street for  
7 safe and sanitary temporary shelter and services from the City, and the short-term availability  
8 of the Property for use by the City to provide temporary housing, the Board finds that the City  
9 must expeditiously award contracts to complete repairs or improvements to the Property and  
10 to allow its use for temporary housing as described in this ordinance.

11 Section 3. Agreement to Use Property.

12 (a) Lennar and the City have entered an agreement (the "Agreement") for the City  
13 to make repairs and improvements and operate a facility to provide temporary housing and  
14 services to homeless persons. Under the Agreement, construction work will be performed by  
15 the City or its contractors, at no cost to Lennar, and the City will indemnify Lennar for any  
16 losses relating to the City's use of the Property. A copy of the Agreement is on file with the  
17 Clerk of the Board of Supervisors in File No. 170467.

18 (b) The Board approves the Agreement in substantially the form contained in File  
19 No. 170467, and authorizes the Department of Homelessness and Supportive Housing, City  
20 Administrator, Department of Public Works, and Director of Real Estate to enter into any  
21 amendments or modifications to the Agreement that those departments determine, in  
22 consultation with the City Attorney, are in the best interest of the City, do not otherwise  
23 materially increase the obligations or liabilities of the City, are necessary or advisable to  
24 effectuate the purposes of the Agreement, and are in compliance with all applicable laws.  
25

1 (c) Within 30 days of the Agreement being fully executed by all parties, the  
2 Department of Homelessness and Supportive Housing shall submit to the Clerk of the Board  
3 of Supervisors a completely executed copy for inclusion in File No. 170467.

4 Section 4. Repairs or Improvements for Temporary Shelter at 1515 South Van Ness  
5 Avenue.

6 In response to the shelter crisis declared in Ordinance No. 57-16, City departments,  
7 including the City Administrator, Department of Public Works, Department of Homelessness  
8 and Supportive Housing, and Department of Building Inspection, shall exercise the authority  
9 granted by California Government Code Sections 8698 through 8698.2, and shall take any  
10 necessary or appropriate steps to repair or improve the Property to provide temporary housing  
11 for homeless persons, subject to the following limitations:

12 (a) The City may only perform repairs or improvements after the City and Lennar  
13 execute an agreement allowing the City to use the Property;

14 (b) The Fire Marshal and the Directors of the Department of Public Works,  
15 Department of Homelessness and Supportive Housing, and Department of Building Inspection  
16 shall each make a written determination, before the City commences work, that the proposed  
17 repairs or improvements will satisfy basic public health and safety standards to allow for  
18 human occupancy;

19 (c) The repairs or improvements shall comply with the Americans with Disabilities  
20 Act and other federal health and safety requirements, and shall otherwise comply with the  
21 requirements of the Agreement; and

22 (d) The City shall initiate the repairs or improvements on or before June 1, 2017.

23 Section 5. Contracting Authority.

24 (a) Notwithstanding any provision of the Municipal Code, the Department of Public  
25 Works, the Department of Public Health, and the Department of Homelessness and

1 Supportive Housing may enter into contracts to provide professional and/or construction  
2 services to assist the City in the repair or improvement of the Property, and contracts to  
3 provide professional services or to procure goods or materials to assist in the operation of the  
4 temporary housing facility at the Property, without adherence to the requirements of  
5 Administrative Code Chapters 6, 12B, 14B, and 21.

6 (b) Within 30 days of any contract authorized by this Section 5 being fully executed  
7 by all parties, the Department of Homelessness and Supportive Housing, Department of  
8 Public Health, or the Department of Public Works shall submit to the Clerk of the Board a  
9 completely executed copy for inclusion in File No. 170467.

10  
11 Section 6. Effective Date; Retroactive Operation.

12 (a) This ordinance shall become effective 30 days after enactment. Enactment  
13 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or  
14 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors  
15 overrides the Mayor's veto of the ordinance.

16 (b) The ordinance shall apply to any work performed at the Property and any  
17 agreements entered by the City on or after April 25, 2017.

18  
19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21 By:

22   
JON GIVNER  
Deputy City Attorney

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24  
25

## **LEGISLATIVE DIGEST**

[Temporary Housing for Homeless People During Shelter Crisis - LMC San Francisco I Holdings, LLC - 1515 South Van Ness Avenue]

**Ordinance approving an agreement between the City and LMC San Francisco I Holdings, LLC, to allow the City to use the property at 1515 South Van Ness Avenue to utilize and operate a facility to provide temporary housing and services to homeless persons; directing the City Administrator, Public Works, Department of Homelessness and Supportive Housing, Department of Building Inspection, and other City departments to make repairs or improvements, consistent with health and safety standards, to use the property for temporary housing to address encampments in the Mission District; authorizing Public Works, Department of Homelessness and Supportive Housing, and Department of Public Health to enter into contracts without adhering to competitive bidding and other requirements for construction work, procurement, and personal services at the facility; and affirming the Planning Department's determination under the California Environmental Quality Act.**

### **Existing Law**

California law authorizes the Board of Supervisors to declare the existence of a shelter crisis based on a finding that a significant number of people in the City are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those people. The law authorizes the City to suspend state or local laws setting housing, health, or safety standards for new homeless shelter facilities in response to the shelter crisis, to the extent that strict compliance would prevent, hinder, or delay the mitigation of the shelter crisis. In Ordinance No. 57-16, enacted on April 22, 2016, the Board of Supervisors declared the existence of a shelter crisis in the City and County of San Francisco, permitting the City to take necessary steps to facilitate temporary homeless housing without strict compliance with housing, health or safety laws.

Local law requires the Board of Supervisors to approve most gifts worth \$10,000 or more, and generally requires City departments to use a competitive bidding process and follow other contracting requirements for personal services, procurement, and construction contracts, subject to exceptions.

### **Terms of the Proposed Ordinance**

The proposed ordinance would approve an agreement between the City and LMC San Francisco I Holdings, LLC, an affiliate of Lennar Multifamily Communities ("Lennar"). The agreement would allow the City to use the property at 1515 South Van Ness temporarily to operate a facility to provide temporary housing and services to homeless people. Lennar owns the property and plans to develop it beginning around January 15, 2018. Lennar has offered a gift that would allow the City to use the property before Lennar begins construction



work on its new project. The ordinance would approve that gift and the agreement between Lennar and the City.

The ordinance would direct City departments—including the City Administrator, Department of Public Works, Department of Homelessness and Supportive Housing, and Department of Building Inspection—to take necessary and appropriate steps to repair or improve the property to provide temporary housing for homeless persons. The ordinance would not allow the City to commence work until the Fire Marshal and the directors of the Department of Public Works, Department of Homelessness and Supportive Housing, and Department of Building Inspection all make written determinations that the proposed repairs or improvements will satisfy basic public health and safety standards.

The ordinance would allow the Department of Public Works, Department of Public Health and Department of Homelessness and Supportive Housing to enter into contracts to prepare and manage the facility during the City's temporary use of the property.

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BOARD of SUPERVISORS



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TDD/TTY No. 554-5227

April 27, 2017

**File No. 170467**

Lisa Gibson  
Acting Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

On April 25, 2017, Mayor Lee introduced the following proposed legislation:

**File No. 170467**

Ordinance approving an agreement between the City and LMC San Francisco I Holdings, LLC, to allow the City to use the property at 1515 South Van Ness Avenue to utilize and operate a facility to provide temporary housing and services to homeless persons; directing the City Administrator, Public Works, Department of Homelessness and Supportive Housing, Department of Building Inspection, and other City departments to make repairs or improvements, consistent with health and safety standards, to use the property for temporary housing to address encampments in the Mission District; authorizing Public Works, Department of Homelessness and Supportive Housing, and Department of Public Health to enter into contracts without adhering to competitive bidding and other requirements for construction work, procurement, and personal services at the facility; and affirming the Planning Department's determination under the California Environmental Quality Act.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

**REVIEWED**

By Joy Navarrete at 11:45 am, Apr 28, 2017

## **AGREEMENT TO USE PROPERTY FOR A TEMPORARY NAVIGATION CENTER**

This AGREEMENT TO USE PROPERTY FOR A TEMPORARY NAVIGATION CENTER (this "Agreement"), dated as of April \_\_, 2017, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through the City Administrator, the Director of Public Works, the Director of the Department of Homelessness and Supportive Housing Homeless, and the Director of Property, and LMC San Francisco I Holdings, LLC, a Delaware limited liability company ("Owner").

### **Recital**

A. Owner owns that certain improved real property in the City and County of San Francisco, located at 1515 South Van Ness Avenue, San Francisco, California, as more particularly described in Exhibit A (the "Property"). The Property is currently improved with a one story warehouse building, consisting of approximately \_\_\_ square feet (the "Building"). All references in this Agreement to the Property shall include the Building.

B. Owner intends to demolish the Building and construct a project on the Property, as set forth in [*reference City approvals*] (the "New Project"). Owner intends to begin work on the New Project or around [\_\_\_\_\_, 2018.]

C. California Government Code Sections 8698 through 8698.2 authorize the governing body of a political subdivision, including the City, to declare the existence of a shelter crisis upon a finding by the governing body that a significant number of persons within the jurisdiction are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those persons. In Ordinance No. 57-16, enacted on April 22, 2016, the Board of Supervisors found that a significant number of persons within the City are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those persons. For that reason, and based on factual findings set forth in that ordinance, the Board of Supervisors declared the existence of a shelter crisis in the City and County of San Francisco for the purposes of California Government Code Sections 8698 through 8698.2.

D. [*add reference to Board action on this*]

E. In response to the shelter crisis, the City wishes to construct and operate a temporary navigation center on the Property to provide temporary housing for homeless persons and to provide services to such persons, generally consistent with City navigation centers at 1950 Mission Street, at the Civic Center Hotel, and at 25th and Michigan Streets.

F. City and Owner desire to enter into this Agreement to allow City to create and operate the temporary navigator center on the terms set forth in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing covenants, promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree as follows:

## 1. PERMITTED USES

(a) City may enter and use the Property for the sole purpose of constructing and operating a navigation center to serve homeless persons. The construction work shall be performed by the City or its contractors, at no cost to Owner, in accordance with the scope of work described in Exhibit B [*and shown in Exhibit B-1?*] (the "Work"). The Work shall include portable bathroom and shower facilities, but no cooking or kitchen facilities, as more particularly described in Exhibit B. Any material change from the Work described in Exhibit B shall be subject to Owner's prior written approval, which Owner may give or withhold in Owner's sole discretion. City shall begin the Work within thirty (30) days after the start of the term of this Agreement.

(b) City shall enter into an agreement with a third party (the "Operator") for the operation of the navigation center at the Property generally in the form attached as Exhibit C. Any material change from the form of management agreement attached as Exhibit C shall be subject to Owner's prior written approval.

(c) City shall use, and shall cause its contractors and agents to use, due care at all times to avoid any damage or harm to the Property. City shall not perform any excavation work or perform any construction except as described in the approved Work. City shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Property. City shall take appropriate action in good faith to address any reasonable neighborhood concerns and complaints relating to the City's use of the Property, consistent with City's actions with respect to navigations centers in other parts of the City.

(d) City shall not cause, nor shall City allow any of its contractors or agents to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in or about the Property. City shall promptly notify Owner when City learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Property. City shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. If City or its contractors or agents cause a release of Hazardous Material, City shall, without cost to Owner and in accordance with all laws and regulations, promptly return the Property to the condition immediately prior to the release. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Property or are naturally occurring substances in the Property, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Property.

## 2. AS-IS; NO REPRESENTATIONS OR WARRANTIES

(a) City accepts the Property strictly in its "AS IS" condition, without representation or warranty of any kind by Owner, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Property or any facilities on the Property for City's use. Without limiting the foregoing, this Agreement is made subject to all applicable laws, rules and ordinances governing the use of the Property, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Property, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is City's sole obligation to conduct an independent investigation of the Property and all matters relating to its use of the Property hereunder, including, without limitation, the suitability of the Property for such uses. City, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for City to make use of the Property in the manner contemplated hereby.

(b) Under California Civil Code Section 1938, to the extent applicable to this Agreement, City is hereby advised that the Property has not undergone inspection by a Certified Access Specialist to determine whether it meets all applicable construction-related accessibility requirements. City shall be solely responsible for maintaining all facilities placed in or on the Property pursuant hereto in good and safe condition, and Owner shall have no duty whatsoever for any maintenance of the Property or any such facilities therein.

## 3. COVENANT TO MAINTAIN; REPAIR OF DAMAGE

City shall at all times, at no cost to Owner, maintain the Property in a good, clean, safe, secure, sanitary and sightly condition in so far as the Property may be affected by City's activities hereunder. If any portion of Property is damaged by any of the activities of City or its contractors or agents, City shall, at no cost to Owner, repair such damage as required to continue to operate the navigation center.

## 4. TERM OF AGREEMENT

(a) The term of this Agreement is temporary only and shall start on the date of execution, and shall continue until \_\_\_\_\_, 2018; provided (1) if the Property is damaged or destroyed by casualty, and City elects not to make such repairs as needed to continue to operate the Property as a navigation center, City shall have the right to terminate this Agreement by delivery of notice to Owner, and (2) Owner shall have the right to terminate this Agreement for a City default as set forth in section (b) below.

(b) If City fails to comply with any material covenant, condition or term of this Agreement and such failure continues for fifteen (15) days after the date of written notice by Owner to City, City shall be in default under this Agreement; provided that if such default is not capable of cure within 15 days, City shall have a reasonable period to complete such cure if City undertakes prompt action to cure the default within the fifteen (15)-day period and thereafter diligently prosecutes the same to completion. Owner shall have the right to terminate this Agreement by delivery of written notice of termination if City fails to cure the default within the time period set forth above.

## 5. NO AGREEMENT FEE

There shall be no fee charged in connection with City's use of the Property under this Agreement.

## 6. COMPLIANCE WITH LAWS

City shall, at no cost to Owner, conduct and cause to be conducted all activities on the Property allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act and any other disability access laws), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. City shall, at no cost to Owner, procure and maintain in force at all times during its use of the Property any and all licenses or approvals necessary to conduct the activities allowed hereunder.

## 7. INDEMNITY

City shall indemnify, defend and hold harmless Owner, its boards, officers, agents, and employees (collectively, "Agents"), and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"), arising in any manner out of (a) any injury to or death of any person occurring in or on the Property during the term of this Agreement; (b) any damage to property occurring in, on or about the Property relating in any manner to City's use of the Property under this Agreement (subject to the surrender provisions of Section 9), (c) any failure by City to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, or (d) any release or discharge of any Hazardous Material caused or allowed by City or its Agency on, in, under or about the Property, except (1) to the extent of Losses resulting directly from the negligence or willful misconduct of Owner or its Agents, and (2) the parties agree to look first to any liability insurance held by Operator to the extent applicable to the Losses, and City's indemnification shall not extend to items to the extent covered by such insurance. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including costs to negotiate with any insurer and to pay any deductible. City specifically acknowledges and agrees that it has an obligation to defend Owner from any claim that falls within this indemnity provision even if the allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to City. City's obligations under this section shall survive the expiration or other termination of this Agreement.

## 8. WAIVER OF CLAIMS; WAIVER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES

(a) Neither Owner nor any of its Agents shall be liable for any damage to the property of City, or its contractors or agents, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by City.

(b) Owner would not be willing to give this Agreement in the absence of a complete waiver of liability for consequential or incidental damages due to the condition of the Property. Accordingly, City fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages, and covenants not to sue Owner, for any loss, cost, liability, claim or damage resulting from the condition of the Property or the City's use of the Property as contemplated by this Agreement.

(c) In connection with the foregoing release, City acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

City acknowledges that the release contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. City realizes and acknowledges that it has agreed upon this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The release contained herein shall survive any termination of this Agreement.

#### 9. SURRENDER

Upon the expiration or termination of this Agreement, City shall surrender the Property to Owner in good condition, subject to any damage, destruction, casualty and wear and tear caused by City's use. The parties acknowledge and agree that City shall have the right to remove its property, but City shall not be required to remove the improvements made as part of the Work and that Owner intends to demolish the Building immediately following the end of the Term. Notwithstanding anything to the contrary in this Agreement, City shall not be responsible to repair any damage or destruction to the Building, even any damage caused by City or its contractors or agents, except to the extent that such damage increases Owner's demolition costs for the New Project. Upon any casualty or damage to the Building that City elects not to repair (and instead terminates this Agreement), City and Owner shall meet and confer in good faith for a period of not less than 30 days to reach agreement on the increased cost to Owner, if any, resulting the Building damage. Owner shall consult with its demolition contractor and provide evidence of any increased cost, which evidence will be subject to review by City's Department of Building Inspection. If the parties are not able to reach agreement, either party may submit the matter to binding arbitration as set forth in Exhibit D.

#### 10. CITY'S AND OPERATOR'S INSURANCE

Owner acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement. City shall require the Operator to maintain the insurance as set forth in Exhibit C. City assumes the risk of damage to the Building, and for any increased cost to Owner resulting from such damage as set forth in Section 9. [*Insurance under review*]

#### 11. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION

This Agreement does not create a partnership or joint venture between City and Owner as to any activity conducted by City on, in or relation to Property. This Agreement does not constitute authorization or approval by City of any activity conducted or to be conducted by Owner on, in, around or relating to Property.

#### 12. UTILITIES

Owner has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Property. City has the sole responsibility to locate such utilities and protect them from damage. City shall arrange and pay for any necessary temporary relocation of utility facilities, subject to the prior written approval of Owner. City shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

13. NO COSTS TO OWNER

City shall bear all costs or expenses of any kind or nature in connection with its use of the Property, and shall keep the Property free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Property.

14. NOTICES

Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

City: Naomi Kelly, City Administrator  
City and County of San Francisco  
City Hall, Room 362  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attn: 1515 South Van Ness Navigation Center]

with a copy to:

*[insert Jeff Kositsky address]*

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Notices herein shall be deemed given two (2) days after the date when they shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

15. MACBRIDE PRINCIPLES - NORTHERN IRELAND

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Owner confirms that Owner has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

16. SUNSHINE ORDINANCE

Owner understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.) apply to this Agreement and any and all records, information, and materials submitted to City in connection with this Agreement. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Owner hereby authorizes City to disclose any records, information and materials submitted to City in connection with this Agreement.



## 17. CONFLICT OF INTEREST

Through its execution of this Agreement, Owner acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Owner becomes aware of any such fact during the term of this Agreement, Owner shall immediately notify the City.

## 18. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

Through its execution of this Agreement, Owner acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, 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. Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Owner further acknowledges that the prohibition on contributions applies to each Owner; each member of Owner's board of directors, and Owner's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Owner; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Owner. Additionally, Owner acknowledges that Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Owner further agrees to provide to City the names of each person, entity or committee described above.

## 16. NON-DISCRIMINATION

In the performance of this Agreement, Owner agrees not to discriminate against any employee of Owner, any City employee working with Owner, or applicant for employment with Owner, 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.

## 17. GENERAL PROVISIONS

(a) This Agreement may be amended or modified only by a writing signed by City and Owner. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement. (c) Except as expressly provided to the contrary,

all approvals and determinations to be made by City hereunder may be made in the sole and absolute discretion of the City Administrator. (d) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties relating to City's use of the Property and all prior written or oral negotiations, discussions, understandings and agreement relative to City's use are merged herein. (e) The sections and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (f) Time is of the essence in all matters relating to this Agreement. (g) This Agreement shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City's use of its own attorneys. (i) 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. (j) Owner is the sole owner of the Property. (k) If Owner is a corporation, limited liability company or a partnership, each of the persons executing this Agreement on behalf of Owner does hereby covenant and warrant that Owner is a duly authorized and existing entity, that Owner has and is qualified to do business in California, that Owner has the full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Owner are authorized to do so.

In witness whereof, City and Owner have executed this Agreement on the date set forth below, effective as of the date first set forth above.

OWNER:

\_\_\_\_\_,  
a California [corporation, limited liability  
company, sole proprietor, individual, etc.]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

By: \_\_\_\_\_  
Mohammed Nuru, Director of Public Works

By: \_\_\_\_\_  
Jeff Kositsky, Director of Department of  
Homelessness and Supportive Housing  
Homeless

By: \_\_\_\_\_  
John Updike, Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

**EXHIBIT A**

Property Description

**EXHIBIT B**

Scope of Work

**EXHIBIT C**

**Management Contract**

## **EXHIBIT D**

### **Binding Arbitration**

1. Arbitration. Any dispute involving the City's reimbursement for Owner's increased demolition costs under Section 9 (the "Increased Costs") shall be submitted to arbitration in accordance with this Exhibit D. The arbitration shall take place in the City and County of San Francisco.

2. Appointment. Each party shall appoint one (1) construction manager/construction cost estimator (each, the "Cost Estimator") within twenty (20) days after the notice that the arbitration provisions of this section have been invoked. Upon selection, each party shall promptly notify the other party in writing of the name of the Cost Estimator selected. Each such Cost Estimator shall be competent, qualified by training and experience, and be involved in the business of estimating construction costs for large commercial projects in San Francisco. Each such Cost Estimator may have a prior working relationship with either or both of the parties, provided that such working relationship shall be disclosed to both parties. Without limiting the foregoing, each Cost Estimator shall have at least ten (10) years' experience estimating commercial construction costs in the City and County of San Francisco. If either party fails to appoint its Cost Estimator within such twenty (20)-day period, the Cost Estimator appointed by the other party shall individually determine the Increased Costs.

3. Instruction and Completion. Each Cost Estimator will make an independent determination of the Increased Costs, and prepare a written report with their determination and the justification for the determination (the "Report"). The Cost Estimators may share and have access to objective information in preparing their Report, but they will independently analyze the information in their determination of the Increased Costs. Neither of the Cost Estimators shall have access to the final determination of the other (except for the sharing of objective information) until both Reports are submitted in accordance with the provisions of this Section. Neither party shall communicate with the Cost Estimator appointed by the other party regarding the instructions contained in this section before the Cost Estimators complete their Reports. Each Cost Estimator shall complete, sign and submit its Report setting forth its determination of the Increased Costs to the parties within forty-five (45) days after the appointment of the last of such Cost Estimators. If the higher determination of Increased Costs is not more than one hundred ten percent (110%) of the lower determination of Increased Costs, then the Increased Costs shall be the average of such two (2) figures.

4. Potential Third Cost Estimator. If the higher determination of Increased Costs is more than one hundred ten percent (110%) of the lower determination of Increased Costs, then the first two Cost Estimators shall agree upon and appoint an independent third Cost Estimator meeting the minimum qualifications set forth above. Such third Cost Estimator shall consider the Reports submitted by the first two Cost Estimators as well as any other relevant evidence which the third Cost Estimator may request of either or both of the first two Cost Estimators. Neither party, nor the Cost Estimators they appoint, shall conduct any ex parte communications with the third Cost Estimator regarding the Increased Costs. Within thirty (30) days after his or her appointment, the third Cost Estimator shall select the Increased Costs determination by one or the other of the first two (2) Cost Estimators that is the closer, in the opinion of the third Cost Estimator, to the actual Increased Costs. The determination of the third Cost Estimator shall be limited solely to the issue of deciding which of the determinations of the two Cost Estimators is closest to the actual Increased Costs. The third Cost Estimator shall have no right to propose a middle ground or to modify either of the two Reports, or any provision of this Agreement.

5.       Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Increased Costs as set forth above shall be conclusive, final and binding on the parties. Neither of the first two (2) Cost Estimators nor the third Cost Estimator shall have any power to modify any of the provisions of this Agreement and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in this Agreement. Subject to the provisions of this section, the parties will cooperate to provide all appropriate information to the Cost Estimators.

6.       Fees and Costs. Each Party shall bear the fees, costs and expenses of the Cost Estimator it selects. The fees, costs and expenses of the third Cost Estimator shall be shared equally by City and Developer.



BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Jeff Kositsky, Director, Department of Homelessness and Supportive Housing  
Naomi Kelly, City Administrator, Office of the City Administrator  
Mohammed Nuru, Director, Public Works  
Tom Hui, Director, Department of Building Inspection  
Chief Joanne Hayes-White, Fire Department  
Daniel de Cossio, Fire Marshal, Fire Department  
Barbara Garcia, Director, Department of Public Health

FROM:  Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

DATE: April 27, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Mayor Lee on April 25, 2017:

**File No. 170467**

Ordinance approving an agreement between the City and LMC San Francisco I Holdings, LLC, to allow the City to use the property at 1515 South Van Ness Avenue to utilize and operate a facility to provide temporary housing and services to homeless persons; directing the City Administrator, Public Works, Department of Homelessness and Supportive Housing, Department of Building Inspection, and other City departments to make repairs or improvements, consistent with health and safety standards, to use the property for temporary housing to address encampments in the Mission District; authorizing Public Works, Department of Homelessness and Supportive Housing, and Department of Public Health to enter into contracts without adhering to competitive bidding and other requirements for construction work, procurement, and personal services at the facility; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org).

c: John Thomas, Public Works  
Jennifer Blot, Public Works  
Lena Liu, Public Works  
William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection  
Kelly Alves, Fire Department  
Greg Wagner, Department of Public Health  
Colleen Chawla, Department of Public Health

BOARD of SUPERVISORS



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San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

April 27, 2017

**File No. 170467**

Lisa Gibson  
Acting Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:

On April 25, 2017, Mayor Lee introduced the following proposed legislation:

**File No. 170467**

Ordinance approving an agreement between the City and LMC San Francisco I Holdings, LLC, to allow the City to use the property at 1515 South Van Ness Avenue to utilize and operate a facility to provide temporary housing and services to homeless persons; directing the City Administrator, Public Works, Department of Homelessness and Supportive Housing, Department of Building Inspection, and other City departments to make repairs or improvements, consistent with health and safety standards, to use the property for temporary housing to address encampments in the Mission District; authorizing Public Works, Department of Homelessness and Supportive Housing, and Department of Public Health to enter into contracts without adhering to competitive bidding and other requirements for construction work, procurement, and personal services at the facility; and affirming the Planning Department's determination under the California Environmental Quality Act.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Jeanie Poling, Environmental Planning

President, District 5  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-7630  
Fax No. 554-7634  
TDD/TTY No. 544-5227

Orig. com  
Clerk BOS-11  
Atty. Gen. COB-Repres  
Dep. City Atty. Noyes  
Office

London Breed

## PRESIDENTIAL ACTION

Date: 4/26/2017

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,  
Pursuant to Board Rules, I am hereby:

☒ Waiving 30-Day Rule (Board Rule No. 3.23)

File No. 170467 Mayor  
(Primary Sponsor)

Title. Temporary Housing for Homeless People During Shelter Crisis - LMC  
San Francisco I Holdings, LLC - 1515 South Van Ness Avenue

☐ Transferring (Board Rule No 3.3)

File No. \_\_\_\_\_  
(Primary Sponsor)

Title. \_\_\_\_\_

From: \_\_\_\_\_ Committee

To: \_\_\_\_\_ Committee

☐ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor \_\_\_\_\_

Replacing Supervisor \_\_\_\_\_

For: \_\_\_\_\_ Meeting  
(Date) (Committed)

A handwritten signature in black ink that reads "London Breed".


London Breed, President  
Board of Supervisors

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2017 APR 26 PM 1:05  
BY [Signature]

OFFICE OF THE MAYOR  
SAN FRANCISCO



EDWIN M. LEE

TO: Angela Calvillo, Clerk of the Board of Supervisors  
FROM: *For* Mayor Edwin M. Lee   
RE: Temporary Housing for Homeless people during shelter crisis – 1515  
South Van Ness Avenue  
DATE: April 25, 2017

---

Attached for introduction to the Board of Supervisors is an Ordinance approving an agreement between the City and LMC San Francisco I Holdings, LLC to allow the City to use the property at 1515 South Van Ness Avenue to utilize and operate a facility to provide temporary housing and services to homeless persons; directing the City Administrator, the Department of Public Works, the Department of Homelessness and Supportive Housing, the Department of Building Inspection, and other City departments to make repairs or improvements, consistent with health and safety standards, to use the property for temporary housing to address encampments in the Mission District; authorizing the Department of Homelessness and Supportive Housing and the Department of Public Health to enter contracts without adhering to competitive bidding and other requirements for construction work and personal services at the facility; and affirming the Planning Department's determination under the California Environmental Quality Act.

Should you have any questions, please contact Mawuli Tugbenyoh (415) 554-5168.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2017 APR 25 PM 4:06  
AK