

File No. 171207

Committee Item No. 10

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 [Funding Agreement - Community Arts Stabilization Trust - Renovation of the Powerhouse  
2 Building]

3 **Resolution authorizing a Funding Agreement with the Community Arts Stabilization**  
4 **Trust to finance the renovation of the Powerhouse building of the Geneva Car Barn and**  
5 **Powerhouse.**

6  
7 WHEREAS, The City and County of San Francisco ("City") owns certain real property  
8 located at 2301 San Jose Avenue on a portion of Assessor's Parcel Block No 6972, Lot No.  
9 036, commonly known as the Geneva Car Barn and Powerhouse ("GCB"); the GCB is under  
10 the jurisdiction of the Recreation and Park Commission, managed by the Recreation and Park  
11 Department ("RPD"), and adjacent to Cameron Beach Yard, which is a rail yard under the  
12 jurisdiction of the San Francisco Municipal Transportation Agency ("SFMTA"); and

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

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

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

10          WHEREAS, The National Park Service administers the HRTC program with the  
11 Internal Revenue Service in partnership with State Historic Preservation Offices; and

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

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

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

21          WHEREAS, RPD has performed a search for additional funding partners for the Project  
22 and has determined that it is essential to work with the Community Arts Stabilization Trust  
23 ("CAST"); CAST is a nonprofit public benefit corporation with a mission of creating stable  
24 physical spaces for arts and cultural organizations, has previously secured NMTC tax credit  
25

1 financing, and has committed to providing \$1,000,000 to the Project and monitoring the  
2 Project's compliance with NMTC requirements during the Tax Credit Period; and

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

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

9 WHEREAS, The City and CAST desire to enter into a "Funding Agreement" in order to  
10 bridge the gap between the USB investments and the total Project costs and to outline their  
11 participation in the Tax Credit Financing and the treatment of certain fees and expenses;  
12 among other things, the Funding Agreement will require the City to provide a \$6,800,000 grant  
13 to CAST for the Project, and will require CAST to contribute \$1,000,000 of its own funds to the  
14 Project; CAST will contribute these funds to the QALICB, either directly or indirectly via an  
15 investment fund created for the Project by USB; the QALICB will receive and administer these  
16 funds, as well as the foregoing USB investments, in order to complete the Project; and

17 WHEREAS, The Recreation and Park Commission authorized RPD to enter into the  
18 Funding Agreement on \_\_\_\_\_, and a copy of the draft Funding Agreement is on file  
19 with the Clerk of the Board under File No. \_\_\_\_; now, therefore, be it

20 RESOLVED, That the Board of Supervisors approves the Funding Agreement with  
21 CAST substantially in the form that is on file with the Clerk of the Board of Supervisors, and  
22 authorizes the RPD General Manager to contribute \$6,800,000 to the Project, and to perform  
23 all acts required of the City thereunder; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors authorizes the RPD General  
25 Manager to enter into any modifications and amendments to the Funding Agreement,

1 including to any of its exhibits, and authorizes the RPD General Manager to execute further  
2 agreements related to the Project financing, that the RPD General Manager determines, in  
3 consultation with the City Attorney, are in the best interests of the City and do not materially  
4 increase the obligations or liabilities of the City, are necessary or advisable to effectuate the  
5 purposes of the Project or this Resolution, and are in compliance with all applicable laws,  
6 including the City's Charter; and, be it

7           FURTHER RESOLVED, That within thirty (30) days of the full execution of the Funding  
8 Agreement, RPD shall provide such final document to the Clerk of the Board of Supervisors  
9 for inclusion into the Board's file.

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<p><b>Items 8, 9, 10, 11 and 12</b>  <b>Files 17-1205, 17-1206, 17-1207,</b>  <b>17-1208, 17-1209</b></p>	<p><b>Department:</b>                  Recreation and Parks Department (RPD)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></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;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	
<p style="text-align: center;"><b>Policy Consideration</b></p>	
<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>	
<p style="text-align: center;"><b>Recommendations</b></p>	
<ul style="list-style-type: none"> <li>• Approve Files 17-1205, 17-1206, 17-1207 and 17-1208.</li> <li>• Approval of File 17-1209 is a policy matter for the Board of Supervisors.</li> </ul>	

**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,<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2,3</sup> The Phase 1 Powerhouse Project has been awarded an allocation of New Market Tax Credits by the San Francisco Community Investment Fund<sup>4</sup>. The Powerhouse is on the National Register of Historic Places and therefore the Phase 1 Powerhouse Project qualifies for Historic Rehabilitation Tax Credits.<sup>5</sup>

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,<sup>6</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> 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.

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

<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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 Workshop<sup>8</sup> 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.

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

<sup>8</sup> 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**

<b>Sources of Funds</b>	
<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
<b>Subtotal City Contribution</b>	<b>\$8,154,612</b>
<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
<b>Subtotal Other</b>	<b>\$4,848,767</b>
<b>Total Sources</b>	<b>\$13,003,379</b>
<b>Uses of Funds</b>	
Contractor construction cost	\$8,279,900
Contractor construction Contingency (10% of Construction)	827,990
<b>Subtotal, Contractor Construction</b>	<b>9,107,890</b>
Other Miscellaneous Construction	1,544,191
Planning, Permitting, Design, Engineering, Environmental	1,517,681
Other Consultant Fees	937,687
<b>Total Uses</b>	<b>\$13,003,379</b>

\*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.

## FUNDING AGREEMENT

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

### RECITALS

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

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

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

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

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

### AGREEMENT

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

with a copy to:

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

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

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

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

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

*[Signatures on following pages]*

**Signature Page to Funding Agreement**

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

**CITY:**

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

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

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**Signature Page to Funding Agreement**

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

**CAST:**

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

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

EXHIBIT A

Form of Lease  
(see attached)

**EXHIBIT B**

Form of Development Services Agreement  
(see attached)

**EXHIBIT C**

Form of Building Lease Option Agreement  
(see attached)



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 B

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 - Funding Agreement

The text is listed:

Resolution authorizing a Funding Agreement with the Community Arts Stabilization Trust to finance the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only

