

File No. 210184

Committee Item No. 8

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date April 14, 2021

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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Completed by: Linda Wong

Date April 9, 2021

Completed by: Linda Wong

Date \_\_\_\_\_

1 [Establishment of Small Business Emergency Relief Program - Funding/Loan Agreements -  
2 California Rebuilding Fund, LLC - Not to Exceed \$2,000,000 - Funding/Grant Agreements -  
3 KIVA Capital Management, LLC - Not to Exceed \$1,400,000]

4 **Resolution authorizing the establishment of a small business emergency financial**  
5 **relief program to be administered by the Office of Economic and Workforce**  
6 **Development (OEWD), and authorizing the Director of OEWD to enter into one or more**  
7 **funding/loan agreements with the California Rebuilding Fund, LLC in an amount not to**  
8 **exceed \$2,000,000 to facilitate the origination of loans to certain small businesses in**  
9 **the City; and to enter into one or more funding/grant agreements with Kiva Capital**  
10 **Management, LLC in an amount not to exceed \$1,400,000 to provide monies for an**  
11 **interest buydown fund for loans facilitated by the California Rebuilding Fund to certain**  
12 **small businesses in the City, and to take necessary actions in connection therewith, as**  
13 **defined herein.**

14  
15 WHEREAS, California Government Code, Sections 8500 *et seq.*, San Francisco  
16 Charter, Section 3.100(14), and Chapter 7 of the Administrative Code empower the Mayor to  
17 declare the existence of a local emergency, subject to the concurrence of the Board of  
18 Supervisors, in the case of emergency threatening the property, lives, or welfare of the City  
19 and County or its citizens; and

20 WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (“Proclamation”)  
21 declaring a local emergency to exist within the City in connection with the imminent spread of  
22 the novel (new) coronavirus (“COVID-19”); and

23 WHEREAS, On March 3, 2020, the Board of Supervisors concurred with the Mayor’s  
24 Proclamation, including actions taken by the Mayor to meet the COVID-19 emergency; and

1           WHEREAS, On March 6, 2020, the Health Officer declared a local health emergency  
2 under Section 101080 of the California Health and Safety Code, and the Board of Supervisors  
3 concurred with that declaration on March 10, 2020; and

4           WHEREAS, On March 16, 2020, the Health Officer issued a stay safe at home order  
5 (Order No. C-19-07, and herein the “Stay Safer At Home Order”) requiring most City residents  
6 to remain in their homes except for travel to obtain essential supplies, and required the  
7 closure of nonessential businesses, and the Stay Safer At Home Order has been amended  
8 and modified to date; and

9           WHEREAS, The effects of the COVID-19 emergency continue to impose significant  
10 financial hardships on small businesses within the City, and will continue to do so until such  
11 time as City residents and individuals in the Bay Area are vaccinated; and

12           WHEREAS, On January 12, 2021, Mayor Breed announced her intention to establish a  
13 small business grant and low or zero interest loan program to provide financial support to local  
14 businesses to sustain such businesses until the business and economic environment returns  
15 to normal (“Program”); and

16           WHEREAS, It is intended that the Program consist of (i) microloans to small low-  
17 income businesses across the City, and (ii) loans to other small business across the City, in  
18 either case, complementing and expanding existing local, State, and Federal initiatives aimed  
19 at providing relief for small businesses struggling as a result of COVID-19; and

20           WHEREAS, The California Rebuilding Fund, LLC (“Rebuilding Fund”), a public-private  
21 partnership, was announced by Governor Newsom in November 2020 as a loan program to  
22 assist small businesses located in the State, particularly focused on certain small businesses  
23 (currently defined by Rebuilding Fund guidelines as businesses with fewer than 50 full-time  
24 employees and less than \$2.5 million in annual revenues) located in economically  
25 disadvantaged and historically underbanked areas to provide access to capital and advisory

1 services to support such businesses recover from the economic challenges arising from the  
2 COVID-19 emergency; and

3 WHEREAS, Kiva Capital Management, LLC (“Kiva”), a 501(c)(3) non-profit  
4 organization, is headquartered in San Francisco and has a mission to expand financial access  
5 to help underserved communities by providing microloans to small businesses; and

6 WHEREAS, The Office of Employment and Workforce Development (“OEWD”) has  
7 identified the Rebuilding Fund and Kiva as partners to facilitate lending to small business in  
8 the City for the purposes of the Program, and desire to enter into funding agreements to  
9 enable such organizations to provide loans to small businesses in the City; and

10 WHEREAS, Concurrently herewith this Board is considering the adoption of a related  
11 supplemental appropriation ordinance totaling \$7,500,000 for the FY2020-2021 in order to  
12 provide funds to support the Program; now, therefore, be it

13 RESOLVED, That the Board authorizes the Director of the Office of Economic and  
14 Workforce Development (“Director”) to establish and administer a loan and grant program to  
15 assist small businesses located in the City, particularly targeted to small businesses located in  
16 economically disadvantaged and historically underbanked areas as determined by OEWD;  
17 now, therefore be it

18 FURTHER RESOLVED, That the Director is hereby authorized to enter into one or  
19 more funding/loan agreements with the Rebuilding Fund in an amount not to exceed  
20 \$2,000,000 in substantially the form submitted to the Board and on file with the Clerk in File  
21 No. 210184 to facilitate small business (defined herein with reference to the Rebuilding Fund  
22 guidelines, as may be amended from time to time, and which currently define “small  
23 business” as a business with fewer than 50 full-time employees and less than \$2.5 million in  
24 annual revenues) loan origination with certain community development financial institutions for  
25

1 small businesses adversely impacted by the Covid emergency and located in the City; and, be  
2 it

3 FURTHER RESOLVED, That the Director is hereby also authorized to enter into one or  
4 more funding/grant and administration agreements with Kiva in an amount not to exceed  
5 \$1,400,000 to provide interest rate buydown fund to reduce the interest cost on certain loans  
6 originated or facilitated by the Rebuilding Fund to certain small business located in the City,  
7 and to provide other loan administration services for such small businesses; and, be it

8 FURTHER RESOLVED, That the Director is hereby urged to expeditiously cause such  
9 documents to be executed with Rebuilding Fund and Kiva, as applicable, to cause the  
10 origination of loans to small business in the City as soon as practicable; and, be it

11 FURTHER RESOLVED, That the Director shall submit report(s) to this Board as and  
12 when such reports are available regarding loans made to small businesses located in the City,  
13 as provided by either the Rebuilding Fund or Kiva, including the aggregate amount of loans  
14 made for each loan type and average loan amount for each loan type; and, be it

15 FURTHER RESOLVED, That within 30 days of the funding/loan agreements and  
16 funding/grant agreements being fully-executed by all parties, the Office of Economic and  
17 Workforce Development shall provide the final funding/loan agreements and funding/grant  
18 agreements to the Clerk of the Board for inclusion into the official file.

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<b>Item 8</b> <b>File 21-0184</b>	<b>Department:</b> Office of Economic & Workforce Development (OEWD)
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**EXECUTIVE SUMMARY**

**Legislative Objectives**

- The proposed resolution authorizes (a) the establishment of a small business emergency financial relief program to be administered by the Office of Economic and Workforce Development (OEWD); (b) a loan agreement with the California Rebuilding Fund, LLC in an amount not to exceed \$2 million; and (c) a grant agreement with Kiva Capital Management, LLC (Kiva) in an amount not to exceed \$1.4 million.

**Key Points**

- The Board of Supervisors approved an ordinance on second reading on April 6, 2021, appropriating \$7.6 million in property tax revenues to OEWD for loans to support small businesses in San Francisco impacted by the COVID-19 pandemic.
- The \$2 million allocation to the California Rebuilding Fund would be used to make loans to small businesses that are underserved by banks (and would leverage total available loan funds up to \$12 million). The \$1.4 million allocation to Kiva would be used to make monthly interest payments on the loans received by small businesses in order to reduce the interest rate from the California Rebuilding Fund’s current fixed interest rate of 4.25 percent to approximately 0 percent.
- The proposed grant agreement between the City and Kiva is for \$2.5 million. OEWD in consultation with the California Rebuilding Fund has determined that \$1.4 million, as specified in the proposed resolution, is not sufficient to reduce interest payments on loans up to \$12 million. OEWD intends to increase the amount allocated to the grant agreement from \$1.4 million to \$1.6 million, which is currently deemed sufficient to reduce interest payments on loans up to \$12 million. According to OEWD staff, the entire \$2.5 million may be required depending on market interest rates and availability of loan funds exceeding \$12 million.

**Fiscal Impact**

- Of the \$7.6 million appropriated by the Board of Supervisors, \$3.4 million would be allocated to the proposed loan agreement (\$2.0 million) and grant agreement (\$1.4 million). According to OEWD staff, the balance of \$4.2 million could potentially be allocated to the California Rebuilding Fund loan program.

**Recommendation**

- Because the proposed loan program, including the associated loan agreement and grant agreement, is consistent with the Board of Supervisors’ appropriation of \$7.6 million, the Budget and Legislative Analyst recommends approval of the proposed resolution.

## MANDATE STATEMENT

City Charter Section 1.101 states that all rights and powers of a City and County which are not vested in another officer or entity by this Charter shall be exercised by the Board of Supervisors.

## BACKGROUND

The Board of Supervisors approved an ordinance on second reading at the April 6, 2021 Board of Supervisors meeting, appropriating \$24.75 million in property tax revenues to the Office of Economic and Workforce Development (OEWD) for various programs to support small businesses in San Francisco impacted by the COVID-19 pandemic (File 21-0177). Of the \$24.75 million, \$7.6 million is allocated to loan programs.

OEWD implemented three loan programs, totaling \$14.6 million, between April 2020 and December 2020 to support small businesses in San Francisco.

- SF Hardship Emergency Loan Program (SF HELP) was implemented in April 2020, and has distributed \$8,715,927 of available funds of \$9,450,000 in zero-interest loans to 302 small businesses, with businesses receiving an average of \$28,765.
- African American Small Business Revolving Loan Fund was implemented in July 2020, and has distributed \$1,898,000 of available funds of \$2,700,000 in zero-interest loans to 42 small businesses, with an average loan amount of \$45,190 (with up to 20 percent of the loan amount forgivable).
- Latino Small Business Fund (SF HELP extension) was implemented in December 2020, and has distributed \$692,000 of available funds of \$2,475,000 in zero-interest loans to 22 small businesses, with an average loan amount of \$31,454.

In addition, the federal government established the following financial relief programs for small businesses administered by the U.S. Small Business Administration (SBA):

- The Paycheck Protection Program provides loans that help businesses retain their workforce during the Covid-19 pandemic. According to OEWD, \$3.2 billion was provided from March 2020 through December 2020 to 22,215 San Francisco businesses, with an average loan amount of \$145,009.
- Covid-19 Economic Injury Disaster Loans provide economic relief to small businesses and non-profit organizations that are currently experiencing a temporary loss of revenue. According to OEWD, \$936.8 million was provided from March 2020 through December 2020 to 15,012 San Francisco-based small businesses, self-employed individuals or sole proprietorships, or non-profits, with an average loan amount of \$62,400.
- The federal SBA also provides Express Bridge Loans to small businesses that currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly; debt relief to existing SBA loan borrowers during the Covid-19 pandemic; and Shuttered Venue Operators Grants for emergency assistance for eligible venues affected by the Covid-19 pandemic.

The State provides a California Small Business Covid-19 Relief Grant Program available to small businesses or non-profits operating in California, with a total of \$2 billion available statewide and grant awards ranging from \$5,000 to \$25,000.

### DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the establishment of a small business emergency financial relief program to be administered by the Office of Economic and Workforce Development (OEWD). Under the proposed ordinance, the Director of OEWD would be authorized to enter into one or more funding/loan agreements with (a) the California Rebuilding Fund, LLC in an amount not to exceed \$2,000,000 to facilitate the origination of loans to certain small businesses in the City; and (b) Kiva Capital Management, LLC in an amount not to exceed \$1,400,000 to provide monies for an interest buy down fund for loans facilitated by the California Rebuilding Fund to certain small businesses in the City.

According to the proposed ordinance, the intent of the small business emergency financial relief program is to provide microloans to small low-income businesses across the City, and loans to other small business across the City. These loans are intended to complement and expand existing local, State, and Federal initiatives aimed at providing relief for small businesses struggling as a result of COVID-19.

#### **California Rebuilding Fund**

Governor Newsom implemented the California Rebuilding Fund in November 2020 as a public-private partnership, providing loans of up to \$100,000 to small businesses. Initial funding for the loans came from a guarantee from the California Infrastructure and Economic Development Bank<sup>1</sup>. The Fund is administered by Kiva Capital Management, and loans are distributed to small businesses through Community Development Financial Institutions.<sup>2</sup> Loans provided to small businesses are to be paid back over three to five years at an annual interest rate of 4.25 percent.

#### **Kiva Capital Management**

Kiva Capital Management (Kiva) is a 501(c)(3) organization, established in 2005 and based in San Francisco, that provides microloans to businesses by linking the loan applicant to lenders. Once Kiva has reviewed and approved the loan application, the loan is posted to the Kiva system, and lenders crowd fund the loan in increments of \$25 or more.

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<sup>1</sup> The California Infrastructure and Economic Development Bank (IBank) was created in 1994 to finance public infrastructure and private development. IBank has broad authority to issue tax-exempt and taxable revenue bonds, provide financing to public agencies, provide credit enhancements, acquire or lease facilities, and leverage State and Federal funds.

<sup>2</sup> Community Development Financial Institutions (CDFIs) are specialized community based financial institutions with a primary mission to promote economic development by providing financial products and services to people and communities underserved by traditional financial institutions, particularly in low income communities. Community Development Financial Institutions in San Francisco include the Northern California Loan Fund, Pacific Community Ventures Investment Partners III, Pacific Community Ventures, Inc., TMC Development Working Solutions, and HomeBricks, Inc.



**Loan Agreement**

The proposed loan agreement is between the City as lender and the California Rebuilding Fund, LLC, as borrower, which is a wholly owned subsidiary of Kiva Microfunds. Under the loan agreement, the City will lend \$2 million to the California Rebuilding Fund at an interest rate of 1.5 percent per year, which will serve as a source of funds for loans to small businesses, defined by the California Rebuilding Fund as businesses with fewer than 50 employees and annual revenues of less than \$2.5 million, that are located in historically underbanked and disadvantaged communities. The loan agreement provides for the City to waive the California Rebuilding Fund's repayment of the \$2 million loan.

**Grant Agreement**

The proposed grant agreement is between the City and Kiva Microfunds,<sup>3</sup> in which Kiva Microfunds will administer a small business loan program to provide loans to small businesses impacted by COVID. The grant agreement is in effect from April 1, 2021 through June 30, 2027.

Funds allocated to Kiva Microfunds by the City through the grant agreement are to be used to pay monthly interest payments for up to five years on loans made to small businesses by the California Rebuilding Fund up to \$12 million, including \$2 million allocated by the City under the proposed loan agreement and \$10 million from other funds allocated by the California Rebuilding Fund. The intent is to reduce the interest owed by small businesses on loans obtained from the California Rebuilding Fund, which current carry a fixed interest rate of 4.25 percent. The more than six-year term of the proposed grant agreement is to correspond to the term of the loans obtained by small businesses from the California Rebuilding Fund, which are generally for five years.

The grant agreement provides for an allocation of \$2.5 million to Kiva Microfunds, although the proposed resolution specifies that the amount of the grant to Kiva is \$1.4 million. According to OEWD staff, OEWD in consultation with the California Rebuilding Fund has determined that \$1.4 million, as specified in the proposed resolution, is not sufficient to reduce interest payments on loans up to \$12 million in loans from the current fixed interest rate of 4.25 percent to an estimated fixed interest rate of approximately 0 percent.<sup>4</sup> OEWD intends to increase the amount allocated to the grant agreement from \$1.4 million to \$1.6 million, which is currently deemed sufficient to reduce interest payments on loans up to \$12 million. According to OEWD staff, the entire \$2.5 million may be required depending on market interest rates and availability of loan funds exceeding \$12 million.

**Reporting Requirements**

The proposed resolution provides for the OEWD Director to submit report(s) to this Board as and when such reports are available regarding loans made to small businesses located in the City, as

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<sup>3</sup> Kiva Capital Management LLC is a wholly owned subsidiary of Kiva Microfunds, acting as an "impact-first asset manager, managing institutional-quality impact funds in underserved sectors."

<sup>4</sup> According to OEWD staff, the \$1.4 million allocation to reduce interest rates was based on loan amounts up to \$10 million. To reduce interest rates on loans up to \$12 million requires an allocation of \$1 million.

provided by either the Rebuilding Fund or Kiva, including the aggregate amount of loans made for each loan type and average loan amount for each loan type.

### **FISCAL IMPACT**

The Board of Supervisors approved an ordinance on April 6, 2021, appropriating \$7.6 million in property tax revenues to OEWD to provide small business COVID-19 relief loans, which is the source of funds for the \$2 million loan agreement between the City and the California Relief Fund, and \$1.4 million grant agreement between the City and Kiva, totaling \$3.4 million in funds. According to OEWD staff, the balance of \$4.2 million could potentially be allocated to the California Rebuilding Fund loan program.

Because the proposed loan program, including the associated loan agreement and grant agreement, is consistent with the Board of Supervisors' appropriation of \$7.6 million, the Budget and Legislative Analyst recommends approval of the proposed resolution.

### **RECOMMENDATION**

Approve the proposed resolution.

## LOAN AGREEMENT

This Loan Agreement (this “*Agreement*”), dated as of \_\_\_\_\_, 2021, is entered into by and between the City and County of San Francisco, a political subdivision of the State of California (the “*City*”) and California Rebuilding Fund, LLC, a Delaware public benefit limited liability company (“*Borrower*”).

WHEREAS, Borrower is a wholly owned subsidiary of Kiva Microfunds, a California public benefit corporation (the “*Member*”), a tax-exempt charity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “*Code*”) and classified as a public charity under Section 509(a)(1) of the Code;

WHEREAS, Borrower was organized for the exclusive charitable purpose of addressing the capital needs of economically vulnerable small businesses located in disadvantaged communities in the State of California that historically have had less access to capital, as they attempt to reopen and recover from the COVID-19 health and economic crisis (the “*Public Benefit*”);

WHEREAS, Borrower is seeking a “program-related investment loan” as defined in Section 4944(c) of the Code, from Foundation on concessionary terms for purposes of the Public Benefit, in furtherance of the exempt purposes of the Borrower and the Foundation described in Section 170(c)(2)(B) of the Code; and

WHEREAS, Foundation is willing to make such loan as a “program-related investment,” as defined in Section 4944(c) of the Code, for use under the [*guarantee lending facility or blended facility*]<sup>1</sup> (the “Supported Facility”), subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises set forth herein, the parties hereto agree as follows:

### ARTICLE I THE PRI LOAN

SECTION 1.1 Commitment to Lend. At the Closing (as defined below), the City shall lend to Borrower and Borrower shall borrow from the City the principal amount of two million (\$2,000,000) (the “*PRI Loan*”) subject to the terms and conditions set forth in this Agreement.

SECTION 1.2 Note; Maturity. The City’s PRI Loan to Borrower hereunder shall be evidenced by a single Note (in the form set forth in Appendix A, the “*Note*”) dated as of the Closing and shall be due and payable on the date that is six (6) months following the Maturity Date (as defined the Supported Facility); provided, however, that the Borrower shall only be required to repay the PRI Loan to the City after the payment in full of all amounts set forth in Section 6.3(a)

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<sup>1</sup> Note to Draft: Reference to applicable credit agreement that the grant is being applied to be inserted.

to Section 6.3(e) of the Supported Facility; provided, further, that the City shall have the right to waive the Borrower's repayment obligation under this Agreement.

SECTION 1.3 Interest Rate. The PRI Loan made hereunder shall bear interest on the principal balance outstanding from time to time from the date such PRI Loan is made until it is repaid in full or forgiven, at a rate equal to one and one-half percent (1.5%) per annum.

SECTION 1.4 Prepayments. Borrower may prepay the PRI Loan in whole or in part, without premium or penalty, upon three (3) business days' notice to the City, by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment.

SECTION 1.5 Security. The PRI Loan will be an unsecured, full recourse obligation.

## **ARTICLE II**

### **CONDITIONS TO BORROWING; CLOSING**

SECTION 2.1 Conditions. The obligation of the City to make the PRI Loan hereunder is subject to satisfaction by Borrower of each of the following conditions:

- (a) receipt by the City of this Agreement and the Note duly signed by an authorized officer of Borrower;
- (b) receipt by the Foundation of copies of certificates of good standing issued by the jurisdiction of organization of the Borrower; and
- (c) receipt by the Foundation of such other documents as the Foundation may reasonably require.

SECTION 2.2 Closing. The closing of the PRI Loan (the "**Closing**") shall take place simultaneously with the execution of this Agreement via the electronic exchange of signature pages, or at such other time or place as the parties may mutually determine. At the Closing, if Borrower satisfies the foregoing conditions, Foundation shall advance the PRI Loan proceeds to Borrower by check or wire transfer.

## **ARTICLE III**

### **REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants as of the date of this Agreement and as of the Closing that:

SECTION 3.1 Corporate Existence; Tax Status. Borrower (i) is a public benefit limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, (ii) is duly authorized to do business in every jurisdiction in which it conducts operations, (iii) is a "disregarded entity" that is not treated as a separate legal entity from Member for U.S. federal income tax purposes pursuant to Treasury Regulation Section 301.7701-

3(b)(1)(ii); and (iv) has not made an election on IRS Form 8832 or any successor form to classify Borrower as an association taxable as a corporation pursuant to Treasury Regulation Section 301.7701-3(b)(1)(I). Member (x) is recognized by the Internal Revenue Service as an organization described in Section 501(c)(3) of the Code, (y) is not a private foundation as defined in Section 509(a) of the Code, and (z) is the sole member of Borrower.

SECTION 3.2 Authorization. The execution, delivery and performance by Borrower of this Agreement and the Note and the Borrower's obligations hereunder and thereunder are within Borrower's power, have been duly authorized by all necessary action, require no action or approval by any governmental body or agency, and do not contravene or constitute a default under any provision of applicable law or regulation, or of the certificate of formation or bylaws of Borrower, or of any contract to which Borrower is a party, or of any judgment, decree, instrument or agreement, including without limitation any other loan agreement, which is binding upon Borrower.

SECTION 3.3 Binding Effect. This Agreement constitutes a valid and binding agreement of Borrower, and the Note, when executed and delivered in accordance with this Agreement, will constitute a valid and binding obligation of Borrower.

SECTION 3.4 Litigation. There is no action, suit, investigation or proceeding pending or, to the best of Borrower's knowledge, threatened, by or before any court or governmental or administrative body or agency which would materially adversely affect the ability of Borrower to perform its obligations under this Agreement or the Note.

SECTION 3.5 Financial Statements. The most recent unaudited financial statements of Borrower, for [date], copies of which have been presented to Foundation, fully and fairly depict the financial condition of Borrower as of the date of those statements, and there have been no changes in the financial condition of Borrower since the date of those statements which would materially adversely affect the ability of Borrower to enter into, execute and deliver, and perform its obligations under this Agreement or the Note.

## **ARTICLE VI COVENANTS**

Borrower agrees that, so long as any amount under the Note remains outstanding and unpaid:

SECTION 4.1 Information. Borrower will deliver to Foundation:

- (a) Quarterly financial statements shall be provided within 90 days of the end of each quarter.
- (b) Annual financial statements shall be provided within 120 days of the end of the year.

(c) Annual narrative report from the Borrower describing the use of the PRI Loan and how the PRI Loan furthers the Public Benefit. This narrative shall be provided within 120 days of the end of the year.

(d) Any other information respecting the operations, activities and financial condition of the Borrower that the Foundation may reasonably request.

#### SECTION 4.2 Use of Proceeds.

(a) The Borrower shall use the proceeds of the PRI Loan made under this Agreement, and any earnings therefrom, solely for the purpose of the Public Benefit and the Supported Facility. Use of the PRI Loan proceeds for the Public Benefit is in furtherance of the tax-exempt purposes set forth in the third recital clause at the beginning of this Agreement.

(b) The Borrower shall not use any of the PRI Loan proceeds, or earnings therefrom, (i) to engage, directly or indirectly, in any activity described in Section 170(c)(2)(D) of the Code, (ii) in a manner that would constitute a “taxable expenditure” within the meaning of Section 4945(d) of the Code if such proceeds, or any earnings therefrom, were so applied by a “private foundation” described in Section 509(a) of the Code, (iii) to carry on propaganda, or otherwise attempt, to influence legislation (within the meaning of Section 4945(d)(1) of the Code), (iv) to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Code), (v) to participate in or intervene in (including the publishing or distributing of any statements) any political campaign on behalf of (or in opposition to) any candidate for public office, (vi) to make any grant that does not comply with the requirements of Section 4945(d)(3) or 4945 (d)(4) of the Code, nor (vii) for or to further, directly or indirectly, any purpose that is not for charitable, scientific, or educational purposes within the meaning of Section 170(c)(2)(B) of the Code.

SECTION 4.3 Corporate Standing; Tax-Exempt Status; Compliance with Laws. Borrower shall remain a Delaware public benefit limited liability company, duly formed, validly existing and in good standing under the laws of the State of Delaware. Borrower will comply with all applicable laws, ordinances, rules, regulations, and requirements of governmental authorities, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or could not reasonably be expected to have a material adverse effect on the Borrower. Member will remain the sole member of Borrower, Borrower shall remain a “disregarded entity” that is not a separate legal entity from Member for U.S. federal income tax purposes pursuant to Treasury Regulation Section 301.7701-3(b)(1)(ii), and Borrower shall not make an election on IRS Form 8832 or any successor form to classify Borrower as an association taxable as a corporation pursuant to Treasury Regulation Section 301.7701-3(b)(1)(I).

## ARTICLE V MISCELLANEOUS

SECTION 5.1 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or any equivalent means of communication) and shall be given to each party as set forth below:

To Borrower:

California Rebuilding Fund, LLC  
c/o Kiva Microfunds  
986 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn:  
Phone:

To the City:

CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
1 SOUTH VAN NESS AVE. 5TH FLOOR  
SAN FRANCISCO, CA. 94103  
Attn:  
Phone:

SECTION 5.2 No Waivers. No failure or delay by Foundation in exercising any right, power or privilege hereunder or under the Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof. The rights and remedies provided for in this Agreement shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 5.3 Expenses. Each party shall pay all of its own fees and expenses in connection with the preparation of this Agreement.

SECTION 5.4 Amendments and Waivers. Any provision of this Agreement or the Note may be amended or waived only if such amendment or waiver is in writing and is signed by Borrower and Foundation.

SECTION 5.5 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Borrower may not assign or otherwise transfer any of its rights under this Agreement, without the prior consent of Foundation.

SECTION 5.6 Applicable Law. This Agreement and the Note shall be construed in accordance with and governed by the law of the State of Delaware applicable to contracts to be wholly performed within such State.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, the parties hereto have executed, or have caused this Agreement to be executed by their respective authorized officers, as of the day and year first above written.

BORROWER:  
CALIFORNIA REBUILDING FUND, LLC

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

Name:

Title:

LENDER:  
CITY AND COUNTY OF SAN FRANCISCO

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

Name:

Title:



**Appendix A**  
FORM OF NOTE

\$2,000,000  
[DATE], 2021

FOR VALUE RECEIVED, the undersigned, California Rebuilding Fund, LLC (the “**Maker**”), a Delaware public benefit limited liability company, promises to pay to the order of the City and County of San Francisco (the “**Payee**”), the principal sum of two million dollars (\$2,000,000), with simple interest on the outstanding principal amount at the rate of one and one-half percent (1.5%) per annum, computed on the basis of the actual number of days elapsed and a year of 365 days. This Note is issued pursuant to that certain Loan Agreement, dated [\_\_\_], 2021 by and among the Maker and the Payee (as may be amended from time to time, the “**Agreement**”) and is entitled to the benefits of and is subject to the terms contained in that Agreement. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Subject to Section 1.2 of the Agreement, the outstanding principal amount and unpaid accrued interest on this Note shall be due and payable by the Maker on or after the Maturity Date.

The Maker hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

This Note may be prepaid at any time or from time to time, in whole, or in part, without penalty or premium, provided that the Maker shall pay all accrued but unpaid interest up to the date of any such prepayment.

This Note may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.

This Note shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the Maker has executed this Note the day and year first above written.

CALIFORNIA REBUILDING FUND, LLC

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