San Francisco Mayor's Office of Housing and Community Development
Department of Homelessness and Supportive Housing
Office of Community Investment and Infrastructure
Controller's Office of Public Finance

MEMORANDUM

DATE: July 2, 2021

TO: CITYWIDE AFFORDABLE HOUSING LOAN COMMITTEE

FROM: VIVIANA LOPEZ, PROJECT MANAGER

RE: **Cooperative Living for Mental Health Program Regulations**

I. Executive Summary

MOHCD Staff is recommending the Committee approve the Program Regulations (the "Regulations," attached as **EXHIBIT I**) for the Cooperative Living for Mental Health Program ("CLMH" or the "Program"). Staff has prepared this loan memorandum to describe the scope of the Program and to seek approval of the Program regulations and term sheet. Once approved by Loan Committee, individual loan approvals will be delegated to the MOHCD Director, as intended by Chapter 117 of the Administrative Code. The $11 million fund that has been created for this Program is anticipated to acquire and preserve up to 30 beds. Funding sources are detailed in **Section 3b**.

The goals of the Program are: 1) to provide long-term housing security to people living with chronic mental illness or substance use disorders who have been deemed capable of living in communal, non-institutional, neighborhood-based household settings; 2) to remove these buildings from the speculative market while increasing the supply of permanently affordable rental housing, by 3) offering direct funding to sponsors or partnering with nimble bridge lenders and then providing the permanent financing for the acquisition, rehabilitation, and preservation of single-family or multi-family unit residential buildings as affordable for occupancy by CLMH clients.

The CLMH Program furthers Mayor London Breed's longstanding priority to reduce homelessness by providing pathways to secure, permanent supportive housing for individuals who experience chronic mental health or substance use disorders. It also aligns with the Mayor's and MOHCD's racial equity goals. While the Black population in San Francisco has diminished to only 5% of all residents, they constitute approximately 35% of the City's homeless population.

II. Background

a. Program History

The CLMH Program is built on the cooperative living ("co-op") program model, where the Department of Public Health (DPH) places a small group of individuals in a home or apartment to offer the opportunity to live independently but still within a supportive setting. Generally, these individuals are formerly homeless and have chronic mental illness or behavioral health or other disabilities and/or substance use disorders, but have been deemed by DPH to be able to live in non-medical, supportive housing environments. Those who participate in cooperative living have contracts subsidized by DPH for a variety of services that may include mental health services, case management, crisis services, money management, community support and community building. The Sponsors (see definition of Eligible Borrowers in **Section 3.1.1**) typically own or master lease units and have lease contracts with the CLMH Program participants. Program participants pay no more than 30% of income on rent. The strength of this model is that it allows individuals to be placed in normalized, non-institutional, neighborhood-based settings that are significantly less costly than hospital or other institutional settings.

On July 9, 2019 the Board of Supervisors amended the City Administrative Code, Chapter 117 to establish the CLMH loan fund as a Category Eight fund to receive any monies appropriated or donated for the purpose of "acquiring, retaining, and operating an economical and stable stock of multi-family buildings and/or single-family homes to create cooperative living opportunities for people with chronic mental illness and/or substance abuse disorders[1]."

b. Funding Sources

In 2019, the Mayor's Budget approved $6 million in Educational Revenue Augmentation Funds (ERAF) for the Program for 2020-2021. Another $5 million was allocated through the 2019 Affordable Housing General Obligation Bond for a total of $11 million in available funds.

c. Program Design

MOHCD will establish the CLMH Program to provide financing in the form of long-term, forgivable loans to nonprofit organizations (or "Sponsors;" defined in **Section 3.1.1** below) for the purpose of acquiring, rehabilitating, and preserving an economic and stable stock of multi-family buildings and/or single-family homes as co-operative living opportunities for people with chronic mental illness and/or substance abuse disorders. Due to contract funding limitations by DPH at the time of Program Approval, to qualify for funds, potential Sponsors need to have existing contracts with DPH for the provision of coop housing. MOHCD staff has taken the lead on the development of the program regulations, and DPH staff has reviewed all major updates, and is in final agreement with the terms of the regulations.

The CLMH Program will facilitate the acquisition, rehabilitation, and preservation of market-rate buildings, and a Declaration of Restrictions will restrict each building as permanently affordable. A Deed of Trust will secure the loan on title. MOHCD encourages potential Sponsors to work with bridge lenders such as the San Francisco Housing Accelerator Fund ("HAF") to provide the initial acquisition and rehab financing. Once the rehab is complete, MOHCD will provide the funds to takeout the bridge lender and provide the permanent financing for the property.

While the program funds will be disseminated on a first-come-first-served basis, if significant additional funds were to become available for program extension and expansion, MOHCD would work with DPH on a Notice of Funding Availability (NOFA) to notify Sponsors of the availability of funding. Delegated authority will allow the MOHCD Director to approve individual loans, except in the case where they are over $10 million.

d. Borrower/Grantee Profile

Sponsors have been notified of the availability of funding, and the pool of Sponsors will be limited to only those that have existing contracts with DPH for co-op living. Eligible borrower profiles are included here:

[1] San Francisco Administrative Code, Chapter 117: Cooperative Living Opportunities for Mental Health Program. Section 117.1. (2019)

Positive Resource Center/Baker Places

Positive Resource Center/Baker Places (PRC) provides outpatient stable housing services to 114 clients in 30 stable housing locations throughout the city that it leases or owns. There are two programs within the Co-op Department: the Assisted Independent Living Program (70 beds), and the Supported Living Program, (44 beds, comprising 36 beds including 8 targeted Section 8 beds plus 8 beds with other rental subsidies). Both programs aim to reduce inpatient and crisis services by successfully providing long-term stable housing supported by mental health, substance use disorder and HIV/AIDS case management. Services include individual and group counseling, crisis intervention acute intervention and referral, plan of care assessment, development and tracking, outpatient social skills focused groups 5 days a week, on-call case manager availability 24/7, and case manager assisted linkage to community resources including mental health, substance use disorder, primary care clinician, vocational, educational, financial, nutritional, health insurance, and other services requested by clients. The target population is adult residents of San Francisco who have a demonstrated need for co-op level of care and have completed transitional level of care and mental health or substance use disorder treatments. Clients are required to pay income-based monthly program rent which is determined at initial program qualification.

Conard House

The Conard House Coop Program consists of 19 apartments units. Six apartments are in two 3-unit buildings in the Mission District and NOPA, owned by Conard, and the remaining 13 co-ops are leased apartments around the City, in the Castro, Western Addition, Russian Hill, Bayview, Lower Pac Heights, and Excelsior. The types of buildings included in Conard’s co-op portfolio include triplexes, duplexes, and single-family buildings with second units. Their current co-op resident capacity is 68 adults. Co-op units may be shared by groups of people depending on the number of bedrooms, with the majority being 1-bed per room. Program participants lease bedrooms and common spaces through a residential lease with a set of house rules as a standard part of the lease. Standard eviction procedures for non-compliance apply.

Progress Foundation

The co-op model for Progress Foundation has historically been a master lease strategy in which Progress locates individual living units of 4 or 5 bedrooms. Progress then subleases the beds to Supported Living Program (SLP) clients, a program funded through a contract with the DPH’s Community Behavioral Health Services (CBHS). Each resident of the co-op has a services agreement with the agency to continue a clinical relationship with a Progress Foundation case manager or some other clinician in the CBHS system of care. In addition to individual meetings with each client, case managers meet weekly with each household to address issues within the apartment setting and to address client concerns. Progress Foundation SLP staff are responsible for coverage of the co-op settings on a 24-hour-a-day, 7 days-a-week basis. Progress co-op clients are dually diagnosed (severe mental illness and substance use disorder) and the SLP has a target ratio of 1 FTE case manager for each 20 program clients. The Progress SLP is funded by client rents, and a combination of Medi-Cal, State Realignment, and General Fund dollars. Additionally, the contract with DPH includes an ongoing subsidy in the amount of the differential between the client’s income and the unit’s rent. Progress maintains a maximum rent/utilities cost at 30% of each client’s income, following the HUD project-based subsidy framework. Thirty-two clients are currently housed in their master-leased Co-ops, with another Transitional-Aged Youth (TAY) co-op for 5 clients opening soon. An additional 30 Supported Living clients who have graduated from the Co-ops are receiving case management services while they transition to independent living in the general community. Progress also provides case management support to approximately 70 individuals who live in 4 permanent housing developments, which all include a project-based subsidy (HUD and HCD).

III. Governing Documents, Policy and Regulations

Select Program terms are below. Please refer to the attached Program Regulations (**EXHIBIT I**) and related exhibits for a comprehensive list of the Program terms. Definitions are further provided in the text of Chapter 117 of the San Francisco Administrative Code.

3.1. General Loan Terms

3.1.1. Eligible Borrowers. Borrowers (also "Sponsors") may be either a for-profit or not-for-profit enterprise. To be an eligible Borrower, the applicant must have an active Cooperative Living contract or grant agreement with DPH Behavioral Health Services for the provision of case management services, and the applicant must not be in default or have any performance issues under such contract or grant agreement. MOHCD will evaluate all prospective Borrowers based on their enterprise risk.

3.1.2. Eligible Properties. Loans may be used to cover costs associated with (i) the acquisition of single-family homes, multi-unit residential buildings, or other suitable residential units; (ii) the conversion of such buildings to Cooperative Living; and (iii) financing the cost of needed improvements such as seismic, fire, health, and safety upgrades or other major rehabilitation for habitability of such structures and for unreinforced masonry buildings. Proceeds of a Loan will not be used to finance new construction of a building.

Properties proposed for acquisition must be exclusively residential use (mixed use buildings are not eligible), and must be vacant, unless the acquisition is of a property that is already occupied by tenants who have a contract with DPH.

3.1.3. Loan Structure and Term. Loans will mature and complete amortization no later than 57 years from the date upon which they are funded. Loans issued to finance a Project beyond such construction and/or stabilization phase will mature and complete amortization no later than 55 years from loan closing.

Loan payments including all principal and accrued interest may be deferred and repayable as a balloon due at maturity. Loan prepayments will not be permitted without MOHCD's prior written consent. To preserve and maintain cooperative living, MOHCD may forgive, refinance, restructure, modify, or extend the term of any Loan and any related agreements, provided that a new Declaration of Restrictions is recorded against the Property.

3.1.4. Interest Rates. Loans will bear a fixed rate of interest set at the closing date equal to the greater of 3% annual simple interest.

3.2. Regulatory Requirements

3.2.1. Occupancy Restrictions. Tenants must have a contract with DPH for rent and case management services under a cooperative living program. In the event the project ceases to be used for the program, then the units must be occupied by households or marketed to households whose combined average income and rent does not exceed 80% of AMI. MOHCD reserves the right to require deeper affordability on any property.

3.2.2. Contracting Requirements. Borrowers will comply with all City contracting requirements described in EXHIBIT B of the Program Regulations.

3.3. Program Costs

3.3.1. Origination Fee. $15,000 or 1.25% of the Loan, whichever is greater.

3.3.2. Legal Fee. $15,000 to $35,000 depending on size and complexity.

3.4. Underwriting

3.4.1. Loan Sizing. Equal to the lesser of:

i. 100% appraised value, or
ii. 100% of total development costs

3.4.2. Underwriting Guidelines.

i. Operating Reserves, capitalized amount and annual deposits:

In connection with Closing, Projects must reserve in an Operating Reserve Account an amount equal to at least 25% of budgeted operating expenses for the first full year of operations (including hard debt service).

No annual deposits are required unless the balance in the Operating Reserve Account drops below 25% of the prior year's operating expenses (including hard debt service), in which case the Borrower must, if practicable, deposit into the account an amount equal to the greater of (a) 25% of budgeted operating expenses for the next full year of operations (including hard debt service) or (b) the Operating Reserve Account deposit required at Closing. Any such required payments would be made from cash flow that remains after all other required payments are made (e.g., hard debt service, other reserve payments).

ii. Replacement Reserves, capitalized amount and annual deposits:

To close, projects must reserve the greater of 1) $2,000 per unit or 2) the amount necessary to pay all replacement costs for the 20 years following closing, as specified in an approved PNA.

Annual deposits must equal the greater of either 1) the amount required by the PNA or 2) the greater of the per unit or per bed amounts listed in the following table:

Number of Units at the Project	Replacement Reserve Deposits	
	Per Unit Per Year	Per Bed Per Year
<10	$400	$100
11-25	$375	$75
>25	$350	$50

3.4.3. Enterprise Risk. MOHCD and DPH will assess each prospective Borrower's capacity for both project management and asset management. Borrower must demonstrate its ability to manage the financial performance and capital needs of its portfolio.

3.5. Loan Approval Process

3.5.1. Application. To initiate the Loan approval process, prospective Borrowers must submit an application to MOHCD and DPH. Application information and forms will be made available by the Director and published on MOHCD's website, or such other convenient location as may be determined by the Director.

The elements of a typical application package include the following:

- An Application for Program Financing Form;
- A MOHCD Pro Forma workbook;
- An Indemnification Agreement;
- An organizational chart for the Project (including the hierarchical relationships, ownership percentages, official names, entity types, and state of formation for all entities that have ownership and/or control interests in the Borrower entity as of Application submission or will have such interests as of Closing);
- A narrative description of experience with similar projects (for the Sponsor as well as its partners) and a description of services that will be provided to the tenants; and
- A draft Distribution List with contact information for known transaction parties

3.5.2. Approval. Following submission of a complete application package described in Section 3.5.1, MOHCD and DPH will review the application for consistency with these regulations and MOHCD's policy priorities. The Program Director will issue a soft commitment letter that will include an authorized signatory from DPH, to serve as the preliminary approval mechanism, indicating that the proposed project 1) is generally feasible; and 2) can be executed in a manner consistent with these Regulations.

Following preliminary approval, applications will be submitted to the MOHCD Director for evaluation and final approval. Final approval or denial may be issued pursuant to delegated authority related to MOHCD's Acquisition Program Guidelines.

3.6. Compliance Monitoring.

On an annual basis, DPH will monitor occupancy compliance to ensure that units are occupied by persons with DPH contracts for cooperative living. MOHCD will monitor the Borrower's compliance with the Loan Documents and will take such actions as are necessary to enforce provisions of the Loan Documents. As needed, MOHCD staff will work with those departments or individuals designated by the Director to monitor compliance with Chapter 117, and all other applicable federal, state, and local laws.

4. STAFF RECOMMENDATIONS

MOHCD staff recommends approval of the Cooperative Living for Mental Health Program Regulations (attached as EXHIBIT I).

5. LOAN COMMITTEE MODIFICATIONS

LOAN COMMITTEE RECOMMENDATION

Approval indicates approval with modifications, when so determined by the Committee.
[ ] APPROVE. [ ] DISAPPROVE. [ ] TAKE NO ACTION.

____ Date: ____________________
Eric D. Shaw, Director
Mayor's Office of Housing and Community Development

[ ] APPROVE. [ ] DISAPPROVE. [ ] TAKE NO ACTION.

____ Date: ____________________
Sally Oerth, Interim Executive Director
Office of Community Investment and Infrastructure

[ ] APPROVE. [ ] DISAPPROVE. [ ] TAKE NO ACTION.

____ Date: ____________________
Salvador Menjivar, Housing Director
Department of Homeless and Supportive Housing

[ ] APPROVE. [ ] DISAPPROVE. [ ] TAKE NO ACTION.

____ Date: ____________________
Anna Van Degna, Director
Controller's Office of Public Finance

Attachments: EXHIBIT I– Cooperative Living for Mental Health Program Regulations

Chavez, Rosanna (MYR)

From: Shaw, Eric (MYR)
Sent: Tuesday, July 6, 2021 11:30 AM
To: Chavez, Rosanna (MYR)
Subject: Cooperative Living for Mental Health Program Regulations

Approve

Eric D. Shaw
Director/ Interim Director HopeSF

Mayor's Office of Housing and Community Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor

Chavez, Rosanna (MYR)

From: Colomello, Elizabeth (CII)
Sent: Friday, July 2, 2021 11:57 AM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR); Oerth, Sally (CII)
Subject: Cooperative Living for Mental Health Program Regulations

Hi Rosie-
Confirming that I am voting in favor of the subject regulations before Loan Committee on behalf of OCII.
Thanks-
Elizabeth

office of COMMUNITY INVESTMENT and INFRASTRUCTURE
OCII

Elizabeth Colomello
Senior Development Specialist

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Chavez, Rosanna (MYR)

From: Menjivar, Salvador (HOM)
Sent: Friday, July 2, 2021 1:19 PM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR)
Subject: COOPERATIVE LIVING UNDER THE CLMH PROGRAM

I approve the request for program regulations for Cooperative Living for Mental Health (CLMH), a program with the Department of Public Health that will provide financing in the form of long-term, forgivable loans for the purpose of acquiring and preserving a stable stock of multi-family buildings and/or single-family homes.

Best,

salvador

Salvador Menjivar
Director of Housing
Pronouns: He/Him
San Francisco Department of Homelessness and Supportive Housing
salvador.menjivar1**@sfgov.org** | 415-308-2843

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Chavez, Rosanna (MYR)

From: Pereira Tully, Marisa (CON)
Sent: Friday, July 2, 2021 11:57 AM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR)
Subject: Cooperative Living for Mental Health Program Regulations

Approve

Marisa Pereira Tully (she/her)
Controller's Office of Public Finance
City and County of San Francisco

EXHIBIT I: Cooperative Living for Mental Health Program Regulations

See attached.

Mayor's Office of Housing and Community Development
City and County of San Francisco

London N. Breed
Mayor

Eric. D. Shaw
Director

COOPERATIVE LIVING FOR MENTAL HEALTH (CLMH) PROGRAM REGULATIONS

The purpose of these Program Regulations (the "**Regulations**") is to implement the Cooperative Living for Mental Health Program ("**CLMH**" or the "**Program**") for the City and County of San Francisco (the "**City**") under Chapter 117 of the City's Administrative Code ("**Chapter 117**") and administration of the Cooperative Living Opportunities for Mental Health Loan Fund (the "**Fund**") under Section 10.100-49.5 of the City's Administrative Code. Chapter 117 establishes the basis for site eligibility, program management, regulations, loan terms, and program administration. Further, it delegates to the Mayor's Office of Housing and Community Development ("**MOHCD**"), and the Department of Public Health ("**DPH**") the authority to promulgate these Regulations for the purpose of ensuring efficient and transparent administration of the Program.

1. GENERAL INFORMATION

1.1. <u>Defined Terms</u>. Any capitalized terms not defined herein have the meanings given in Chapter 117.1. With respect to defined terms, words used in the present tense include the future, words stated in the masculine gender include the feminine and neuter, and the singular number includes the plural and the plural, the singular.

1.2. <u>Effective Date, Amendments</u>. These Regulations are effective as of July 2, 2021 and may be amended at the discretion of the Director of MOHCD (the "**Director**"). Any such amendments will be drafted in consultation with the City Attorney's Office and will not become effective until approved by the Citywide Affordable Housing Loan Committee (the "**Loan Committee**"). Such amendments must also be reported to the City's General Obligation Bond Oversight Committee at the first meeting of that committee following the effective date of the amendment.

1.3. <u>Publication</u>. The Director will publish these Regulations, as amended from time to time, on MOHCD's website and in such other public places as the Director may deem appropriate, and will provide these Regulations to persons requesting a written copy hereof.

1.4. <u>Sources and Uses of Funds</u>. The funds used to provide Loans or grants under the Program are held in the Fund. The purpose of the Fund is to expand opportunities for people with chronic mental illness and/or substance use disorders to live in communal, non-institutional, neighborhood-based, household settings with 24-7 on-call individual and household case management services ("**Cooperative Living**"). These funds may be issued directly to Borrowers (as defined in **§2.2** below) in the form of Loans or grants or may be used to take out interim sources of Loan funds (e.g., acquisition or rehabilitation loans).

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The Fund will be used exclusively for the purpose of providing long-term loans or grants for qualified organizations to acquire, rehabilitate, and maintain housing under the Program, and as further described in **§2.1** below.

1.5. __Term Sheet__. These Regulations are summarized for reference in the term sheet attached hereto as **EXHIBIT A**.

2. LOAN TERMS AND CONDITIONS

For the purposes of these Regulations, "**Property**" means any legal parcel(s) of real property and improvements eligible for a Loan or grant under the Program, and subject to a Declaration of Restrictions, and "**Project**" means the improvements on such Property.

2.1. __Eligible Properties__. The proceeds of Loans may be used to cover costs associated with (i) the acquisition of single-family homes, multi-unit residential buildings, or other suitable residential units; (ii) the conversion of such buildings to Cooperative Living; and (iii) financing the cost of needed improvements such as seismic, fire, health, and safety upgrades or other major rehabilitation for habitability of such structures and for unreinforced masonry buildings. Proceeds of a Loan will not be used to finance new construction of a building. Properties proposed for acquisition must be exclusively residential use (mixed use buildings are not eligible), and must be vacant, unless the acquisition is of a property that is occupied by tenants who have a contract with DPH. MOHCD reserves the right to make exceptions on a case-by-case basis. MOHCD reserves the right to decline an Application due to an unreasonable acquisition price (see loan-to-value ratio in **§6.3**). As described in **§6.2** below, appraisals submitted in connection with Applications must show both an "as-is" market value for the Property and an "as-rehabilitated and restricted" market value for the Property.

All residential units at Properties must fully conform with City's Building Code and Planning Code requirements applicable to the Property, including, but not limited, to zoning, and any relevant neighborhood plan controls. Where there are unpermitted units and the units meet minimum livability standards according to Chapter 5 of the San Francisco Housing Code of 2016, Loans may be used to bring such units into compliance with permitting requirements.

A Project defined as a "Residential Hotel" under Chapter 41 of the City's Administrative Code is eligible to receive a Loan; a Project defined as a "Tourist Hotel" under that chapter is not eligible to receive a Loan.

2.2. __Eligible Borrowers__. Recipients of Loans ("Borrowers") may be either a for-profit or not-for-profit enterprise. To be an eligible Borrower, the applicant must have an active Cooperative Living contract or grant agreement with the Department of Public Health (DPH) Behavioral Health Services for the provision of case management services, and the applicant must not be in default or have any performance issues under such contract or grant agreement. As part of the Loan underwriting process, MOHCD will evaluate all prospective Borrowers based on the enterprise risk criteria described in §6.1 below. Eligible Borrowers may be organized as special-purpose, single-asset entities. In such cases, MOHCD may look to the entity or entities that ultimately own or control the Borrower (the "Sponsors") when assessing enterprise risk, seeking financial guarantees, or for other purposes.

2.3. __Interest Rates__. Loans will bear a fixed rate of interest set at the closing date equal to 3% annual simple interest.

2.4. __Loan Term, Amortization, Prepayments__. Loans issued to finance for the acquisition of Property and/or construction related to a Project ("**Acquisition/Construction Loans**") will mature and complete amortization no later than 57 years from the date upon which they are funded

(“**Closing**”). Loans issued to finance a Project beyond such construction and/or stabilization phase (“**Permanent Loans**”) will mature and complete amortization no later than 55 years from Closing.

Loan payments including all principal and accrued interest may be deferred and repayable as a balloon due at maturity. Loan prepayments will not be permitted without MOHCD’s prior written consent. To preserve and maintain Cooperative Living, MOHCD may forgive, refinance, restructure, modify, or extend the term of any Loan and any related agreements, provided that a new Declaration of Restrictions is recorded against the Property.

2.5. <u>Security, Lien Position</u>. All Loans will be fully secured by a lien (Deed of Trust) against the fee interest in the Property and any improvements financed with Loan proceeds. MOHCD may subordinate such deeds of trust and other security instruments on a case by case basis pursuant to MOHCD’s Subordination Policy. When applicable, MOHCD may agree to secure its Loan against the leasehold interest if all other loans and agreements are also to be recorded against the leasehold interest. Borrowers will not secure any other loans against the Property without the prior written approval of MOHCD, in its sole and absolute discretion, and if approved, no junior loans may mature prior to a Loan.

2.6. <u>Additional City/OCII Funding</u>. Loans may be combined with other financing from the City or the Office of Community Investment and Infrastructure (“**OCII**”), including grants and subordinate gap loans, as necessary and subject to availability. DPH will enter into new contracts or grants, or expand or modify existing contracts or grants with nonprofit housing providers to support the operation of Cooperative Living opportunities, and associated services, through state programs, City funding, and/or other sources, as available.

3. AFFORDABILITY RESTRICTIONS

For the purposes of these Regulations, “**Eligible Person**” means the tenant or tenants occupying a given unit at a Property, who is also a person with chronic mental illness and/or a substance use disorder who has been assessed and determined by DPH to be able to live independently and safely in Cooperative Living and to be able to participate in maintaining a cooperative household. For so long as the Project operates within the Program, the terms and conditions of the contract or grant agreement with DPH will apply to the Project. In the event the Project ceases to be used for the Program, then the Units must be occupied by households or marketed to households whose combined average income does not exceed 80% of AMI. Income restrictions are stated in terms of Area Median Income (“**AMI**”), which means the area median income as published annually by MOHCD, derived in part from the income limits determined by the U.S. Department of Housing and Urban Development for the San Francisco area, adjusted solely for Household size, but not high housing cost area, also referred to as “unadjusted median income.”

In general, all Properties financed by Loans will be subject to an agreement to be executed by the Borrower and recorded against the Property as a condition precedent to receiving the Loan in order to permanently restrict rents at the Property at affordable levels (a “**Declaration of Restrictions**”). Each Declaration of Restrictions must (a) be recorded in first position on title, (b) be senior to all deeds of trust, (c) restrict all units to Eligible Persons, (d) restrict all units to Households earning no more than 120% AMI, with a combined average income and rent not to exceed 80% of AMI across all units. MOHCD reserves the right to require deeper affordability (e.g., lower AMI caps) on any Property. The term of each Declaration of Restrictions will be the life of the Project, but no less than 75 years . To ensure long-term use restrictions, MOHCD may require Borrowers to execute and record against the Property an agreement that provides the City a first option to purchase the Property at a restricted value.

4. CITY CONTRACTING AND OTHER REQUIREMENTS

All Loans or grants will be subject to the minimum requirements described below and the terms set forth in the Loan Agreement (as defined in **§8** below), Declaration of Restrictions, and any other Loan-related documents to which the City is a party (collectively the "**Loan Documents**").

4.1. **City Contracting Requirements.** As a condition precedent to receiving a Loan, all Borrowers must agree to comply with all City contracting requirements, including but not limited to (a) health insurance requirements, (b) the Local Business Enterprise and Non-Discrimination in Contracting Program in Administrative Code Section 14B, (c) the First Source Hiring Program in Administrative Code Section 83, and (d) the highest general prevailing rate of wages as determined in accordance with Administrative Code Section 6.22E or other applicable City and state[1] laws. These requirements are described in detail in the document attached hereto as **EXHIBIT B**, the provisions of which (as amended from time to time) are incorporated by reference herein and will be incorporated into the Loan Documents.

4.2. **Property/Liability Insurance.** As a condition precedent to receipt of a Loan, the Borrower will obtain and agree to maintain insurance in the types, coverages, and amounts determined by the City's Risk Manager and the Director. These insurance-related requirements are described in detail in the document attached hereto as **EXHIBIT C**, the provisions of which (as amended from time to time) are incorporated by reference herein and will be incorporated into the Loan Documents.

4.3. **Anti-Displacement Policy and Relocation Requirements.** As a matter of policy, tenants must not be evicted or otherwise permanently displaced as a result of a Project's participation in the Program. If Program-financed construction will require residential tenants to be temporarily relocated, Borrowers must facilitate and cover all costs associated with such relocation. As a condition precedent to Closing, Borrowers will be required to demonstrate their willingness, preparation, and ability to undertake necessary relocation by submitting to MOHCD and DPH a relocation budget and a detailed relocation plan, the provisions of which are consistent with the following:

- Residential tenants will not incur costs related to relocation but will continue to pay rent for their original unit.
- The Borrower will dedicate staff or provide a relocation consultant to provide advisory services to residential tenants during the relocation process.
- Notice will be given to all tenants 90 days and 30 days prior to commencement of relocation.
- For residential tenants, adequate temporary housing will be provided that is in decent, safe, and sanitary condition and of comparable size to a tenant's unit at the Project.
- Relocation and rent-concession agreements must be documented and signed by all applicable parties prior to commencement of construction.
- **DPH will verify that case management services will not be disrupted by the proposed relocation.**

5. PROGRAM COSTS

All Loans will be subject to certain costs, reimbursement requirements, and indemnification requirements as described below.

5.1. **Origination Fee.** MOHCD receives compensation for underwriting and closing Loans by charging an up-front fee equal to the greater of $15,000 or 1.25% of the total Loan funds disbursed. This fee must be paid in full at Closing.

5.2. **City Attorney Expenses.** The City Attorney's Office bills MOHCD for staff time and resources associated with its work as lender counsel ("**CAO Expenses**"). These expenses typically range from $15,000 to $35,000, depending on the size and complexity of the transaction and the presence

[1] For example, Section 1720(a)(1) of the California Labor Code provides that a construction project is subject to prevailing wage requirements if it is "paid for in whole or in part out of public funds…"

of MOHCD gap financing. MOHCD will include in its closing invoice to the Borrower a separate line item (in addition to the Origination Fee) to offset any CAO Expenses billed to MOHCD.

5.3. **__Indemnification__.** In case any action at law or in equity, including an action for declaratory relief, is brought against the Borrower to enforce the provisions of the Loan Documents, the Borrower must pay reasonable attorney's fees and other reasonable expenses incurred by the City or its agents in connection with such action.

The Borrower must also defend and indemnify and hold the City harmless for any costs incurred by the City related to any claim, lawsuit, liability, or loss in connection with a Loan, regardless of whether the Borrower is negligent. The City reserves the right to require a personal or corporate guaranty (e.g., from a parent company) in order to strengthen the indemnification and expense reimbursement obligations described above.Additional terms and conditions associated with the Borrower's indemnification and reimbursement obligations to the City are described in the Deposit and Indemnification Agreement negotiated and executed in connection with the Application.

6. UNDERWRITING CRITERIA

The following criteria will apply to MOHCD's underwriting of Loans:

6.1. **__Enterprise Risk__.** MOHCD and DPH will assess each prospective Borrower's enterprise-level risk based on the entity's capacity for project management, asset management, and service delivery. In general, the Borrower's project manager must have experience with at least one comparable, successfully completed project or be assisted by a consultant or other staff person with such experience. When relying on a consultant, the consultant's resume should demonstrate that the consultant has successfully managed all aspects of at least two comparable development projects in the recent past. The Borrower must demonstrate that all project management staff assigned to a Project (whether internal staff or consultants) have adequate time to commit to the Project.

Regarding asset management, the Borrower must provide information requested by MOHCD describing asset management staffing plans and demonstrate its ability to manage the financial performance and capital needs of its existing and future assets. MOHCD will use the information provided to verify that the Borrower's approach to asset management meets the City's stewardship expectations, particularly with regard to timely performance of capital needs assessments, maintaining adequate replacement reserves, and timely collection of tenant rents.

6.2. **__Due Diligence Items__.** In connection with each Application, MOHCD will request, and the Borrower will promptly provide, all documentation necessary to establish a Project's creditworthiness. Standard due diligence items include the following:

- Appraisal, ordered by MOHCD, providing the following values for the Property—
  - an "as-is" market value for the Property and
  - an "as-rehabilitated and restricted" market value for the Property assuming (a) completion of Property rehabilitation and (b) implementation of any MOHCD rent restrictions;
- Phase I Environmental Site Assessment Report and, if necessary based on the findings of the Phase I, a Phase II Environmental Site Assessment Report;
- Physical Needs Assessment ("**PNA**");
- Zoning analysis, detailing current and future zoning and accounting for future entitlements and other requirements;
- Project description
- Project pro forma and cash flow analysis;
- Full Project development budget;
- Detailed acquisition and predevelopment budget;

- 3 years of audited financials plus the most recent unaudited financials for the Sponsor;
- List of contingent liabilities;
- Proposed project schedule;
- Evidence of insurance;
- ALTA survey; and
- Organizational documents for the Sponsor and Borrower.

6.3. <u>Loan-to-Value Ratio</u>. All Projects must demonstrate, via a cash flow analysis covering the Loan term, a loan-to-value ratio ("**LTV**") that does not exceed the lesser of (a) 100% of appraised value, or (b) 100% of total development costs. For the purposes of calculating a Project's LTV, the Project's value must be substantiated by a MOHCD-approved appraisal. As described in **§3.2** above, appraisals submitted in connection with Applications must show both an "as-is" market value for the Property and an "as-rehabilitated and restricted" market value for the Property.

6.4. <u>Reserve Requirements</u>. MOHCD requires all Projects to set aside reserves in separate interest-bearing accounts as described below.

6.4.1. Operating Reserves; Capitalized Amounts and Annual Deposits. In connection with Closing, Projects must reserve in an Operating Reserve Account an amount equal to at least 25% of budgeted operating expenses for the first full year of operations (including hard debt service).

No annual deposits are required unless the balance in the Operating Reserve Account drops below 25% of the prior year's operating expenses (including hard debt service), in which case the Borrower must, if practicable, deposit into the account an amount equal to the greater of (a) 25% of budgeted operating expenses for the next full year of operations (including hard debt service) or (b) the Operating Reserve Account deposit required at Closing. Any such required payments would be made from cash flow that remains after all other required payments are made (e.g., hard debt service, other reserve payments).

6.4.2. Replacement Reserves; Capitalized Amounts and Annual Deposits. In connection with Closing, Projects must reserve in a Replacement Reserve Account an amount equal to the greater of (a) of $2,000 per unit or (b) the amount necessary to pay all replacement costs for the 10 years following Closing, as specified in an approved PNA (taking into account the scope of work planned in connection with Closing).

MOHCD requires annual deposits into the Replacement Reserve Account equal to the greater of (a) the amount needed according to an approved 20-year PNA or (b) the greater of the per unit or per bed amounts listed in the following table:

Number of Units at the Project	Replacement Reserve Deposits	
	Per Unit Per Year	Per Bed Per Year
<10	$400	$100
11-25	$375	$75
>25	$350	$50

In addition to the deposits listed above, any property taxes that were included in a Project's development budget and later refunded by the City's tax collector must be deposited into the Project's Replacement Reserve Account.

6.4.3. Other Reserves. MOHCD reserves the right to require additional reserves in connection with the Loan underwriting process.

6.5. <u>Key Operating Assumptions</u>. Key operating assumptions in the MOHCD pro forma operating budget for each Project include the following:

6.5.1. Vacancy Allowance. Budgets typically assume annual economic vacancy equal to 5% of residential rental income. MOHCD may increase or decrease the residential vacancy percentage based on the five most recent years of audited financial data.

6.5.2. Construction Contingencies. Budgets must assume a contingency set-aside for unforeseen conditions and minor errors and omissions related to any construction equal to 15% of a Project's total construction budget. A soft contingency set-aside of 15% is required for unforeseen expenses related to architectural design, engineering, legal, or financial costs.

6.5.3. Income and Expense Growth. Budgets must assume no more than 2.5% annual growth in operating income and no less than 3.5% annual growth in operating expenses, or as determined by the contract with DPH.

7. LOAN APPROVAL PROCESS

The process of approving Applications submitted to MOHCD will proceed as described below.

7.1. Application. To initiate the Loan approval process, prospective Borrowers must submit an application to MOHCD and DPH. Application information and forms will be made available by the Director and published on MOHCD's website, or such other convenient location as may be determined by the Director. The application package will indicate procedures for returning a completed application, and the expected time frame for the processing thereof.

The elements of a typical application package include the following:

- An Application for Program Financing Form;
- A MOHCD Pro Forma workbook;
- An Indemnification Agreement;
- An organizational chart for the Project (including the hierarchical relationships, ownership percentages, official names, entity types, and state of formation for all entities that have ownership and/or control interests in the Borrower entity as of Application submission or will have such interests as of Closing);
- A narrative description of experience with similar projects (for the Sponsor as well as its partners) and a description of services that will be provided to the tenants; and
- A draft Distribution List with contact information for known transaction parties

7.2. Preliminary Approval/Denial. Following submission of a complete application package described in Section 7.1 ("**Application**"), MOHCD and DPH will review the Application for consistency with these Regulations and MOHCD's policy priorities, resolve any follow-up inquiries with the Borrower, and present the Application to the Director for evaluation. The Director will either approve or deny the Application (respectively, "**Preliminary Approval**" or "**Preliminary Denial**") and if approved, will issue a soft commitment letter that will include an authorized signatory from DPH, to serve as the preliminary approval mechanism. Preliminary Approval is merely MOHCD's preliminary finding that, based on the information provided in the Application (in original form or as subsequently amended), the proposed financing (1) is generally feasible, (2) can be executed in a manner consistent with these Regulations, and (3) is recommended for approval by the Loan Committee (as applicable).

Preliminary Approval DOES NOT (1) represent any commitment by the City to proceed with the proposed financing; (2) authorize any gap financing by MOHCD, OCII, or other City departments; (3) signify that the Project complies with the planning, zoning, subdivision, or building, laws or ordinances of the City; or (4) suggest that MOHCD, DPH, the City, or any officer or agent of

MOHCD, DPH, or the City will grant any other approval, consent, or permit that may be required in connection with a given Project.

Any Preliminary Denials will be in writing and will state the basis for denial. Borrowers may appeal Preliminary Denials to the Director within 10 days of being notified of such denials; any Preliminary Denial not appealed within this 10-day timeframe will be considered a Final Denial (and thus subject to the terms of **§7.3** below). Any appeals of Preliminary Denials must be submitted in writing; the Director's subsequent denial of any such appeal will also be considered a Final Denial.

7.3. **Final Approval/Denial.** Following Preliminary Approval, Applications will be submitted to the MOHCD Director for evaluation and final approval or denial. Final approval or denial may be issued pursuant to delegated authority related to MOHCD's Acquisition Program Guidelines. Regardless of whether an Application meets all of the eligibility criteria in these Regulations, the Loan Committee or MOHCD Director (if authorized) may, in its discretion, choose to deny the Application (also a "**Final Denial**") or to approve the application (a) with modifications (e.g., a lower Loan amount than requested by the Applicant), (b) subject to certain conditions, or (c) without conditions (each, a "**Final Approval**").

Final Denials are not subject to appeal; Applicants who wish to submit an Application for reconsideration following a Final Denial must compensate the City for its costs associated with the denied Application and complete the entire Application process again (including, without limitation, payment of an additional Underwriting Deposit).

8. LOAN CLOSING AND DISBURSEMENTS

Following Loan approval, MOHCD will oversee the Closing and disbursement processes. MOHCD staff will work with Applicants and other relevant transaction parties in good faith to complete any remaining due diligence, attend regular closing calls, finalize legal documents, and proceed as quickly as practicable to Closing and disbursement of Loan funds ("**Disbursement**").

Unless otherwise agreed by MOHCD and the Borrower in writing, the Borrower will establish an escrow account with the title company issuing the title policy associated with the Project, or any other escrow agent the Borrower chooses, subject to MOHCD approval (the "**Escrow/Title Agent**"). The parties will execute and deliver to the Escrow/Title Agent written instructions consistent with these Regulations and the loan agreement by and between the Borrower and the City to be executed in connection with the Loan (the "**Loan Agreement**"). All conditions precedent to Closing and Disbursement will be fully described in the Loan Agreement. In the event the escrow does not close on or before the expiration date of escrow instructions signed by MOHCD, or any other date MOHCD specifies, MOHCD may declare the Application and the Loan Agreement to be null and void.

The Borrower will timely submit draw requests—in connection with Closing and throughout the construction process, as applicable—in accordance with the Loan Agreement. MOHCD staff will process draws with due dispatch and will monitor construction progress pursuant to the terms of the Loan Agreement.

9. COMPLIANCE MONITORING

DPH will monitor occupancy compliance to ensure that units are occupied by persons with DPH contracts for cooperative living. MOHCD will monitor the Borrower's compliance with the Loan Documents and will take such actions as are necessary to enforce provisions of the Loan Documents. Also, as needed, MOHCD staff will work with those departments or individuals designated by the Director to monitor compliance with Chapter 117, and all other applicable federal, state, and local laws.

10. EXCEPTIONS, WAIVERS

Where consistent with applicable laws and regulations, MOHCD reserves the right to waive any portion of these Regulations, or to make exceptions on a case-by-case basis. Such waivers and/or exceptions will be granted through the written approval of the Director of MOHCD, in consultation with the Loan Committee.

EXHIBIT A

COOPERATIVE LIVING OPPORTUNITIES FOR MENTAL HEALTH PROGRAM TERM SHEET

This program term sheet (the "Term Sheet") summarizes key provisions of the Cooperative Living Opportunities for Mental Health Program Regulations (the "Regulations") for the City and County of San Francisco (the "City"). The Regulations describe the terms and conditions applicable to the Cooperative Living Opportunities for Mental Health Program (the "Program") administered by the Mayor's Office of Housing and Community Development ("MOHCD"), and the Department of Public Health ("DPH") on behalf of the City. In the case of discrepancies between this Term Sheet and the Regulations, the Regulations will prevail. Unless otherwise indicated, all section references herein refer to sections in the Regulations. Any capitalized terms not defined herein have the meanings given in the Regulations.

			§§
General Loan Terms	**Eligible Properties**	Loans may be used by a for-profit or not-for-profit entity to finance the acquisition, improvement, and/or rehabilitation of single-family homes, multifamily residential buildings, or other suitable residential units for conversion to communal, non-institutional, neighborhood-based, household settings with 24-7 on call individual and household case management services ("Cooperative Living") for people with chronic mental illness and/or substance use disorders. Loan proceeds <u>will not</u> be used to finance new construction. Properties proposed for acquisition must be exclusively residential in use, and must be vacant, unless the acquisition is of a property that is occupied by tenants who have a contract with DPH. MOHCD reserves the right to make exceptions on a case-by-case basis. Acquisition price must be substantiated by a licensed appraisal and may not exceed purchase prices for comparable units or buildings in the area. MOHCD reserves the right to decline an application for funding due to an unreasonable acquisition price. All appraisals must show both the fair market value and the restricted value. It is expected that once restrictions are in place, all future appraisals and refinances will be based on the restricted value.	2.1
	Interest Rates	Loans will bear a fixed rate of interest set at the closing date equal to 3% annual simple interest.	2.3
	Loan Terms, Amortization, Prepayments	Acquisition/Construction Loans will mature no later than 57 years from the date upon which they are funded ("Closing"). Permanent Loans will mature no later than 55 years from Closing. Loan payments including all principal and accrued interest will be deferred and repayable as a balloon due at maturity. Loan prepayments will not be permitted without MOHCD's prior written consent. To preserve and maintain Cooperative Living, MOHCD may forgive, refinance, restructure, modify, or extend the term of any Loan and any related agreements, provided that a new Declaration of Restrictions is recorded against the Property.	2.4
	Security, Lien Position	All Loans will be fully secured by a lien against the fee interest in the Property and any improvements financed with Loan proceeds. MOHCD may record and subordinate deeds of trust and other security instruments on a case by case basis. When applicable, MOHCD may agree to secure its Loan against the leasehold interest if all other loans and agreements are also to be recorded against the leasehold interest. No junior loans may mature prior to a Loan.	2.5
Use Restrictions & Regulatory Requirements	**Use Restrictions**	In general, all Properties financed by Loans will be subject to a Declaration of Restrictions ("DOR") recorded against the Property which must (a) be recorded in first position on title, (b) be senior to all deeds of trust, (c) restrict all units to persons with chronic mental illness and/or a substance use disorder who have been assessed and determined by DPH to be able to live independently and safely in Cooperative Living and to be able to participate in maintaining a cooperative household ("Eligible Persons"), and (d) restrict all units to household earning no more than 120% of AMI with a combined average not to exceed 80% AMI. The term of each DOR will be the greater of 75 years, or the life of the applicable building or unit. To ensure long term use restrictions, MOHCD may require Borrowers to execute and record against the Property an agreement that provides the City an option to purchase the Property at a restricted value.	3

Use Restrictions & Regulatory Requirements	**Contracting Requirements**	DPH will enter into new contracts or grants, or expand or modify existing contracts or grants with nonprofit housing providers to support the operation of Cooperative Living opportunities, and associated services, through state programs, City funding, and/or other sources, as available. Borrowers will comply with all City contracting requirements, including but not limited to (a) health insurance requirements, (b) the Local Business Enterprise and Non-Discrimination in Contracting Program, (c) the First Source Hiring Program, (d) the highest general prevailing rate of wages as determined in accordance with applicable City and state laws, and (e) the requirements of Article 21 of the Administrative Code, or any competitive procurement requirements applicable to grant agreements. These requirements are described in detail in EXHIBIT B of the Regulations.	4.1
	Insurance Requirements	Borrowers will obtain and agree to maintain insurance in the types, coverages, and amounts determined by the City's Risk Manager and the Director. These requirements are described in detail in EXHIBIT C of the Regulations.	4.2
	Displacement and Relocation	Tenants must not be evicted or otherwise involuntarily and permanently displaced as a result of a Project's participation in the Program. If Program-financed construction will require residential tenants to be temporarily relocated, Borrowers must submit to MOHCD and DPH a detailed relocation budget/plan prior to closing and cover all relocation-related costs.	4.3
Progr am	**Origination Fee**	This fee, which must be paid in full at Closing, is equal to the greater of $15,000 or 1.25% of the total Loan funds disbursed.	5.1
	City Attorney Expenses	The City Attorney's Office bills MOHCD for staff time and resources associated with its work as lender counsel ("CAO Expenses"). These expenses typically range from $15,000 to $35,000, depending on the size and complexity of the transaction and the presence of MOHCD or OCII gap financing. MOHCD will include in its closing invoice to the Borrower a separate line item (in addition to the Origination Fee) in the amount of $15,000 to offset any CAO Expenses billed to MOHCD.	5.2
	Indemnification	In case any action at law or in equity, including an action for declaratory relief, is brought against the Borrower to enforce the provisions of the Loan Documents, the Borrower must pay reasonable attorney's fees and other reasonable expenses incurred by the City or its agents in connection with such action. The Borrower must also defend and indemnify and hold the City harmless for any costs incurred by the City related to any claim, lawsuit, liability, or loss in connection with a Loan, regardless of whether the Borrower is negligent. The City reserves the right to require a personal or corporate guaranty (e.g., from a parent company) in order to strengthen the indemnification and expense reimbursement obligations described above.	5.3
Underwriting	**Enterprise Risk**	MOHCD and DPH will assess each prospective Borrower's capacity for both project management, asset management, and service delivery. The Borrower's project manager must have experience with at least one comparable, successfully completed project or be assisted by a consultant or other staff person with adequate experience. Also, the Borrower must provide asset management, service, and harm reduction plans and demonstrate its ability to manage the financial performance and capital needs of its portfolio.	6.1
	Operating Reserves	In connection with Closing, Projects must reserve in an Operating Reserve Account an amount equal to at least 25% of budgeted operating expenses for the first full year of operations (including hard debt service). No annual deposits are required unless the balance in the Operating Reserve Account drops below 25% of the prior year's operating expenses (including hard debt service), in which case the Borrower must, if practicable, deposit into the account an amount equal to the greater of (a) 25% of budgeted operating expenses for the next full year of operations (including hard debt service) or (b) the Operating Reserve Account deposit required at Closing. Any such required payments would be made from cash flow that remains after all other required payments are made (e.g., hard debt service, other reserve payments).	6.4.1
	Replacement Reserves	Projects must reserve in a Replacement Reserve Account an amount equal to the greater of: (a) the amount necessary to pay all replacement costs for the 10 years following Closing, as specified in an approved physical needs assessment ("PNA") (taking into account the scope of work planned in connection with Closing), or (b) $2,000 per unit. MOHCD also requires annual deposits into the Replacement	6.4.2

		Reserve Account equal to the greater of: (a) the amount needed according to an approved 20-year PNA, or (b) the following per-unit amounts: <10 units = $400, 11-25 units = $375, >25 units = $350, or (c) the following per-bed amounts: <10 beds = $100, 11-25 beds = $75, >25 beds = $50. Any property taxes that were included in a Project's development budget and later refunded by the City's tax collector must be deposited into the Project's Replacement Reserve account.	
	Vacancy Allowance	Subject to certain exceptions, budgets assume annual economic vacancy equal to 5% of residential rental income and 20% of commercial rental income.	6.5.1
	Construction Contingency	Budgets must assume a contingency set-aside for construction costs equal to at least 15% of a Project's total construction budget, and a separate soft cost contingency of 15% for architectural, engineering, legal, and finance costs.	6.5.2
	Income/Expense Growth	Budgets must assume no more than 2.5% annual growth in operating income and no less than 3.5% annual growth in operating expenses or as determined by the operating and services contract with DPH.	6.5.3
Loan Approval Process	**Application**	To initiate the underwriting process, prospective Borrowers must submit an Application to MOHCD and DPH, the typical elements of which include: (a) an Application for Program Financing Form; (b) a MOHCD Pro Forma workbook; (c) a Deposit and Indemnification Agreement; (d) an organizational chart for the Project; (e) a narrative description of experience with similar projects (for the Sponsor as well as its partners) and a description of services that will be provided to the tenants; and; (f) a draft distribution list.	7.1
	Preliminary Approval/Denial	Following Application submission, MOHCD staff will review the Application for consistency with the Regulations, MOHCD and DPH's policy priorities, resolve any follow-up inquiries with the Borrower, and present the Application to the Director for evaluation. The Director will either approve or deny the Application (respectively, "Preliminary Approval" or "Preliminary Denial"). If approved, a soft commitment signed by both MOHCD and DPH will be provided to the Borrower. Any Preliminary Denials will be in writing and will state the basis for denial. Borrowers may appeal Preliminary Denials to the Director within 10 days of being notified of such denials; any Preliminary Denial not appealed within this 10-day timeframe will be considered final. Any appeals of Preliminary Denials must be submitted in writing; the Director's subsequent denial of any such appeal will be considered final.	7.2
	Final Approval/Denial	Following Preliminary Approval, Applications may be submitted to the Director for evaluation and final approval or denial. Final approval or denial may be issued pursuant to delegated authority related to MOHCD's Acquisition Program Guidelines.	7.3

CITY AND COUNTY OF SAN FRANCISCO
MANDATORY CONTRACTING PROVISIONS

The following provisions will apply to this Regulatory Agreement as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit will have the meanings given in this Regulatory Agreement.

1. Conflict of Interest. Through its execution of this Agreement, Owner acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

2. Proprietary or Confidential Information of City. Owner understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Owner may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Owner agrees that all information disclosed by City to Owner will be held in confidence and used only in performance of the Agreement. Owner will exercise the same standard of care to protect such information as a reasonably prudent Owner would use to protect its own proprietary data.

3. Local Business Enterprise Utilization; Liquidated Damages.

a. The LBE Ordinance. Owner will comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Owner's obligations or liabilities, or materially diminish Owner's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Owner's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Owner's obligations under this Agreement and will entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies will be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Owner will comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Enforcement. If Owner willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Owner will be liable for liquidated damages in an amount equal to Owner's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Owner authorized in the LBE Ordinance, including declaring the Owner to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Owner's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Owner acknowledges and agrees that any liquidated damages assessed by the Director of the CMD will be payable to City upon demand. Owner further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Owner on any contract with City. Owner agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and will make such records available for audit and inspection by the Director of CMD or the Controller upon request.

4. Nondiscrimination; Penalties.

a. Owner Will Not Discriminate. In the performance of this Agreement, Owner agrees not to discriminate against any employee, City and County employee working with such Owner or Subcontractor, applicant for employment with such Owner or Subcontractor, 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.

b. Subcontracts. Owner will incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and will require all Subcontractors to comply with such provisions. Owner's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Owner does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Owner will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contracts Monitoring Division (formerly 'Human Rights Commission').

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Owner will comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Owner understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Owner and/or deducted from any payments due Owner.

5. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Owner acknowledges and agrees that he or she has read and understood this section.

6. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges Owners not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

7. Drug-Free Workplace Policy. Owner acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Owner agrees that any violation of this prohibition by Owner, its employees, agents or assigns will be deemed a material breach of this Agreement.

8. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Owner to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

9. Compliance with Americans with Disabilities Act. Owner acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through an Owner, must be accessible to the disabled public. Owner will provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Owner agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Owner, its employees, agents or assigns will constitute a material breach of this Agreement.

10. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, Owners' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

11. Limitations on Contributions. Through execution of this Agreement, Owner acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, 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 prospective party to the contract; each member of Owner's board of directors; Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Owner; any Subcontractor listed in the bid or 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.

12. Requiring Minimum Compensation for Covered Employees.

a. Owner agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Owner's obligations under the MCO is set forth in this Section. Owner is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Owner to pay Owner's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Owner is obligated to keep informed of the then-current requirements. Any subcontract entered into by Owner will require the Subcontractor to comply with the requirements of the MCO and will contain contractual obligations substantially the same as those set forth in this Section. It is Owner's obligation to ensure that any Subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any Subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Owner.

c. Owner will not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Owner will maintain employee and payroll records as required by the MCO. If Owner fails to do so, it will be presumed that the Owner paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Owner's job sites and conduct interviews with employees and conduct audits of Owner.

f. Owner's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion will determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Owner fails to comply with these requirements. Owner agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Owner's noncompliance. The procedures governing the assessment of liquidated damages will be those set forth in Section 12P.6.2 of Chapter 12P.

g. Owner understands and agrees that if it fails to comply with the requirements of the MCO, the City will have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City will have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

h. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Owner is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Owner later enters into an agreement or agreements that cause Owner to exceed that amount in a fiscal year, Owner will thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Owner and this department to exceed $25,000 in the fiscal year.

13. Requiring Health Benefits for Covered Employees.

Owner agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement will have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Owner will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Owner chooses to offer the health plan option, such health plan will meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Owner is a small business as defined in Section 12Q.3(e) of the HCAO, it will have no obligation to comply with part (a) above.

c. Owner's failure to comply with the HCAO will constitute a material breach of this agreement. City will notify Owner if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Owner fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Owner fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City will have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Owner will require the Subcontractor to comply with the requirements of the HCAO and will contain contractual obligations substantially the same as those set forth in this Section. Owner will notify City's Office of Contract Administration when it enters into such a Subcontract and will certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Owner will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Owner based on the Subcontractor's failure to comply, provided that City has first provided Owner with notice and an opportunity to obtain a cure of the violation.

e. Owner will not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Owner's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Owner represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Owner will maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Owner will keep itself informed of the current requirements of the HCAO.

i. Owner will provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Owner will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Owner will allow City to inspect Owner's job sites and have access to Owner's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Owner to ascertain its compliance with HCAO. Owner agrees to cooperate with City when it conducts such audits.

m. If Owner is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Owner later enters into an agreement or agreements that cause Owner's aggregate amount of all agreements with City to reach $75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Owner and the City to be equal to or greater than $75,000 in the fiscal year.

14. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Owner may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Owner agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Owner violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Owner from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Owner's use of profit as a violation of this section.

15. Preservative-treated Wood Containing Arsenic. Owner may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" will mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Owner may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Owner from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" will mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

16. Compliance with Laws. Owner will keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

17. Protection of Private Information. Owner has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Owner agrees that any failure of Owner to comply with the requirements of Section 12M.2 of this Chapter will be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Owner pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Owner.

18. Food Service Waste Reduction Requirements. Owner agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Owner agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Owner agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount will not be considered a penalty, but rather agreed monetary damages sustained by City because of Owner’s failure to comply with this provision

19. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any Owner, Subcontractor or consultant who submits a false claim will be liable to the City for the statutory penalties set forth in that section. A Owner, Subcontractor or consultant will be deemed to have submitted a false claim to the City if the Owner, Subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

20. Sugar-Sweetened Beverage Prohibition. The Owner agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

21. Prevailing Wages. Owner understands and agrees that all provisions of section 1770, et seq., of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are hereby incorporated into this contract. Owner also understands and agrees that all provisions of sections 6.22E and 6.22F of the San Francisco Administrative Code are hereby incorporated into this contract. Owner also understands and agrees that all applicable provisions of the Davis-Bacon Act (40 U.S.C. §§3141 et seq.) are hereby incorporated into this contract.

The Owner will maintain weekly certified payroll records for submission to the awarding department as required. The Owner will be responsible for the submission of payroll records of its subcontractors. All certified payroll records will be accompanied by a statement of compliance signed by the Owner indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Board of Supervisors and that the classifications set forth for each employee conform with the work performed.

All such records as described in this section will at all times be open to inspection and examination of the duly authorized officers and agents of the City, including representatives of the Office of Labor Standards Enforcement.

EXHIBIT C

INSURANCE REQUIREMENTS

Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement throughout the Compliance Term at no expense to the City:

1. Borrower, Contractors.

(a) to the extent Borrower or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars ($1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits no less than Two Million Dollars ($2,000,000) combined single limit per occurrence and Four Million Dollars ($4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Borrower is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars ($1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than Two Million Dollars ($2,000,000) per claim and Four Million Dollars ($4,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Borrower's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Borrower will assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars ($50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars ($75,000) each loss, with any deductible not to exceed Five Thousand Dollars ($5,000) each loss, including the City as additional obligee or loss payee;

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than Two Million Dollars ($2,000,000) per claim or occurrence and Two Million Dollars ($2,000,000) annual aggregate per policy. This coverage will be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's contractor, provided that the policy must be "claims made" coverage and Borrower must require Borrower's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance.

Borrower must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation;

start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Borrower as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor. For rehabilitation/construction projects that are unoccupied by residential or commercial tenants, Tenant must obtain Property Insurance by the date that the project receives a Certificate of Substantial Completion.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Borrower for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars ($10,000) each loss, including the City as loss payee.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender will require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

4. General Requirements.

(a) General and automobile liability policies of Borrower, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Borrower hereby waives all rights of subrogation against the City to the extent of any loss covered by Borrower's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Borrower's insurance by the City will not relieve or decrease the liability of Borrower under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Borrower demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

Borrower must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.